

RECEIVED

NOV -9 2016

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

FREDERICK FLOWERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001174

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 27-31, 2012	1
INDICTMENTS AND SENTENCING SHEETS	716
APPLICATION FOR POST-CONVICTION RELIEF FILED AUGUST 26, 2014	722
RETURN DATED APRIL 14, 2015	729
PCR TRANSCRIPT DATED DECEMBER 17, 2015	734
ORDER OF DISMISSAL FILED MAY 18, 2016	793

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 Q. And right under that on 24, March the 1st 2011 at
2 16:27?

3 A. The same thing, T-I-E-T; James Smith.

4 Q. But that was a completed call?

5 A. That one was, yes; 29 seconds.

6 Q. And then the last call dialed by that phone was at
7 what time?

8 A. The last call was at 16:45. It was a dialed call to
9 Mye or Myhesa Wine.

10 Q. And I believe Detective -- Officer VanHorn
11 previously testified that the call -- that the last call
12 appeared to be received by that phone was on March the 1st
13 at 4:46 p.m. from contact named C-T-P-T?

14 A. That's correct.

15 Q. Were you ever able to ascertain the identity of
16 C-T-P-T?

17 A. No. I checked that number through our databases,
18 county, the city and nothing came back. I did a search
19 warrant for subscriber information and it was one of the
20 prepaid phones and there was no information to it.

21 Q. And of course that phone was in the car that was
22 used is that correct?

23 A. The Kyocera, yes.

24 Q. And based upon that were you able to ascertain the
25 approximate time of the shooting?

1 A. Right. 16:48 is what we were looking at.

2 Q. It's when it was called in by Mr. Smith?

3 A. That's when it was called in; right. And then the
4 last received call was 16:46.

5 Q. Moving ahead to March 15th of 2011. Did you have an
6 occasion to speak with a fellow named Michael Quarles?

7 A. I did.

8 Q. And why did you want to speak to Mr. Quarles?

9 A. Michael was at -- in the house at 1339 St. Clair on
10 the day of the shooting. Detectives tried to speak to
11 him then. Again, he wasn't forthright.

12 Q. And you interviewed him that day?

13 A. On March 15th I did, yes.

14 Q. Okay. And did you feel that he was being truthful
15 on that occasion?

16 A. Absolutely not.

17 Q. What did you do with his cell phone during the
18 course of this interview?

19 A. I confiscated his cell phone.

20 Q. He had previously lied about even having a cell
21 phone right?

22 A. He did. What he did was I asked him what his cell
23 phone number was and he said that he had contacts -- he
24 told me he had contact in his phone that were relevant to
25 the investigation.

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 So I asked him what was his phone number. He had
2 his phone in his pocket and when I called the number I
3 was speaking to a girl.

4 So I told him that can't be the phone in your pocket
5 because I'm talking to a girl now and looking at you. He
6 wasn't making that connection so I confiscated his phone.

7 Q. And what did you do after you confiscated his phone?

8 A. I obtained a search warrant to look at the
9 information on the phone.

10 Q. And was the number [REDACTED]-3437 the number to the
11 Cricket Kyocera phone in his contacts?

12 A. It was in his contacts.

13 Q. Under what name?

14 A. Freddie.

15 Q. Spelled F-R-E-A-D-Y correct?

16 A. That's correct.

17 Q. Moving ahead to March the 21st 2011 did you make an
18 effort to locate someone named C-T Treen?

19 A. I did.

20 Q. At [REDACTED] Castle Avenue?

21 A. I did.

22 Q. And why were you trying to locate Mr. Treen?

23 A. I had prepared a search warrant for the [REDACTED] Cricket
24 phone.

25 Q. The Kyocera?

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

- 1 A. The Kyocera.
- 2 Q. State's exhibit 4?
- 3 A. Yes. And that number came back as being a prepaid
4 number as well, but it didn't have subscriber information
5 to a C-T-Treen. I think it was [REDACTED] Castle Place was the
6 address listed.
- 7 Q. And what efforts did you make to locate Mr. Treen on
8 March the 21st?
- 9 A. I checked him through all of our databases; D-M-V,
10 our systems, the county I couldn't find anyone -- I
11 couldn't locate anyone by that name. I went to that
12 address [REDACTED] Castle Place. I found out it was a
13 fictitious address; it didn't exist.
- 14 Q. And what was the date of birth of the fictitious Mr.
15 Treen?
- 16 A. [REDACTED]
- 17 Q. And what is Freddie Flower's date of birth?
- 18 A. [REDACTED].
- 19 Q. Now jumping ahead to March 31st. You had an occasion
20 to meet with Mr. Kennedy Smith again, is that correct?
- 21 A. I did.
- 22 Q. Was that when you obtained that written statement
23 that everybody has been talking about?
- 24 A. I did.
- 25 Q. And then on May the 12th of 2011 you had the occasion

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 to meet with Myhesa Wine again.

2 A. Right.

3 Q. Why and where was that?

4 A. I met with Myhesa in front of his residence. He
5 came out and sat down in the police car and I spoke to
6 him. The reason why I met with him again is because I
7 didn't believe him.

8 Q. Okay. And were you able to record that interview?

9 A. I tried to. I tried to record it and at the end of
10 the interview I went back to the recorder and for
11 whatever reason it just didn't pick it up.

12 Q. Did he really provide any different information on
13 that occasion than he provided before?

14 A. No.

15 Q. So based on that did you interview him again on June
16 the 1st?

17 A. I did.

18 Q. Of 2011? And where did that interview take place?

19 A. At the station.

20 Q. And why did you want to talk to him again?

21 A. Well, during the interview at his house in the
22 police car he had given me some information that indicted
23 that there may be some communication between him and
24 Freddie so I wanted to go over the phone records with
25 him.

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 Q. Okay. And was during that information -- during
2 that interview with him then his story began to change,
3 correct?

4 A. Yes.

5 Q. And you heard Mr. Wine testify previously. Are
6 those the changes that he made to his story?

7 A. Yes.

8 Q. That he admitted being over at Freddie's earlier in
9 the day, correct?

10 A. Right.

11 Q. And he actually admitted being on St. Clair at the
12 time of the shooting right?

13 A. Prior to that he said he was not on St. Clair at the
14 time of the shooting. Then on that June the 1st interview
15 he changed it and said I was on St. Clair but I was down
16 the corner -- was at the corner with Cornelius and
17 Michael and I witnessed Freddie killing from the corner
18 house.

19 Q. Okay. Also from that interview you learned you
20 needed to talk to Carlos Jones again, correct?

21 A. Right.

22 Q. And Cornelius and Myhesa Wine correct?

23 A. Well, Michael Quarles.

24 Q. I mean Michael Quarles. On June the 6th you talked
25 to Reginald Wescott for the first time. Why did you talk

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 to him?

2 A. Myhesa had told -- Myhesa indicated that Reginald
3 might have information that would help the investigation.

4 Q. Okay. He said he had been over to Reginald's right
5 after the shooting correct?

6 A. That's correct.

7 Q. And Mr. Westcott's name is -- nickname is what?

8 A. Nasty.

9 Q. And what is his relationship with Frederick Flowers?

10 A. He's a friend.

11 Q. And by that time you had known his number showed up
12 in the call phone -- the cell phone log of the Cricket
13 Kyocera phone is that correct?

14 A. That's correct. On the day of the murder they had
15 communicated with one another.

16 Q. Once again did you believe you were being told the
17 truth?

18 A. Reginald was a little bit tougher. He wasn't
19 unbelievable but I wasn't getting the feeling he was
20 completely forthright with me.

21 Q. Now moving ahead to April the 13th, 2012 this year
22 did you have the occasion to come into contact with the
23 defendant Frederick Flowers?

24 A. I did.

25 Q. For what purpose?

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 A. I had met with you and Investigator Casey just to go
2 over the case pretrial meetings. And it was brought to
3 my attention we had not obtained a buccal swab from
4 Freddie yet to compare to any possible contact D-N-A
5 recovered from the Cricket phone inside the car.

6 Q. And at that point you went to meet with Mr. Flowers
7 for what purpose?

8 A. To obtain that D-N-A sample.

9 Q. And how do you obtain the D-N-A sample?

10 A. We used to obtain D-N-A through blood sample. But
11 over the last couple of years we've been able to get
12 D-N-A or extract D-N-A from buccal swabs, which is
13 nothing more than a Q-tip that we rub on the inter side
14 of their gums and we can obtain D-N-A like that.

15 Q. Okay. And I'll hand you what's been marked as
16 State's exhibit number 49 and ask you if you recognize
17 that item?

18 [Whereupon, the witness is shown exhibit]

19 A. I do.

20 Q. And what is that?

21 A. This is -- inside of this envelope is the buccal
22 swab, which I packaged inside of a white container and
23 sealed it and this is my handwriting on the outside.

24 Q. Okay. And what was eventually done with State's
25 exhibit number 49?

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 A. We sent -- or I sent -- requested it be sent to SLED
2 along with any contact D-N-A that might have been
3 recovered from the Cricket along with a standard sample
4 of blood from the defendant.

5 Q. Okay.

6 MR. DURANT: You have any problem with -- Ms. Ford,
7 do you have any objection to the admission of State's
8 exhibit 49, the buccal swab?

9 MS. FORD: No objection.

10 THE COURT: All right. 49 is admitted without
11 objection.

12 [Whereupon, State's exhibit number 49 is entered
13 into evidence by the court]

14 Q. [Mr. DuRant] And then I believe on July the 16th of
15 this year you had an occasion to interview Myhesa Wine
16 for a fourth time.

17 A. I did.

18 Q. And where did that take place?

19 A. At the Solicitor's office.

20 Q. Okay. And I believe he previously testified as to
21 what happened in regards to that.

22 A. That's correct.

23 Q. Had you been able to talk to Carlos Jones at this
24 time?

25 A. No, but it wasn't for lack of effort. I had spoken

1 -- I went by Carlos's house a few different times. I ---

2 Q. --- why did you want to talk to Carlos?

3 A. Because I knew he was out there that night. I knew
4 that his number appeared in Frederick's contact list from
5 that day. And I also heard throughout the investigation
6 that he could provide information that could help.

7 Q. Okay. And in fact some of these other people that
8 you talked to during the investigation that we discussed
9 threw out his name too, correct?

10 A. That's correct.

11 Q. And his nickname is what?

12 A. Butta.

13 Q. Now what efforts did you make to get in touch with
14 him during the course of the investigation?

15 A. I finally spoke to one of his family members, a very
16 nice person. She said that she would bring Freddie to
17 meet with me ---

18 Q. --- I was talking about Butta now.

19 A. Oh, I'm sorry, Carlos. He called me up. He said
20 yes, I will meet with you. He agreed to meet with me at
21 the Piggly Wiggly parking lot downtown.

22 Q. Now this was kind of close back to the shooting, is
23 that correct?

24 A. Yes, this would have been maybe a week after the
25 shooting; maybe a little longer than that. I got a phone

1 call from him.

2 He described the car that I was sitting in saying he
3 was looking at me. I asked him to just come on and talk
4 to me. He didn't do it.

5 Q. Okay. So you never got to meet with him that
6 night?

7 A. No.

8 Q. Now what efforts did you make to get in touch with
9 him as this trial was approaching?

10 A. Once we got a trial date and it started getting
11 closer I tried again to meet with Carlos. I went and
12 knocked on some doors.

13 I spoke to the people at [REDACTED] St. Clair and told
14 them that we were talking to individuals and I might have
15 to subpoena Carlos if he didn't come in and talk to me.
16 Later on that day I got a phone call from him and he said
17 yes, he would meet with me.

18 Q. And that's when you met him at Ryan's on Highway 61?

19 A. That's correct.

20 Q. And that would have been on August the 2nd I believe?

21 A. That's right.

22 Q. Did he show up that time?

23 A. He did show up that time.

24 Q. Who was he with?

25 A. He came with an older gentleman and also his

1 girlfriend and his younger child; a boy.

2 Q. Did you get an opportunity to interview him that
3 day?

4 A. I did. He sat in the front seat of the police
5 vehicle, the passenger seat, and his girlfriend and child
6 were in the backseat. He gave a very short statement.
7 He indicated that he had to go.

8 Q. The statement that he gave you was what he testified
9 to previously that he had been walking up Wantoot at the
10 time of the shooting and didn't get there until after the
11 shooting.

12 A. He heard the shots as he was walking.

13 Q. Okay. And what did you do after he told you that?

14 A. He told me that and his girlfriend and his boy
15 exited the car. They closed the door. I said can you
16 just hang on one second and he said sure.

17 I asked him to close the door and he did. I told
18 him I said Carlos I just don't believe what you just told
19 me.

20 Q. And why didn't you believe what he just told you?

21 A. Well, because it didn't make any sense. And I mean
22 just after doing this for a while sometimes you can tell
23 when people are lying to you. And Carlos wasn't -- he
24 wasn't a very good liar I guess. You could just tell he
25 was withholding information. So I told him if he was

1 withholding information and there was more to this story
2 then my recommendation to him would be to call
3 Investigator Casey and straighten this out.

4 And then before he left he said I'll call the
5 Investigator Monday morning and I'll tell him what really
6 happened. So I didn't press him at all at that point.

7 He said he had his child and he had to leave so I
8 called up Casey afterwards and I said expect a phone call
9 Monday.

10 Q. Because you were like going out of town on vacation
11 that week ---

12 A. --- right. I knew I was going out of town the
13 following week. I spoke to Casey and asked if he called
14 and he said -- I can't recall if he did or not.

15 But I know on Monday we had agreed to meet with
16 Carlos at the Solicitor's office. So it was the
17 following Monday morning.

18 Q. That was August the 14th of 2012 is that correct?

19 A. That's correct.

20 Q. And at that time he provided y'all with the recorded
21 statement?

22 A. Yes.

23 Q. And was that consistent with what he testified to?

24 A. Yes.

25 Q. And finally on August 22 did you have an occasion to

1 re-interview Reginald Wescott?

2 A. I did.

3 Q. And was a recorded statement obtained at that time?

4 A. Yes.

5 Q. And was that recorded statement consistent with his
6 testimony in the court during this trial?

7 A. Yes.

8 MR. DURANT: Court's indulgence, please.

9 [Whereupon, Mr. DuRant and Investigator Casey
10 confer]

11 Q. [Mr. DuRant] There was one other thing I wanted to
12 ask you about but I forgot.

13 Based upon your interview with Mr. Jones, Carlos
14 Jones, have you made any determination whether or not to
15 charge Myhesa Wine in this case?

16 A. I have not. I'm going to have to sit down with
17 either you or another Solicitor at the end of this and
18 decide what we are going to charge Myhesa and also
19 Cornelius Jenkins.

20 Q. Okay. So this matter with regard to him is still
21 under investigation?

22 A. Yes.

23 Q. Thank you. Could you please answer any questions
24 that Ms. Ford may have for you?

25 THE COURT: Cross-examination?

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 MS. FORD: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. FORD:

4 Q. Hi Detective. Detective Osborne, in this case there
5 is really is it fair to say when the shooting first
6 occurred there wasn't really much physical evidence
7 around to lead you -- there was a phone in the car
8 basically.

9 A. Right.

10 Q. Okay. And you didn't know who that belonged to?

11 A. No.

12 Q. But you ultimately discovered that it belonged to
13 Freddie?

14 A. That's correct.

15 Q. But you also learned that he had other phones,
16 correct?

17 A. That's correct.

18 Q. And one of those phones is the number [REDACTED]-2382.

19 A. That's correct.

20 Q. Do you have -- are the phone logs still up here?

21 A. Yes.

22 Q. And just -- on the day of the shooting March 1st you
23 went over with Mr. DuRant a lot of the calls that that
24 Cricket cell phone made. There are a lot of calls to and
25 from the [REDACTED] 2382 number as well, correct?

1 A. That's correct.

2 Q. Okay. There are multiple calls from that number.

3 A. That's correct.

4 Q. And to that number. On -- when -- originally Mr.
5 Smith was the only I.D. witness correct?

6 A. [No response]

7 Q. He was the only one who talked to you ---

8 A. --- who came forward ---

9 Q. --- who agreed that he actually saw the shooting?

10 A. That's correct.

11 Q. At that point he didn't mention anything about a
12 phone correct?

13 A. Well, this was part of the reason I wanted to re-
14 interview him with David Aylor. When I went back over
15 and realized there were certain issues that we needed to
16 clarify; and that was one of them.

17 Q. And he -- but he said that he never saw anyone throw
18 a phone in the car -- or drop a phone in the car.

19 A. And that's what I wanted to ask him. I don't think
20 we asked him that. That never really came up.

21 Q. And did it when you spoke to him at Mr. Aylor's
22 office?

23 A. At Mr. Aylor's office it did, yes.

24 Q. Right. And he indicated no he never saw a phone?

25 A. That's correct.

State v Frederick Flowers (2011-GS-10-4314)
August 29, 2012 - Volume 3 of 5

1 Q. So in his account he never saw the shooter with a
2 phone to his ear, correct?

3 A. I don't believe he ever said he did, no.

4 Q. And there was no mention of a struggle or anything
5 with Tiddy, right?

6 A. Coming from...

7 Q. From Kennedy. He was talking ---

8 A. --- I don't believe he did mention that.

9 Q. So really the reason you felt that that phone
10 belonged to the shooter is because you couldn't account
11 for it correct?

12 A. Well, no. I mean that's not the only reason.

13 Q. Well, there wasn't any indication that the shooter
14 had dropped the phone in the car, correct?

15 A. Well, let me just clarify. When Mr. DuRant asked me
16 what conclusions I came to the reason why I came to the
17 conclusion that I believe this was most likely the
18 shooter's phone is because at that time I had information
19 mainly coming from Kennedy that the shooter had shot him
20 from close range; shot his son from close range.

21 He also indicated that the -- that his son was
22 brought to that location. He received a phone call and
23 that individual directed him to that location. So when I
24 saw on the call log that there were calls between those
25 two numbers, the victim and the Kyocera phone, it just

1 didn't make any sense that he would be calling himself.

2 So therefore it seemed logical to me that if that phone
3 had called him earlier, two times within the hour and he
4 shot him from close range, it was likely that he might
5 have dropped the phone in the car.

6 Q. That was an assumption you made, correct?

7 A. That -- it was a working assumption.

8 Q. There were also other phone calls made to and from
9 Tiddy's phone, around the 4 o'clock hour, correct?

10 A. That's correct.

11 Q. You told us a little about that. There are calls
12 from -- several calls from a Big Head correct?

13 A. I don't have his call history right in front of me
14 but I do remember that call.

15 Q. Okay. And you -- there were several calls correct?

16 A. I don't remember the exact number but I do remember
17 seeing at least a couple.

18 Q. Okay. And you tried calling that person, correct?

19 A. I did.

20 Q. But you never were able to follow up on that.

21 A. Well, again really -- I don't want to sound evasive
22 it didn't surprise me that I wasn't able to get in touch
23 with these individuals. If what I had heard about the
24 victim was true, then some of these people he had talked
25 to was probably engaged in drug activity as well. So, I

1 tried but I just couldn't get in touch with a lot of
2 them.

3 Q. You also got information that C.J. was calling Tiddy
4 a lot as well?

5 A. I had information that C.J. had called him, yes.

6 Q. Now, whenever a crime occurs it's really important
7 to you as a police officer to try to get a description of
8 the shooter, correct?

9 A. Yes.

10 Q. Or in whatever kind of case but in this case the
11 shooter.

12 A. Yes.

13 Q. And you received several descriptions in this case,
14 correct?

15 A. Right, yes.

16 Q. And Kennedy's description was that the guy had a
17 dark complexion, correct?

18 A. Which one?

19 Q. Well initially?

20 A. Yes.

21 Q. Dark complexion and that he had twists in his hair?

22 A. Yes.

23 Q. And in both of his descriptions he said the shooter
24 was maybe 6 feet at the most but more like 5-7 or 5-8 to
25 6 feet correct?

1 A. That's correct.

2 Q. And would you agree that is average type of height
3 for a male?

4 A. Six foot is on the taller end to me. The 5 foot 9
5 is right in the average realm.

6 Q. Okay. Now you would agree that Freddie Flowers is
7 way over 6 feet tall?

8 A. He's taller than 6 foot, yes.

9 Q. Okay. More like 6-5?

10 A. That wouldn't surprise me.

11 Q. Okay. And you also -- you told us how you spoke to
12 Jennifer Myers.

13 A. I did.

14 Q. And she had mentioned a Freddie correct?

15 A. Yes.

16 Q. She didn't really know this person though correct?

17 A. I spoke to her twice. But on the night of the
18 murder I spoke to her and Detective Fleming and I went
19 out there and spoke to her.

20 Q. Okay.

21 A. And she -- I mean I think she knew a Freddie. But I
22 think that she had heard information ---

23 Q. --- well what I'm going to -- she told -- we heard a
24 little from Carlos about the day before how Jennifer went
25 with Tiddy to [REDACTED] St. Clair correct?

1 A. Yes.

2 Q. Okay. She confirmed that as well.

3 A. Yes.

4 Q. Okay. And she said that she saw Freddie there.

5 A. Yes.

6 Q. Okay. But her description of Freddie was short and
7 muscular.

8 A. I do remember that description and that's why -- I
9 don't know how much you want me to say I mean ---

10 Q. --- well, I'm just saying that is the -- her
11 description that she gave was not a description of
12 Freddie Flowers is that fair to say?

13 A. It is fair to say, yes.

14 Q. Okay. Now you told us a little of how you charged
15 several people with Obstruction of Justice.

16 A. I did.

17 Q. You like to charge that charge a lot is that fair to
18 say?

19 A. No, I don't like charging that charge at all. I'd
20 much prefer people to come in and just tell the truth.

21 Q. Well, no -- not that you like to charge it but it's
22 not uncommon for you to charge that charge.

23 A. Especially with murder cases, yes.

24 Q. Okay. And that's a felony that carries up to ten
25 years.

1 A. I don't think it's a felony. I think it's a common
2 law misdemeanor.

3 Q. Correct. But it carries up to ten years.

4 A. Yes.

5 Q. And if you feel someone has lied to you then that's
6 when you charge them with it?

7 A. No. People lie all the time whenever you --
8 especially when you interview them about murders. The
9 lie has to be significant enough to hinder or impede the
10 investigation. And quite simply it's just a judgment
11 call.

12 Q. Okay.

13 A. Everyone in this case I felt like we had good reason
14 to believe that they were hindering or impeding our
15 investigation that's why they were charged.

16 Q. All right. But ---

17 A. --- but just little white lies that don't affect the
18 investigation at all, no. If that were the case we would
19 charge them all; everyone.

20 Q. Well Cornelius Jenkins he was charged correct?

21 A. He was.

22 Q. And he was charged because he said that he was
23 downtown all day.

24 A. Right.

25 Q. But phone markers indicated that he was actually in

1 West Ashley correct?

2 A. That's part of it, right.

3 Q. That's why he was charged.

4 A. That's not the only reason. He also indicated that
5 he had never spoken to the victim on the phone. When I
6 went back and looked at the phone records from January
7 until the day of the shooting he spoke to the victim
8 either 27 or 37 times on the phone.

9 Q. Okay. And then -- I want to talk about Kennedy
10 Smith, okay. You arrested him on Obstruction of Justice
11 right?

12 A. Yes.

13 Q. And this was just a day after the murder?

14 A. Yes.

15 Q. Okay. And you told us several reasons why you did
16 that.

17 A. Yes.

18 Q. Okay. Well it's not because he gave a description
19 of the shooter that was wrong correct, because you didn't
20 know that. That's not the reason why he was charged is
21 that fair to say?

22 A. That's not the reason why he was charged.

23 Q. Okay. He was charged -- he told you what he had
24 done that day and he said that he picked up his son from
25 the gas station correct?

1 A. That's correct.

2 Q. That's what he testified to yesterday.

3 A. Yes.

4 Q. But you had talked to a Brandon Smalls correct?

5 A. Yes.

6 Q. Who had indicated that the dad picked Tiddy up from
7 his house?

8 A. Right.

9 Q. Right. That's why you arrested Kennedy Smith
10 correct, for Obstruction of Justice?

11 A. No.

12 Q. You arrested him about -- for the marijuana then?

13 A. Kennedy was arrested because he drove his son to the
14 fire station. His son had just been shot right in front
15 of him.

16 He would not answer any of the questions that we
17 provided to him with the exception of what you just said;
18 he was evasive throughout the entire interview process
19 with Burckhardt and Fleming.

20 He took the marijuana evidence inside of the car and
21 tried to destroy it. He took off running with it. We
22 were frustrated with Kennedy. Those were not actions
23 that anyone should do; much less the father of the
24 victim. That's why he was charged.

25 Q. Part of the reason though -- part of the reason you

1 included in the affidavit when you arrested him was
2 because another witness said that he had picked up Tiddy
3 from his house instead of the gas station. Would you
4 like to see the...

5 A. Yes, and that could be. But I mean like I said
6 there was more to it than just what you had mentioned.

7 Q. That's one. But I'm talking about one reason you
8 arrested him.

9 A. One reason; that's correct.

10 Q. I'm handing you what has been marked as Defendant's
11 exhibit 2. Do you recognize that?

12 [Whereupon, the witness is shown exhibit]

13 A. I do.

14 Q. And what's that, an arrest warrant for Kennedy
15 Smith?

16 A. It is.

17 Q. And in that statement you include that he had said
18 he picked up his son from that gas station when in fact
19 another witness said he had picked him up from that
20 person's house.

21 A. Let me read it real quick.

22 [Whereupon, the witness reviews the document]

23 A. That's correct.

24 Q. That person was Brandon Smalls, correct?

25 A. That's correct.

1 Q. And Brandon Smalls from everything you have been
2 able to gather was not at 1339 St. Clair during the time
3 of the shooting correct; at the house?

4 A. He was not at the house, that's correct.

5 Q. Right. He was down the street. He lives in the
6 area correct?

7 A. He does live in the area, correct.

8 Q. And he's a friend of Tiddy's?

9 A. Yes.

10 Q. Okay. He was actually very upset when he learned
11 that Tiddy had died?

12 A. Yes.

13 Q. Okay. He told you that Kennedy Smith picked up
14 Tiddy from his house, correct?

15 A. Brandon was interviewed on two different occasions.

16 Q. Right. What I'm going to is Brandon Smalls was
17 arrested.

18 A. Yes.

19 Q. Okay. For Obstruction of Justice.

20 A. Yes.

21 Q. And he told y'all -- would it help you to see his
22 affidavit?

23 A. Sure, if you're going to ask me specifics about it.

24 MR. DURANT: Your Honor, at this point we're
25 getting into a little relevance issue here, I think.

1 MS. FORD: No. I mean I have a basis.

2 THE COURT: Okay. I'll listen for a while longer.
3 I'll take your motion under advisement.

4 MR. DURANT: Thank you.

5 Q. [Ms. Ford] I'm handing you what has been marked as
6 Defendant's exhibit 3 for I.D. purposes and this is
7 Brandon Smalls Obstruction of Justice affidavit.

8 [Whereupon, the witness is shown exhibit]

9 A. Yes.

10 Q. Okay. And you arrested him for Obstruction of
11 Justice because you were able to confirm through a
12 videotape at a gas station that Kennedy did in fact pick
13 up his son from the gas station and not at Brandon Smalls
14 house?

15 A. That's correct.

16 Q. Okay. So basically I know there are other reasons
17 you arrested Kennedy Smith but you arrested Kennedy for
18 Obstruction for saying he picked up his son from the gas
19 station when he really picked up his son from Brandon's.
20 And then you arrested Brandon later for Obstruction for
21 saying the dad picked him up from his house when in fact
22 he picked him up from the gas station. Is that fair to
23 say?

24 A. Kennedy impeded the investigation in a number of
25 ways.

1 Q. Right. I'm saying one reason ---

2 A. --- the fact that one turned out to be somebody
3 else's lie doesn't change the fact that he lied about
4 other stuff ---

5 Q. --- right, I'm not saying that. I'm just asking
6 that is one reason why you arrested him.

7 A. That was one reason, that's correct.

8 Q. Now Cornelius Jenkins. You already went over how
9 you arrested him because when he told this lie -- because
10 he gave you the wrong location and all of that.

11 A. Well, and there's -- and you just jogged my memory.
12 There's actually more to it than even that with
13 Cornelius.

14 Q. Well, I'm going by...

15 A. Right. But when I charge someone and I meet with
16 the Judge there is an affidavit. But that's not the only
17 reason. I go over the investigation with the Judge and I
18 tell them here's what we got.

19 And there was more to it than just that for
20 Cornelius, yes. He said he was downtown; the cell tower
21 proved his wasn't downtown. He said he never spoke to
22 Javon. He spoke to Javon 27 or 37 times. And there is
23 also something else.

24 Q. Well that ---

25 THE COURT: --- let me see the attorneys up here

1 just a second please, okay.

2 [Whereupon, an off the record bench conference is
3 held]

4 Q. [Ms. Ford] Okay Detective Osborne, we're not talking
5 about Cornelius Jenkins anymore, okay.

6 A. Okay.

7 Q. Instead I want to go to everybody else, okay.
8 Basically when you -- you talked to everybody involved in
9 this case pretty much, correct. You talked to Carlos
10 correct?

11 A. Yes.

12 Q. To Michael Quarles, correct?

13 A. Yes.

14 Q. And Reggie Wescott?

15 A. Yes.

16 Q. And they each gave multiple stories, correct?

17 A. Yes.

18 Q. With some pretty significant differences, correct is
19 that fair to say?

20 A. Yes.

21 Q. Okay. You haven't charged any of them with
22 Obstruction of Justice?

23 A. No.

24 Q. But would you say you could have?

25 A. I could have, yes.

1 Q. Okay. You mentioned a few times how you typically
2 try to record your interviews.

3 A. Yes.

4 Q. And at Charleston Police Department there's actually
5 -- y'all have a special room, 215 I think where y'all try
6 to record everything?

7 A. Yes.

8 Q. Your interviews. Sometimes though there may be --
9 something may malfunction, correct?

10 A. Yes.

11 Q. Or something like that. Like you told us you tried
12 to record Myhesa's statement at one point and couldn't
13 get it, correct?

14 A. Right. That was me with my recorder though.

15 Q. Okay. You also just -- you told us you met with
16 Kennedy Smith on 3-9 when his lawyer's investigator
17 reached out to you right?

18 A. Yes.

19 Q. And you took him to C-P-D?

20 A. Yes.

21 Q. Okay. But you didn't record that interview?

22 A. No, I didn't.

23 Q. And that's actually the interview where he
24 identified Freddie Flowers.

25 A. Yes.

1 Q. And just to be clear you never said tell me one
2 reason why you were able to observe the shooter. Did you
3 ever say anything like that? Kennedy Smith testified
4 that you didn't ask for more than one reason.

5 A. Yes. I can't remember what the questioning was at
6 that time. I don't recall asking him did you see the
7 shooter at different points. No, I don't recall asking
8 him that specifically, no.

9 Q. But you wanted to gather as much information as you
10 could, correct?

11 A. Not at that interview. In that interview his
12 attorney, David Aylor, I can't recall for what reason he
13 could not participate but he was out of town.

14 And so David was sort of saying I will let you talk
15 to my client but understand that the main purpose should
16 be to see if he can identify the shooter. If you're
17 going to get into a lot of detail then I would prefer to
18 be there. That's why it wasn't recorded ---

19 Q. --- no I'm talking about the 31st the written
20 statement.

21 A. That was with David, yes.

22 Q. Correct. And that was actually at Mr. Aylor's
23 office correct?

24 A. That's correct.

25 Q. So that's why that was not recorded.

1 A. Well, I wrote it down.

2 Q. In a written statement.

3 A. Yes.

4 Q. And what I'm saying is the purpose of that interview
5 was to get as much information as you could, correct?

6 A. I wanted a more in depth interview then, yes.

7 Q. And at that point that's when you were asking about
8 his ability to see the shooter. And he mentioned that
9 he saw the shooter when the shooter stepped away from the
10 car.

11 A. I think so, yes.

12 Q. But if he had seen the shooter at another point you
13 would have wanted to know that correct?

14 A. Right.

15 Q. Also I want to talk a little about Myhesa's
16 statement. Just to be clear Freddie was actually
17 arrested on March 11th correct?

18 A. That's correct.

19 Q. So 11 days after the shooting.

20 A. Right.

21 Q. And he turned himself in for that correct?

22 A. Yes.

23 Q. Myhesa originally indicated he wasn't there,
24 correct?

25 A. That's correct.

1 Q. But he did at this time indicate that Carlos
2 encouraged Freddie to commit the robbery correct?

3 A. What date are you referring to again?

4 Q. This is June of last year.

5 A. I'm sorry. That's correct.

6 Q. And part of your job is to gather police reports
7 together correct?

8 A. That's correct.

9 Q. You write some of them but as a lead investigator
10 you also gather all the other officer's reports.

11 A. Right.

12 Q. And you give them to the Solicitor correct?

13 A. Yes.

14 Q. Who then gives them to the defense attorney?

15 A. That's correct.

16 Q. And presumably I will give them or discuss them with
17 my client correct?

18 A. Correct.

19 Q. And that's what any defense attorney would do -- any
20 attorney?

21 A. I would think so, yes.

22 Q. But you spoke to Myhesa -- when Myhesa first
23 indicated that -- that was June of last year but you
24 didn't turn over the report until just a few months ago,
25 correct?

1 A. Yes. I don't know -- and when I met with Solicitor
2 DuRant about that -- well, I did not meet him about that.
3 When I met with him he was asking me about what we had
4 with the case and then I told him about this interview
5 right here with Myhesa in particular.

6 And Mr. DuRant was a little bit irritated. He said
7 he didn't think he had that information. I thought I had
8 submitted it to him but I guess I didn't. I wasn't
9 trying to hide anything.

10 Q. We would not have received that information until
11 recently correct?

12 A. That's correct.

13 Q. So any of the defendants involved they would have
14 just found out that information within the past couple of
15 months.

16 A. That's correct. I assume so.

17 Q. So if someone were going to talk to somebody about
18 it it would only have been within the past month or two.

19 A. I assume.

20 Q. Okay. When Carlos -- when you spoke with Carlos
21 you told us that he didn't really want to talk when his
22 girlfriend and child were there correct?

23 A. [No response]

24 Q. In the cop car at Ryan's?

25 A. Yes. In fact I even -- he even told me whenever I

1 mentioned to him that -- would he be willing to talk to
2 me again he said yes, I don't want my girlfriend knowing
3 my business.

4 Q. Okay.

5 A. So that's -- it just seemed like he would sort of
6 come forward with everything that he knew about it. But
7 he probably didn't want anyone to know he had witnessed
8 the murder.

9 Q. There was an older gentleman there too you said?

10 A. The older gentleman brought them there and he was in
11 the car parked next to us.

12 Q. Okay. So he didn't come in the cop car with you?

13 A. No.

14 Q. But his girlfriend most likely didn't want him to be
15 there.

16 A. Right.

17 Q. Okay.

18 A. I don't even think she wanted to be there. I think
19 Carlos asked her to be there.

20 Q. Okay. And then recently you were present when he
21 did within the past two weeks tell the Solicitor the
22 version that he's given today.

23 A. It was me and Investigator Casey.

24 Q. And at that point he denied what Myhesa had said
25 about him correct, that he had been encouraging Freddie.

1 A. He denied that, yes.

2 Q. Instead he said that Myhesa was the one who gave
3 Freddie the gun correct?

4 A. That's correct.

5 Q. And that Reginald and Michael Quarles also had guns.

6 A. He saw one of them with a gun and the other one
7 basically made a motion like they had a gun. But I
8 think he only saw one of them actually with a gun.

9 Q. Okay. Just a little more about Kennedy. Initially
10 when you spoke to him before he gave an I.D. he told you
11 repeatedly that his vision was blocked, correct?

12 A. Yes.

13 Q. That he wouldn't be able to identify the shooter
14 because he didn't get a good view correct?

15 A. I do remember that coming up, yes.

16 Q. But he told you he was in a low car.

17 A. Right.

18 Q. And that his son was actually between him and the
19 shooter.

20 A. Right.

21 Q. And that he didn't think anything was going to
22 happen when he got there so he wasn't paying close
23 attention.

24 A. That's correct.

25 Q. But you told him that you didn't believe that. That

1 you didn't believe he wouldn't be able to get a good view
2 at the shooter.

3 A. No, I didn't believe it.

4 Q. Right. But I'm saying you told him I don't think
5 it's possible basically that you didn't get a good view
6 of the shooter.

7 A. I don't remember the exact words but I do definitely
8 remember telling him that I didn't believe him.

9 Q. And he testified that he didn't -- that he misled
10 you on the description of the shooter because he was
11 hoping for street justice.

12 A. That's what he said.

13 Q. Okay. But he didn't tell you that when he met with
14 you on March 9th correct, and identified Freddie?

15 A. No.

16 Q. Okay. And he didn't tell you that on March 31st
17 when met with you with his lawyer did he?

18 A. No. And maybe I asked but I don't remember asking
19 him why he didn't just identify him earlier.

20 Q. Well didn't he say that oh it was like a trick of
21 the light or something; I saw something shaking. Isn't
22 that why he was said he was confused about the hair.

23 A. Well, that's a different issue. I thought you were
24 talking about why he didn't identify him.

25 Q. Right. On March 31st when he met with you he gave

1 the description of the shooter and this time he is saying
2 low cut hair correct?

3 A. Yes.

4 Q. Okay. And then he said I said twists before
5 because I saw something shaking at the base of his neck
6 and I just thought they were twists correct?

7 A. Right.

8 Q. So he was -- is it fair to say that he was saying
9 that I was confused about that and not that I
10 deliberately lied about that.

11 A. That was the impression he left me with, yes.

12 Q. Were you -- and I'm just curious, were you with --
13 you met with a lot of the witnesses when they came to
14 speak to Mr. DuRant. Were you present when Kennedy Smith
15 came and talked to him within the past month?

16 A. No, I wasn't.

17 Q. Okay. When you spoke to Myhesa initially -- or
18 back in June -- I want to go back to when you spoke to
19 Myhesa in June -- and that's where he pretty much started
20 to really point the finger at Freddie correct?

21 A. That's correct.

22 Q. He gave actually several stories that same day but
23 that's when he started to get to the meat of it ---

24 A. --- that's correct ---

25 Q. --- or tried to. And you tried to assure him that

1 it was all right if you were there; just trying to see --
2 basically you were telling him its okay if you were
3 there, just tell me. Do you think that's fair of how you
4 were trying to get information from him?

5 A. Yes. If he only witnessed it then he didn't do
6 anything; he was just present. So sure I would tell him
7 that.

8 Q. Didn't you tell him that there's nothing you can do
9 to save Freddie, nothing?

10 A. Look, when you talk to -- and I know Myhesa in
11 particular that interview that went on for hours. So I
12 can certainly see that coming up during the interview.

13 But I guess it would depend on the whole context of
14 those few words. But I can certainly see myself saying
15 something like that, yes.

16 Q. You said he's already going to prison.

17 A. I can see my saying that, yes.

18 MS. FORD: Beg the court's indulgence.

19 [Whereupon, Ms. Ford and Mr. Butler confer]

20 MS. FORD: No further questions for this witness,
21 Your Honor.

22 THE COURT: Redirect?

23 MR. DURANT: Just a couple, Your Honor.

24 - - -

25 - - -

REDIRECT EXAMINATION

1
2 BY MR. DURANT:
3 Q. In cross-examination she indicated Mr. Kennedy Smith
4 did not say anything about a struggle or something like
5 that during his direct examination. Did I understand
6 that correctly?
7 A. Yes, I was a little confused. I think that's what
8 she was asking.
9 Q. Okay. But he did say that Freddie stepped back
10 because Tiddy was grabbing at the gun?
11 A. Right. And the gun jammed, that's right.
12 Q. And the gun jammed?
13 A. Right.
14 Q. And he was trying to mess with the gun to get it un-
15 jammed correct?
16 A. Yes.
17 Q. And you had indicated that C.J. had called Tiddy a
18 lot, correct?
19 A. Yes.
20 Q. You had the records. Did C.J. call Tiddy at all the
21 day of the shooting?
22 A. No.
23 Q. To Freddie's phone?
24 A. Freddie's phone, that's right.
25 Q. And she had asked you about Jennifer Myers and her

1 description of Freddie.

2 A. Yes.

3 Q. Correct. And the description didn't match Freddie,
4 correct?

5 A. That's correct.

6 Q. But she also said that day -- she picked out a
7 photograph and said this is Freddie Flowers correct?

8 A. She did. There was a -- and I could get into all of
9 Jennifer's comments but there was a little confusion as
10 to what she had heard and what she saw in regards to
11 Freddie. When I showed her a picture of Freddie Flowers
12 she said yes, that's Freddie.

13 Q. Okay. Despite what her description may have been
14 she identified a picture of him?

15 A. Right.

16 Q. And you said that when Mr. Smith -- when you charged
17 Mr. Smith he was being evasive about the marijuana.

18 A. Yes.

19 Q. Was he ever evasive about what happened?

20 A. No, in the sense that he went there and his son was
21 shot, no.

22 Q. Okay. That's remained -- his story about that has
23 remained pretty constant throughout hasn't it.

24 A. Right.

25 Q. It was just when you were talking about the shooter

1 or the marijuana that he was being evasive.

2 A. That's correct.

3 Q. And I believe this point was already made out when
4 you originally arrested him he said he had picked up
5 Tiddy at the Kangaroo and Brandon had apparently said he
6 had picked him up at his house.

7 A. That's right.

8 Q. And so you charged him originally right?

9 A. Kennedy?

10 Q. Kennedy?

11 A. Right.

12 Q. You didn't have the surveillance video from Kangaroo
13 at that time correct?

14 A. At that time I didn't.

15 Q. When you got the surveillance video from the
16 Kangaroo what did you discover?

17 A. I discovered that Brandon wasn't being honest with
18 me.

19 Q. And in fact Mr. Smith had picked his son up from the
20 Kangaroo?

21 A. He did pick him up at the Kangaroo.

22 Q. I have nothing further.

23 THE COURT: Recross?

24 MS. FORD: Yes, Your Honor.

25 - - -

232

1 end up summarizing them in a written report that you do,
2 correct?

3 A. I do.

4 Q. So you try to go into as much detail as possible for
5 anything relevant that was discussed in the recorded
6 interview.

7 A. Yes.

8 Q. And at no time do you ever say that she positively
9 identified Freddie Flowers as being the Freddie that she
10 was discussing at the house the day before.

11 A. I would have to go back and look at it. I mean I
12 really don't know. There were -- and I'll try to say
13 this without getting into all of that. But there were
14 two issues here; Jennifer had heard something ---

15 Q. --- I'm just talking about -- she told you that
16 there is this guy Freddie and she described him as being
17 short.

18 A. See, I can't answer that question without explaining
19 who she was talking about then. That's a different
20 issue.

21 The second issue, the one that I was trying to get
22 at was who did you see at the house the day before the
23 incident. The issue that you're referring to is she had
24 heard something about Freddie; I won't say what that way,
25 but she heard something about Freddie. And she said I

1 think they are talking about this person and she
2 describes that individual as being short, fat; whatever.

3 The next day I say I want to talk about the person
4 that you saw at the house. That's when to the best of my
5 recollection I showed her a photograph, a single photo of
6 Freddie Flowers and she identified him as being at the
7 house. And there was some discussion about being short
8 on marijuana.

9 Q. Okay. You never at any point indicated that in a
10 police report.

11 A. If you're saying I didn't, I didn't. I'm not saying
12 that I did.

13 Q. She -- the guy she described -- the Freddie that she
14 was talking about, the person she saw at the house was
15 short and muscular.

16 A. No, I don't think so. That is something different.

17 [Whereupon, Mr. Butler and Ms. Ford confer]

18 Q. [Ms. Ford] Would you like to see a copy of all your
19 reports?

20 A. I have them up here. The one report I can tell ---

21 THE COURT: --- go -- Ms. Ford, go show him the
22 report you're talking about, where you are pointing so he
23 can find it and refresh his memory on it please, ma'am.

24 MS. FORD: Your Honor, it's not in a report.

25 THE COURT: Okay.

1 MS. FORD: That's what I'm asking.

2 THE COURT: Fine. Go ahead.

3 Q. [Ms. Ford] It seems like you don't really remember
4 when you showed her these pictures or something. You
5 don't remember your conversations completely with Ms.
6 Myers ---

7 A. --- no, I do. But I know there are certain things I
8 can't say or there will be a problem.

9 Q. Okay.

10 A. And that's what I'm trying not to get into.

11 Q. Would it help you if I showed you a transcript of
12 the conversation of your interview with Ms. Myers?

13 A. Which one?

14 Q. Detective Osborne, if Jennifer Myers had been in the
15 house before and she said that I saw this guy Freddie out
16 there and she made a positive identification of him and
17 that person was this Freddie Flowers you would have
18 written that in a report, correct? That's something
19 important, correct?

20 A. If I didn't put that aspect in there then that is an
21 oversight on my part.

22 Q. Okay. No further questions.

23 MR. DURANT: And ---

24 THE COURT: --- no, we're through.

25 MR. DURANT: Okay.

1 THE COURT: We've had direct and re-cross. We're
2 not going to do direct, redirect, and redirect. Please
3 step down. Thank you very much.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: Let me see the lawyers up here, please.

7 [Whereupon, an off the record bench conference is
8 held]

9 THE COURT: All right. Madame Forelady and ladies
10 and gentlemen of the jury to answer your question that
11 you posed this morning I think we are going to finish
12 this case Friday sometime.

13 MADAME FORELADY: Thank you.

14 THE COURT: However, Ms. Dicus who was a long
15 standing member of the Public Defender's office and long
16 standing member of the Charleston Bar, a fine attorney
17 and a real fine person died and her funeral is tomorrow
18 at 11 o'clock.

19 And I'm not going to hold court in the morning
20 because there are people in the courthouse and involved
21 in this case that would like to go to her funeral.

22 So what I'm going to do is ask you to be back in the
23 jury room tomorrow at 2:30 and we'll start the testimony
24 tomorrow at 2:30. Please don't discuss the case amongst
25 yourselves or anyone else and I'll see you tomorrow at

1 2:30. Leave your notepads in your chairs.

2 [Whereupon, the jury exits the courtroom at 5:27
3 p.m.]

4 THE COURT: All right. We'll adjourn until 2:30
5 in the morning -- 2:30 tomorrow.

6 MR. DURANT: Thank you, Your Honor.

7 [Whereupon, court adjourns at 5:27 p.m.]

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

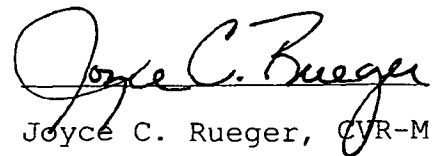
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Family Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Susan Mia Perron in the Court of General Sessions for Charleston County, South Carolina on the 29th day of August, 2012.

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

December 12, 2012


Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2011-GS-10-4314
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
FREDERICK FLOWERS	)	
	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 4 OF 5

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on August 30, 2012, Commencing at 2:30 p.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: D. Bruce DuRant, Esquire
9th Circuit Solicitor's Office
101 Meeting Street
Charleston, South Carolina 29401

FOR THE DEFENDANT: Mary A. Ford, Esquire
Beattie I. Butler, Esquire
Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, South Carolina 29401

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	5
CATHLEEN WOODWARD	
Direct Examination by Mr. DuRant	6
KENNETH WHITLER	
Direct Examination by Mr. DuRant	15
MARY ANN BOEHM	
Direct Examination by Mr. DuRant	23
Cross-Examination by Ms. Ford	51
DR. ELLEN RIEMER	
Direct Examination by Mr. DuRant	59
MOTION FOR DIRECTED VERDICT	73
FIFTH AMENDMENT RIGHTS	74
CERTIFICATE OF THE COURT REPORTER	81

INDEX TO EXHIBITS

[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

STATE

<u>No.</u>	<u>Description</u>	<u>Marked</u> / <u>Admitted</u>
24	Photo	62
25	Photo	62
26	Photo	62
27	Photo	62
28	Photo	62
29	Photo	62

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 PROCEEDINGS

2 THE COURT: I thought I'd come in and see if there
3 is anything we need to attend to while we're waiting on
4 the two jurors. Anything from the State?

5 MR. DURANT: You want to do the pictures?

6 MR. BUTLER: We can talk about that.

7 MR. DURANT: May we approach, Your Honor.

8 THE COURT: Yes, sir.

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: Anything else before I bring in the
12 jury?

13 MR. DURANT: Not from the State, Your Honor.

14 THE COURT: Bring us the jury, please. Anything
15 from the defense, I'm sorry?

16 MS. FORD: No, Your Honor.

17 THE COURT: Okay.

18 [Whereupon, the jury enters the courtroom at 2:40
19 p.m.]

20 THE BAILIFF: Jury is all present, Your Honor.

21 THE COURT: Thank you very much. Everybody have
22 their pads? Solicitor, you can call your next witness,
23 please?

24 MR. DURANT: Thank you, Your Honor. The State
25 would call Cathleen Woodward.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 [Whereupon, Ms. Woodward comes forward]

2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court as follows: do you swear or affirm your
4 testimony will be the truth, the whole truth, and nothing
5 but the truth so help you God]

6 MS. WOODWARD: I do.

7 CLERK OF COURT: State your full name and spell
8 your last name.

9 MS. WOODWARD: My name is Cathleen Woodward,
10 W-O-O-D-W-A-R-D.

11 [Whereupon, the witness takes the witness stand]

12 MR. DURANT: Thank you, Ms. Woodward. If you'll
13 speak into that microphone please because some folks may
14 have difficulty hearing you.

15 - - - - -

16 CATHLEEN WOODWARD,

17 Having been first duly sworn,

18 Was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DURANT:

21 Q. Could you tell our jury your occupation?

22 A. I work for the South Carolina Law Enforcement
23 Division commonly known as SLED in the Toxicology Lab.

24 Q. And how long have you been with SLED?

25 A. I've been with SLED for about six and half years.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 Q. Okay. And how long have you been in the Toxicology
2 Division?

3 A. Just a little over a year.

4 Q. And prior to going to the Toxicology Division what
5 did you do?

6 A. I worked in the Trace Evidence Laboratory.

7 Q. And how long were you in the Trace Evidence
8 Laboratory of SLED?

9 A. About five and half years.

10 Q. And if you would tell us what the Trace Evidence
11 Laboratory does at SLED.

12 A. In the Trace Evidence lab we analyze very different
13 things including paint, glass, explosives, gunshot
14 residue, fibers and various other things.

15 Q. And could please relate to the jury what education
16 and training you've had in the area of trace examination?

17 A. I've completed an in house training program in each
18 discipline in the Trace Department, which usually
19 includes approximately a minimum of six months of
20 training under a certified examiner and analyst. And
21 then typically we take cases for about six months
22 directly following that training.

23 Q. Okay. And do you -- you've been trained in all
24 disciplines of trace examination evidence at SLED?

25 A. In almost all of them just not trace other --

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 Q. Just not what?
2 A. Trace other.
3 Q. Trace other, okay. Have you been certified in the
4 area of gunshot residue?
5 A. I have.
6 Q. And you are currently certified by SLED in that
7 area?
8 A. Yes sir, I am.
9 Q. And for how long have you been so certified?
10 A. Since 2008.
11 Q. And how many gunshot residue tests have you
12 performed during your tenure at SLED?
13 A. I'm not sure of an exact number but probably over a
14 thousand.
15 Q. And have you ever been qualified as an expert in the
16 area of gunshot residue examination?
17 A. Yes sir, I have.
18 Q. On how many occasions and in what courts?
19 A. Approximately 20 times mostly in General Sessions
20 court, once in Family Court, and once in Federal Court.
21 Q. Okay.
22 MR. DURANT: Your Honor, at this time we would
23 offer Ms. Woodward as an expert in the field of trace
24 examination.
25 THE COURT: Any objection?

1 MS. FORD: No, Your Honor, no objection.

2 THE COURT: Okay. Court so finds.

3 Q. [Mr. DuRant] Could you please tell our jury what
4 gunshot residue is?

5 A. Gunshot residue is basically the smoke that you see
6 when a weapon is fired that comes out the muzzle and also
7 possibly around any other open places like the injected
8 port -- that is -- in that equipment.

9 And that smoke is actually small little particles
10 that are made up of lead -- and antimony, and those
11 little particles come out of the primer path of the
12 cartridge when the hammer of the gun comes in contact
13 with the primer -- of the cartridge.

14 When the -- of the gun comes into contact with the
15 primer path of the cartridge it creates a little spark
16 which in turns creates a small explosion that builds
17 pressure and propels the bullet out of the end of a gun.
18 And behind that comes the smoke from that spark and a
19 little explosion.

20 So the particles then come to rest on anything that
21 is in the vicinity of the weapon when it fired, and that
22 includes hands, maybe your clothes; if there is an
23 inanimate object around it can come to rest there. It
24 will also come to rest on the weapon itself.

25 Q. Okay. And how does -- I believe you've already

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 explained this kind of but how does gunshot residue get
2 on someone?

3 A. It will get on you if you handle a weapon that has
4 recently been fired. It can also come to rest on your
5 person if you are in the vicinity of the weapon when it
6 was fired or if you fired a weapon.

7 Q. Okay. And how long does gunshot residue remain on
8 a living human being?

9 A. On a living person we would not expect to detect
10 gunshot residue on someone after six hours. It's our
11 policy not to analyze a kit that was collected six hours
12 or longer past the incident.

13 Q. Does that six hour limitation apply to someone who
14 is passed away?

15 A. No. Once someone has passed on their body functions
16 and their movements have stopped so we would not expect
17 for it to be removed in any way except from an outside
18 source.

19 So if someone else or something else removed it from
20 their hands or their person -- but otherwise no we
21 wouldn't have -- limitations.

22 Q. And actually I'm glad you mentioned --
23 Actually on living human beings it can be something over
24 a period of time, is that right?

25 A. Yes.

1 Q. And samples you examined in this case they are
2 within the six hour limitation is that correct?

3 A. Can I check my notes really quick?

4 Q. Sure.

5 [Whereupon, the witness reviews documents]

6 A. That's correct.

7 Q. And how are these samples of -- gunshot residue
8 samples collected?

9 A. Well, gunshot residue samples are collected by the
10 local agency. I personally do not collect the samples.

11 But when a kit is taken the first step is particle
12 -- are taken from each area of the hand, which is the
13 right palm, the right back, the left palm, and the left
14 back of the hand.

15 And these little particles are simply -- they just
16 have a black sticky substance of the end of them and you
17 just dab them from all over the areas of the hand. There
18 is one particle lift per area.

19 And then the second step of taking samples in our
20 kit is to take swabs that have just a couple drops of
21 very diluted nitric acid on them and rub them on those
22 four areas of the hands as well so you collect particle
23 lifts and swabs.

24 Q. And relative to this case your lab number L1102587
25 did your lab receive a gunshot residue kit from the

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 victim James Javon Smith in this case? It should be your
2 item -- SLED item number 1?

3 A. Yes, we did.

4 Q. I hand you what has previously been marked as
5 State's exhibit number 36 into evidence and ask if that
6 is the gunshot residue kit that you examined?

7 [Whereupon, the witness is shown exhibit]

8 A. Yes sir, it is.

9 Q. And how do you know that?

10 A. Well, we have our label on it, the yellow label here
11 with a bar code and also my initials are on the evidence
12 date that is on the outside of the kit, and it has our
13 former technician's initials taped on it as well.

14 Q. And also relative to this case I believe you
15 received a gunshot residue kit or some sticky tabs that
16 had been obtained from the vehicle is that correct?

17 A. That's correct.

18 Q. And your SLED item number 7?

19 A. Yes, sir.

20 Q. And I hand you what's previously been marked as
21 State's exhibit number 37 and ask if that is the item
22 that you analyzed?

23 [Whereupon, the witness is shown exhibit]

24 A. Yes sir, it is.

25 Q. And how do you know that?

1 A. Again, it has the yellow bar code label on it and my
2 initials are on the evidence tape sealing the envelope,
3 and our former technician's initials and date are on it.

4 Q. Okay. And what testing is performed by you on
5 these kinds of samples?

6 A. On the kit for James Javon Smith we did a chemical
7 analysis of the swabs; or I did a chemical analysis of
8 the swabs, and the article from the vehicle, item number
9 7 each one of those was analyzed using a scan electron
10 microscope.

11 Q. And I believe you've already said you're looking for
12 these three chemical elements: lead, antimony, and
13 another one?

14 A. Lead, barium, and antimony in particular.

15 Q. And you performed that and you analyzed those
16 particular samples did you not?

17 A. Yes sir, I did.

18 Q. And let's start with State's 36 the gunshot residue
19 kit obtained from the victim James Javon Smith. What
20 were your findings with regard to that?

21 A. On this G-S-R kit I did not find any metal that
22 would indicate the presence of gunshot residue on any
23 areas of the hand.

24 Q. And that would be the front and back of both hands,
25 is that correct?

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 A. That's correct.

2 Q. Would those findings be indicative of the victim
3 having fired any weapon in this case?

4 A. No, it doesn't indicate that he didn't fire a weapon
5 in this case.

6 Q. Okay. And how about with regard to State's exhibit
7 number 37 the gunshot residue sticky tabs from the
8 vehicle? What were your findings regarding that?

9 A. On each particle from that G-S-R kit gunshot residue
10 was found. And those areas were the right door trim, the
11 right front door and then one that was labeled R-F door.

12 Q. Okay. And all three of those were positive, is
13 that correct?

14 A. Yes sir, gunshot residue was found.

15 Q. Thank you. Could you please answer any questions
16 defense counsel may have for you?

17 MS. FORD: I have no questions for this witness,
18 Your Honor.

19 THE COURT: Okay. You may step down. Thank you
20 very much.

21 MR. DURANT: Your Honor, I would ask that Ms.
22 Woodward be excused if there is no objection.

23 MS. FORD: No objection.

24 THE COURT: Okay. Thank you very much.

25 [Whereupon, the witness is excused and exits the

1 witness stand]

2 MR. DURANT: The State would call Kenneth Whitler.

3 [Whereupon, Mr. Whitler comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court as follows: do you swear or affirm your
6 testimony will be the truth, the whole truth, and nothing
7 but the truth so help you God?

8 MR. WHITLER: I do.

9 CLERK OF COURT: State your full name and spell
10 your last name.

11 MR. WHITLER: My name is Kenneth H. Whitler. Last
12 name is spelled W-H-I-T-L-E-R.

13 [Whereupon, the witness takes the witness stand]

14 - - - - -

15 KENNETH WHITLER,

16 Having been first duly sworn,

17 Was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DURANT:

20 Q. And could you please tell our jury what your
21 occupation is Mr. Whitler?

22 A. I work for the South Carolina Law Enforcement
23 Division also known as SLED in the Forensic Services
24 Division in the Firearms Department.

25 Q. And how long have you been in the Firearms

1 Identification Department at SLED?

2 A. Since 1997.

3 Q. Long time.

4 A. Yes, sir.

5 Q. And what does the field of firearm identification
6 consist of?

7 A. Basically firearm identification is the study of
8 ammunition components such as bullets and cartridge cases
9 to determine if they were fired by the same gun or by the
10 same firearm, or if they were fired from a particular
11 firearm.

12 If you have a case where the firearm is submitted
13 along with the bullets or cartridge cases you're
14 attempting to find out if those bullets or cartridge
15 cases were fired by that gun.

16 If no gun is submitted then you're trying to
17 determine if there are multiple bullets or cartridge
18 cases if they were fired by the same gun.

19 In some cases you find that they were all fired by
20 the same gun and in some cases you will find that several
21 guns might have been used.

22 Q. And can you tell our jury what specialized training
23 you have had in the area of firearm and gun trace?

24 A. There is no college or university in which you can
25 get a degree in firearm identification. You have to

1 learn it from other qualified examiners. When I was with
2 the FBI laboratory with their training program, which is
3 approximately two years where you work with each of the
4 qualified examiners working on real cases plus cases they
5 will make up for you, test cases, plus a lot of
6 individual study.

7 During that training period you shoot a lot of guns,
8 examine a lot of bullets and cartridge cases; literally
9 thousands. And when each of the examiners in the unit
10 determines that they think you are now qualified you're
11 given a series of three tests.

12 And if you successfully complete the three tests
13 then you're certified to conduct examinations with the
14 FBI laboratory. I completed the training period, I
15 completed the three tests successfully, and I was
16 certified in 1991 to be a firearms identification
17 examiner for the FBI laboratory.

18 In 1997 I retired from the FBI laboratory and came
19 to SLED to do basically the same job; examining bullets,
20 cartridge cases, and firearms.

21 Q. And so you've been doing this since 1991?

22 A. That's correct.

23 Q. As your primary occupation is that correct?

24 A. Yes, sir.

25 Q. And have you been qualified as an expert in the

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 field of firearms identification?

2 A. I've been qualified approximately 250 times in
3 various State, Federal and territorial courts.

4 Q. Okay.

5 MR. DURANT: Your Honor, at this time we would
6 offer Mr. Whitler as an expert in the area of firearms
7 identification.

8 THE COURT: Any objection?

9 MS. FORD: No, Your Honor.

10 THE COURT: Thank you, ma'am. The court so finds.

11 Q. [Mr. DuRant] Mr. Whitler, with regard to this case
12 your lab number L1102587 did you have the opportunity to
13 receive some evidence from the Charleston Police
14 Department on June 1st, of 2011?

15 A. I received some evidence from them, yes.

16 Q. And if you would I want to hand you what's
17 previously been marked as State's exhibits 44 -- excuse
18 me, 39, 44, and 45; I believe all of which are already in
19 evidence and ask if those are the items that you
20 examined?

21 [Whereupon, the witness is shown exhibits]

22 Q. Or among the items you examined I should say.

23 A. Yes, sir. This is some of the items that were
24 submitted.

25 Q. Okay. And you know that how?

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 A. Because I marked the bags that they come in with my
2 initials KW and then I put them in heat sealed bags,
3 which are dated with my initials. And in each case --
4 each bag is still sealed and has my initials on it.

5 Q. And with regard to State's exhibit number 39 that
6 contained two fired 380 RD caliber shell casings with the
7 -- stamp is that correct?

8 A. That's correct.

9 Q. And State's exhibit 44 contained one lead bullet
10 core and one fired bullet jacket?

11 A. That's correct.

12 Q. And State's exhibit 45 contained one fired bullet?

13 A. That's correct.

14 Q. In addition to those three items did you also
15 receive a Taurus 380 caliber pistol, which is designated
16 as your item number 2?

17 A. Yes, sir.

18 Q. With a couple of magazines of ammunition relative to
19 this case?

20 A. Yes, sir.

21 Q. And I want to begin briefly with that Taurus
22 handgun. Did you test fire it?

23 A. Yes, sir.

24 Q. Were the projectiles and shell casings from the test
25 fired Taurus 380 compared with the shell casings and

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 spent projectiles in State's exhibits 39, 44, and 45?

2 A. Yes. And I concluded from those comparisons they
3 were not fired by that pistol.

4 Q. Okay. Now let's move to State's 39 the two spent
5 shell casings you examined. What analysis did you
6 perform on those items?

7 A. I microscopically compared them to each other as
8 well as to the test cartridge case from the pistol. They
9 were not fired by the pistol so then I compared them to
10 each other and determined that both cartridge cases were
11 fired by the same firearm.

12 Q. Okay. But it was not that 380 that you had?

13 A. It was not the pistol.

14 Q. And finally with regard to State's exhibits 44 and
15 45 the spent shell casings, bullet core and jacket and
16 the spent projectile. What analysis did you perform on
17 those items?

18 A. State's exhibit number 44 is a fired bullet jacket
19 and a fired bullet core. The core is the interior of the
20 bullet, so when the bullet goes in the barrel of the
21 firearm it does not pick up any marks from the barrel,
22 the wiping of the barrel.

23 So the core fragment did not have any marks of value
24 so you can't say if it was fired by a particular firearm
25 or not. The rifling impressions are on the bullet

1 jacket. I compared this bullet jacket to State's exhibit
2 45 and fired a bullet, which was an intact bullet and
3 microscopically compared them together and determined
4 that they had similar rifling characteristics and also
5 similar matching identifying marks of value on each of
6 them and that they were both fired by the same firearm.

7 Q. Were you able to determine like the caliber of those
8 -- like the caliber of those projectiles?

9 A. Based on their remaining physical characteristic in
10 the case of State's exhibit 44 and the physical
11 characteristics of State's exhibit 45 they are most
12 consistent with being bullets that are normally loaded
13 into 380 auto caliber cartridges.

14 Q. So that would be consistent with the shell casings
15 you examined in this case as well, correct?

16 A. That's correct.

17 Q. And based upon the rifling characteristics you
18 observed on State's exhibits 44 and 45 projectiles were
19 you able to determine the type and make -- the type and
20 make of firearms that could have fired those rounds?

21 A. Yes sir, I did.

22 Q. And what are those possibilities?

23 A. There were thirteen possibilities and this -- there
24 is a list of firearms from databases maintained that has
25 rifling characteristics and we look -- we measure the

1 right impressions and put these in the computer program
2 and it gives us a list of firearms that could possibly
3 have fired it. Now this doesn't contain every
4 possibility.

5 There is a possibility a gun could exist that hasn't
6 been entered in this database because this consists of
7 guns that examiners have come across in the course of an
8 examination of a case. So if a new gun is introduced
9 and hasn't been used in a crime yet it may not be in this
10 database.

11 But based on what is in the database when I did this
12 examination the following manufacturers of firearms were
13 possibilities: AutoMag, Bersa, Erma, FIE, Field,
14 Grendel, Albert Johnson, Llama, Mauser, National
15 Cartridge.

16 That is not really the firearm that is a converter.
17 It's like a shell that you can put another cartridge in
18 and insert it into another gun with a different caliber.
19 In the case of shotguns that fire different bullets:
20 Portis Manufacturer, Tam Mobile and Thompson Simmons.

21 Q. Are all those 380 autos?

22 A. They are all capable of shooting 380 autos.

23 Q. Okay. I don't believe I have anything else. Could
24 you please answer any questions defense counsel may have?

25 THE COURT: Cross Examination?

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 MS. FORD: I have no questions for this witness,
2 Your Honor.

3 THE COURT: Okay. You may step down. Thank you
4 very much. Any reason he can't be excused?

5 MS. FORD: No, Your Honor.

6 THE COURT: Okay. Thank you very much. You may
7 be excused Mr. Whitler. Thank you very much.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: Call your next witness.

11 MR. DURANT: The State would call Mary Anne Boehm.

12 [Whereupon, Ms. Boehm comes forward]

13 [Whereupon, the witness is duly sworn by the Clerk
14 of Court as follows: do you swear or affirm your
15 testimony will be the truth, the whole truth, and nothing
16 but the truth so help you God]

17 MS. BOEHM: I do.

18 CLERK OF COURT: State your full name and spell
19 your last name.

20 MS. BOEHM: My name is Mary Anne Boehm, B-O-E-H-M.

21 [Whereupon, the witness takes the witness stand]

22 - - - - -

23 MARY ANNE BOEHM,

24 Having been first duly sworn,

25 Was examined and testified as follows:

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 DIRECT EXAMINATION

2 BY MR. DURANT:

3 Q. Good afternoon. Ms. Boehm, could you tell our jury
4 what you do for a living?

5 A. I work for the South Carolina Law Enforcement
6 Division commonly known SLED in the D-N-A casework unit.

7 Q. And how long have you been in the D-N-A Unit at
8 SLED?

9 A. Approximately six and half years.

10 Q. And what is your educational background?

11 A. I received a Bachelor of Science in Integrated
12 Science and Technology for the concentration of
13 Biotechnology from James Madison University, which is --

14 Q. Okay. And can you tell us what specific training
15 you have received in the area of forensic D-N-A analysis?

16 A. I trained for approximately a year by court a
17 qualified analyst in proper techniques and procedures
18 used in our D-N-A lab. I also attend outside training on
19 specific methods and instruments used in a laboratory.

20 Q. And do you have any teaching or instructional duties
21 in the area of D-N-A analysis?

22 A. I have helped train analysts.

23 Q. You are certified by SLED to perform forensic D-N-A
24 analysis?

25 A. Yes, sir.

1 Q. And how many cases have you handled during your time
2 at SLED?

3 A. Approximately a thousand.

4 Q. And have you previously been qualified as an expert
5 in the area of D-N-A analysis?

6 A. Yes, sir.

7 Q. How many occasions and in what courts?

8 A. Approximately 25 times. 20 or more of those have
9 been General Sessions and one with Family Court.

10 MR. DURANT: Your Honor, at this time we would
11 offer Ms. Boehm as an expert in the field of D-N-A
12 analysis.

13 THE COURT: Any objection?

14 MS. FORD: No, Your Honor.

15 THE COURT: All right. The court so finds. Thank
16 you very much.

17 Q. [Mr. DuRant] In general terms what does the field of
18 forensic D-N-A analysis entail?

19 A. Forensic D-N-A analysis examines biological material
20 -- chromosomes through -- better known standards.

21 Q. And what is D-N-A?

22 A. D-N-A stands for deoxyribonucleic acid. It is a
23 chemical found in all of our cells in our body, except
24 for red blood cells. It's important for this -- from
25 generation to generation and gives us physical features

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 such as our hair color and eye colors. With the
2 exception of identical twins no two individuals have the
3 same D-N-A profile.

4 In forensic science we learn that different portions
5 of D-N-A differ between individuals. We tested those --
6 locations and culmination of test results make up the
7 D-N-A profile.

8 Q. Okay. And the reason it is forensically
9 significant is that no two people share the same D-N-A
10 unless they are identical twins, is that correct?

11 A. That's correct.

12 Q. Now with regard to this case your lab number L02587
13 did you receive some evidence from the Charleston Police
14 Department for D-N-A analysis?

15 A. Yes, I did.

16 Q. I hand you what's previously been marked as State's
17 exhibits 41, 46, and 49 and ask you to look at those
18 items and let us know if those were the items submitted
19 to you and if so how you know that?

20 [Whereupon, the witness is shown exhibits]

21 A. These were the items that were submitted to me.
22 They have our lab number and item number on the yellow
23 seal. They also have my initials and the date that I
24 opened and sealed it along the side. And also on the
25 evidence itself it has the case number and my initials.

1 Q. Okay. And let's talk about State's exhibit number
2 41 that was labeled as a sealed pouch with a contact swab
3 from a Cricket Kyocera cell phone is that correct?

4 A. Yes, sir.

5 Q. And State's exhibit 46 was a sealed pouch with a
6 blood spot from James Javon Smith?

7 A. That's correct.

8 Q. And State's exhibit 49 was a sealed pouch with a
9 buccal swab from Frederick Flowers?

10 A. That's correct.

11 Q. What is a buccal swab?

12 A. A buccal swab is an oral swab; it's a sterile cotton
13 swab we use to just rub inside your mouth on either side
14 of the cheek area to collect D-N-A cells.

15 Q. Okay. Those are like epithelial cells I think
16 they're called.

17 A. Yes.

18 Q. And what is a contact swab?

19 A. A contact swab is also -- named as a touch swab.
20 It's any kind of surface where -- often or in this case
21 would have been over and had a potential for D-N-A to be
22 left behind also.

23 Q. Also looking at -- with epithelial are mostly be
24 used with?

25 A. Epithelial -- skin cells.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 Q. And what is a blood spot?

2 A. A blood spot is prepared by the coroner and in this
3 case it was just a little spot of the victim's D-N-A or
4 blood on a card, a sterile card used for a known
5 standard.

6 Q. And with regard to State's exhibit number 49, the
7 buccal swab from Frederick Flowers, were you able to
8 develop a D-N-A profile from that sample?

9 A. Yes, sir.

10 Q. And were you able to develop a D-N-A profile from
11 State's exhibit 46, the blood spot from James Javon
12 Smith?

13 A. Yes, sir.

14 Q. Okay. And then State's exhibit 41, the contact
15 swab from the Cricket cell phone, were you able to
16 develop a profile from that?

17 A. I developed a partial D-N-A profile from that item.

18 Q. What is a partial D-N-A profile?

19 A. It is an incomplete profile. It's -- there wasn't
20 enough D-N-A there for me to get all the results or get a
21 result from every single location that we did test and
22 they were all partial.

23 Q. And did your results also indicate there was a
24 mixture of D-N-A on that particular item?

25 A. Yes, on that item.

1 Q. And can you tell how many people are involved in
2 that mixture?

3 A. I determined there were at least two people in that
4 mixture.

5 Q. Okay. Is there a -- I know a lot of times when
6 there are a mixture of cases there is a major
7 contributor. Could you determine whether or not there
8 was a major contributor in this case?

9 A. No, because in this case there was no major
10 contributor. A major contributor is when someone
11 contributes more D-N-A than another person. But it was
12 all about the same.

13 Q. Okay. And in your work as a D-N-A analyst there
14 are strong profiles and weak profiles?

15 A. There are partial profiles, but no weak. But a
16 mixture can be a strong profile as well.

17 Q. Okay. But in this particular case was it a strong
18 profile or a weak profile?

19 A. It was a weak profile.

20 Q. And what do we mean by it was a weak profile?

21 A. There wasn't enough D-N-A there to generate a full
22 profile therefore it wasn't -- what was there was weak.

23 Q. And is that typical when you're dealing with a
24 contact D-N-A as opposed to like testing a blood sample
25 or a saliva sample or something like that?

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 A. Yes. With touch D-N-A we don't know how much D-N-A
2 to expect because we can't see it. So it's very possible
3 it would have a weak profile in that.

4 Q. Okay. Now as part of your analysis did you prepare
5 a chart setting forth your findings with regard to the
6 forensic D-N-A analysis you performed in this case?

7 A. Yes, sir.

8 MR. DURANT: May we approach, Your Honor?

9 THE COURT: Yes, sir.

10 [Whereupon, an off the record bench conference is
11 held]

12 THE COURT: All right. Ladies and gentlemen of
13 the jury I'm going to have to ask you to go to the jury
14 room. Please don't discuss the case. Leave your pads on
15 the chair and I'll get you back just as soon as I make a
16 decision on admissibility of some evidence.

17 [Whereupon, the jury exits the courtroom at 3:14
18 p.m.]

19 THE COURT: Mr. Butler, you have an objection is
20 that correct?

21 MR. BUTLER: Yes.

22 THE COURT: What do you want to admit, number 1?
23 Go ahead and mark it so we can...

24 MR. DURANT: It's the State's Your Honor. It's
25 State's exhibit number 50.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 THE COURT: All right. State's number 50. And
2 what is it?

3 MR. DURANT: State's exhibit number 50 is a chart
4 prepared by the analyst, which sets forth the findings,
5 her findings as a result of her D-N-A analysis of those
6 three samples submitted by ---

7 THE COURT: --- of those three samples?

8 MR. DURANT: Submitted by the Charleston Police
9 Department. I believe the testimony would be that
10 reference to this chart would assist her in explaining to
11 the jury her findings regarding the samples submitted in
12 this case.

13 THE COURT: All right. What -- you're objecting
14 to the chart itself going in?

15 MR. BUTLER: Yes, sir.

16 THE COURT: All right. On what basis? What's
17 your legal objection?

18 MR. BUTLER: That under 403 it's confusing and more
19 prejudicial than probative. She can explain her results
20 and it's also hearsay. The fact that she is on the stand
21 and I can cross her means it's not a confrontation
22 problem.

23 But police reports don't come in; they're hearsay.
24 Autopsy reports don't come in; they're hearsay. Now
25 these call logs have come in because they're summaries of

1 otherwise admissible evidence. But this isn't that. Its
2 hearsay and it's also her results as I understand it both
3 from the testimony and from the document is she can't
4 exclude Mr. Flowers.

5 She can't say it's him, can't say it's not. All she
6 can say is it's not the victim and that it's at least two
7 people; that's simple enough. It was so ambiguous I
8 thought about moving to exclude it because scientific
9 testimony can be confusing.

10 But the bottom line is they can't say it's him.
11 They can't say it's not; it's not the victim or more than
12 two people.

13 Almost meaningless to even care to move to exclude
14 it, but that document could be confusing to lay people.
15 I barely understand them. There is no reason for that to
16 go back there; and it's also hearsay.

17 MR. DURANT: That hearsay argument is interesting
18 in that he also argued with the medical examiner that
19 that's that the reason that we should put in a diagram as
20 opposed to photos, which would also be hearsay under his
21 analysis right ---

22 THE COURT: --- let me hear what she is going to
23 say about the form very briefly and then I'll make a
24 decision, okay.

25 MR. DURANT: Okay.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 PROFFERED TESTIMONY

2 BY MR. DURANT:

3 Q. Ms. Boehm, you prepared this -- let me show it to
4 you first thing I guess. I hand you what's been marked
5 as State's exhibit number 50 for identification and ask
6 if you recognize that chart?

7 [Whereupon, the witness is shown exhibit]

8 A. Yes sir, I do.

9 Q. And is that an exact duplicate of the chart you
10 prepared, which sets forth the results of your D-N-A
11 analysis in this case?

12 A. Yes, this is the chart that is page 3 of my report.

13 Q. Okay. And you have reached conclusions regarding
14 the D-N-A samples submitted in this case, is that
15 correct?

16 A. That's correct.

17 Q. Would reference to State's exhibit number 50 assist
18 you in explaining your findings to the jury?

19 A. Yes, it would.

20 Q. And do you believe that would be a benefit to you in
21 explaining to the jury what you're talking about?

22 A. Yes, it would.

23 THE COURT: She could use it for demonstrative
24 purposes but his objection is for it to actually go into
25 evidence to go in the jury room.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 MR. DURANT: I understand that, Your Honor ---

2 THE COURT: --- and just because it would benefit
3 her testimony doesn't make it admissible. I mean he's
4 saying it is confusing, and under 403 there is no
5 probative value to it. And the prejudicial value
6 outweighs the probative value.

7 Now there is no probative value to using it for
8 demonstrative purposes. And that's what you've asked is
9 demonstrative purposes. She can use it all she wants;
10 you can blow it up on the screen and she can explain it.
11 But that's different than the document itself going to
12 the jury room.

13 MR. DURANT: I understand that, Your Honor, but
14 what ---

15 THE COURT: --- why do you think it should go back?

16 MR. DURANT: What I don't understand is why that
17 would be confusing to the jury?

18 THE COURT: Well, I don't know. I haven't heard
19 what she is going to say about the document yet.

20 MR. DURANT: Do you want to do the whole thing in
21 camera?

22 THE COURT: I want to hear ---

23 MR. DURANT: --- I don't care if it goes into
24 evidence or not as long as you allow me to show it and
25 let her ---

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 THE COURT: --- I don't mind you showing it and
2 using it for demonstrative purposes. You can do that and
3 not admit it into evidence. But his objection is for it
4 to go into evidence.

5 MR. DURANT: I understand. I disagree that the
6 prejudicial value -- the possibility of confusion
7 outweighs its probative value.

8 THE COURT: Well, I'm trying to get a grasp on
9 what's the probative value is so why don't you ask her
10 some questions.

11 MR. DURANT: I don't know what else to ask her
12 other than does the reference to that chart -- would that
13 assist you in demonstrating your findings to this jury.

14 THE COURT: Well, for now I'm going to take it
15 under advisement and we're just going to use it for
16 demonstrative purpose. I'll rule after I hear her
17 testimony before the jury.

18 MR. DURANT: Okay.

19 THE COURT: Okay?

20 MR. DURANT: That's fine.

21 THE COURT: Mr. Butler, anything else you want to
22 put on the record?

23 MR. BUTLER: No, sir.

24 THE COURT: Bring us the jury, please sir.

25 [Whereupon, the jury enters the courtroom at 3:21

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 p.m.]

2 THE BAILIFF: The jury is all present, Your Honor.

3 THE COURT: Thank you, very much. Yes, sir?

4 MR. DURANT: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. DURANT:

7 Q. I don't know if I already did this or not. I hand
8 you what's previously been marked as State's exhibit
9 number 50 and ask if you recognize that document?

10 [Whereupon, the witness is shown exhibit]

11 A. Yes, sir. This is the third page of my report and
12 it's a table of the D-N-A results.

13 Q. Okay. And that chart was prepared by you ---

14 A. --- yes, sir ---

15 Q. --- is that correct? And would reference to that
16 exhibit assist you in explaining your findings to the
17 jury in this case?

18 A. Yes, sir.

19 Q. And I may have to ask you to come down. I know it's
20 hard to see that. Can you see that from where you are?

21 A. Yes, sir.

22 Q. And I want to ask you some questions relative to
23 that chart.

24 THE COURT: Can you blow it up any?

25 MR. DURANT: I can't blow it up any further than

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 that.

2 THE COURT: Okay.

3 MR. DURANT: Which is part of the problem ---

4 THE COURT: --- in this courtroom ---

5 MR. DURANT: --- in this courtroom.

6 THE COURT: I understand.

7 MR. DURANT: And part of the problem that we
8 discussed earlier.

9 Q. [Mr. DuRant] If you would and you can -- if it would
10 be better for you, you can come down and stand right in
11 front of it. Or you can come to my computer and use my
12 mouse to use as a pointer on it if you think that would
13 be helpful to the jury.

14 A. It might be, yes.

15 MR. DURANT: Your Honor, would you have any
16 objection?

17 THE COURT: You can go and use the mouse to point
18 to what you -- you don't have a schematic or just an old
19 fashioned flip board you can -- chart you can write on to
20 show it, can you, where the jury can see it because I'm
21 sure the jury can't see this.

22 MR. DURANT: I know they can't see it either you
23 know, which is part of my problem.

24 THE COURT: Does anybody have a poster board you
25 can write it on just the old fashioned way? Like phone

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 books, you know.

2 MR. DURANT: Sorry, but no I don't.

3 THE COURT: All right. Come around.

4 [Whereupon, the witness steps down from the witness
5 stand]

6 MR. DURANT: We'll try to do this the best way we
7 can, Your Honor.

8 Q. [Mr. DuRant] And if you would Ms. Boehm here's the
9 mouse and you may have a seat. And if you need to point
10 to any specific item on there you can certainly do so.
11 Now, there is a first column there over on your left
12 [indicates]. What is that?

13 A. The column right here [indicates] these are the
14 items that were submitted in this case. So it's the two
15 standards one is from James Smith and the next one is
16 from ---

17 THE COURT: --- hold on just a second, okay. Let
18 me see the attorneys up here. Let me see the form.

19 [Whereupon, an off the record bench conference is
20 held]

21 THE COURT: What I am going to do since -- in this
22 particular courtroom we have no way of blowing it up.
23 It's extremely small print. The State wants to use it
24 for demonstrative purposes. I'm going to get the clerk
25 to run 14 copies and distribute the 14 copies for

1 demonstrative purposes to the jury where they can look at
2 what the witness is testifying to while she's testifying
3 since we don't have a flip chart or a poster board or
4 anything else where it has been blown up. And she is
5 going to run me some copies please, ma'am? And I
6 understand the defense has an objection to that is that
7 correct?

8 MR. BUTLER: Yes, sir.

9 THE COURT: All right. The objection is
10 overruled.

11 [Off the record momentarily]

12 [Whereupon, the witness returns to the witness
13 stand]

14 THE COURT: We'll do it that way. I apologize. In
15 the other courtrooms this chart is over there close to
16 you, it's bigger, and you've got a magnifier where you
17 can blow it up so big. But in this courtroom we're not
18 technologically advanced to that point, nor do we have
19 the old fashioned flip charts.

20 MR. DURANT: Thank you, Your Honor. May I proceed?

21 THE COURT: Yes, sir.

22 Q. [Mr. DuRant] I believe I already asked you what
23 this column is here [indicates]. That is?

24 A. Those are the items that I tested. The first one,
25 item 10 was the known standard from James Smith. Item 8

1 was the known standard from Frederick Flowers. And item
2 9 was the cell phone.

3 Q. And looking at this top row here [indicates] it goes
4 all the way across the page. It's got a bunch of numbers
5 and letters. What is that?

6 A. These are the specific locations on the D-N-A strand
7 that we tested that differ between individuals.

8 Q. Okay. And y'all tested how many locations?

9 A. Fifteen different locations and then the last one
10 called amelogenin; it's the sex determining test that
11 tells you whether you're male or female.

12 Q. So -- and in the terminology those fifteen areas are
13 called loci is that correct?

14 A. That's correct.

15 Q. Okay. Now let's start off here [indicates] with
16 D8S1179. And by James Smith you have a 13. Under
17 Frederick Flowers you have a 13, 14. And on the cell
18 phone you have a 13, 14. What are those numbers?

19 A. That's correct. Those are the results from that
20 location that I tested. James Smith is a 13 there,
21 Frederick Flowers is a 13 and the evidence is a 13 at
22 that location.

23 Q. Okay. And what do those numbers mean?

24 A. Those are the test results and are actually the
25 amount of repeat in the D-N-A strand. So for instance

1 James Smith has a 13 repeat. And when you repeat one
2 number it's actually two copies of the 13 instead of
3 being redundant and putting 1313. We enter that as 113.
4 Frederick Flowers was two different repeats. He has a 13
5 and then he has a 14. And it's up there as 1314.

6 Q. Okay. And let me ask you about some other things
7 on here. I know that some of these numbers have
8 parenthesis around them. What does that mean?

9 A. Parenthesis is the weak test results like I said
10 earlier that the D-N-A sample was a pretty weak profile.
11 Those we interpret with caution.

12 There could be signs of dropout meaning that that
13 location is not fully represented at that location or it
14 could be possibly more test results that were detected.

15 Q. Okay. Then I want to ask you something about this
16 down there [indicates] the parenthesis allele between 75
17 and 149 RFU. Is 75 your cutoff point?

18 A. Yes. The allele is the typical term for results --
19 test results. And the test results that fall between 75
20 and 149 RFU -- of unit that our instrument uses for
21 detection and that's our rating.

22 Seventy-five is our cutoff. Nothing lower than 75
23 RFU's will be used in an interpretation and 149 is the
24 high end of that interpretation with caution area.

25 Q. Okay. And so is it possible for a particular

1 to have one allele that is above the 75 range and one
2 allele that is below the 75 range?

3 A. Yes, sir.

4 Q. So in your results when you do that you would only
5 report the one that is above your 75 reference is that
6 correct?

7 A. That's correct. That's the only thing that is
8 called. If it's under 75 RFU's it's not even called.
9 You don't look at it.

10 Q. Okay. And then next I believe you have a dash
11 equals no results. What does that mean?

12 A. That -- basically no results were obtained from that
13 certain locus.

14 Q. And then you have bold equals major contributor is
15 that correct?

16 A. That's correct.

17 Q. And we have no bold numbers in this -- these
18 protocols is that correct?

19 A. That's correct.

20 Q. Because you'd already testified there was no major
21 contributor to the mixture, is that correct?

22 A. That's correct.

23 Q. And finally you've got N -- equals inconclusive.
24 What does that mean?

25 A. That would be a scenario that doesn't happen often

1 but if you're unsure about it or there is some weird
2 thing going on with the D-N-A that one we would just deem
3 that location inconclusive and not use it for
4 interpretation purposes.

5 Q. Okay. Now, and I hate to do this but I may end up
6 having to get you to move here -- and once again you said
7 the amelogenin was the sex determiner, is that correct?

8 A. That's correct.

9 Q. Okay. And XY means male, correct?

10 A. Yes, sir.

11 Q. Now with regard to the victim you compared the D-N-A
12 profile from the victim James Javon Smith with the D-N-A
13 profile from the swab from the cell phone, is that
14 correct?

15 A. That is correct.

16 Q. And what was your conclusion regarding that
17 analysis?

18 A. That he was excluded from the mixture.

19 Q. And so the victim was excluded from the mixture?

20 A. Yes, sir.

21 Q. And I don't know where to direct you to. If you
22 were to come up here and move this could you use this
23 chart to show the jury what you mean when you say he was
24 excluded as a contributor?

25 A. Let me grab my report.

1 [Whereupon, the witness steps down from the witness
2 stand]

3 A. As you see James Smith, the victim, his D-N-A
4 profile is at the top; the top row item 10 and the cell
5 phone as item 9. So we'll just deal with those two rows
6 for right now.

7 If you look at the first location, D-8 he is a 13,
8 the cell phone is a 13-14 so that indicates he may be at
9 that locus.

10 If you move onto the second one D-21 James Smith is
11 a 28 31.2 and from the cell phone I got a 28 30; both of
12 those results are weak. So there could be a potential
13 drop out at that locus so he may be there and may not be
14 there.

15 If you look at the next location D-7 he is an 8 10
16 and the cell phone is weak again, it was just a 10. So
17 he could possibly -- he may have contributed. C-SF -- is
18 a 12 and I didn't get any results from the cell phone.
19 D-3 he is a 16 and from the cell phone I got a 16-17; it
20 could possibly be there.

21 At the 1 he is a 7-8 and I add a 79.3 although from
22 the cell phone he could have donated the 7 but his 8 is
23 not there. The next location he is a 12-13 and from the
24 cell phone I got 11-12; still kind of showing up but not
25 really. It's still low level with parenthesis around the

1 numbers. At D-16 he is a 9-12 and I just got a 10 from
2 the cell phone so he didn't contribute that 10 at that
3 location.

4 At D-2 he's a 22-23. I didn't get anything from the
5 cell phone. At D-19 he's a 14-16.2. I got a 12.2 a 14
6 and a 15.2 from the D-19, therefore he could be the 14;
7 the 16.2 is not there.

8 At VWA I have a 16 and from the cell phone it's just
9 an 18. At the next one T-POX he's a 6-8 and from the
10 cell phone I just got an 8. D-18 I got a 14-16. I
11 didn't get anything from the cell phone.

12 From D-5 I got a 12-13. I just got 11 from the cell
13 phone and it's high. There is no parenthesis around it
14 so I can pretty much go with that suggestive result there
15 so he could be excluded from that location.

16 At FGA I got 18.2,23 from James Smith and from the
17 cell phone I only got a 22. Again, he's excluded from
18 that location. And that's the amelogenin they are both
19 male.

20 Q. Okay. And based upon those results you excluded
21 Mr. James Javon Smith as a contributor, is a correct?

22 A. Yes, sir.

23 Q. And what were your -- what was your conclusion that
24 you reached with regard to the defendant Frederick
25 Flowers?

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 A. No conclusive statement can be made regarding the
2 inclusion or the exclusion of Frederick Flowers as a
3 contributor to this mixture.

4 Q. And once again by referring to that chart could you
5 explain your findings regarding Frederick Flowers?

6 A. Again, if you go to the chart Frederick Flowers is a
7 13-14, the cell phone is a 13-14. D-21 30-32.2, cell
8 phone was 28-30. He could have contributed that 30-32.2,
9 it may have dropped out or it may not be there.

10 Q. Now when you say dropped out that means it may have
11 been below that 75 RFU ---

12 A. --- that's correct, uh huh. Again, at D-7 he was a
13 10-11. The cell phone just had a 10. Again his 11 may
14 have dropped out. CSF there is a 10-11 but there is
15 nothing for me to compare it to. And the cell phone I
16 didn't get a result. D-3 he's a 17. The evidence was a
17 16-17. THO-1 he is a 7. There is a 7-9.3.

18 Q. And both of those once again could be -- well 2 --
19 the THO-1 there is two 7's. A 7 for Mr. Flowers and a 7
20 for the swab from the cell phone, is that correct?

21 A. Right.

22 Q. 7 is a strong 7 and 9.3 is a weak 9.3 is that
23 correct?

24 A. That's correct.

25 Q. And once again when you're talking about D-3, S-1

1 358 that's -- you have a match on one allele but you --
2 but once again that's one of those drop out situations
3 you were talking about?

4 A. Correct; or it's weak.

5 Q. Okay.

6 A. And then for D-13 Frederick Flowers was 11-12 and
7 the evidence I got 11-12; weak results. D-16 I got a 10-
8 12. I got 10 from just the cell phone. D-2 I didn't get
9 any results from the cell phone.

10 Frederick Flowers was a 16-23. D-19 Frederick
11 Flowers was a 12.2 and a 15.2, and the cell phone I got
12 12.2, 14 and a 15.2.

13 Q. Let me ask you about that one. What is the
14 significance of adding the three numbers there...

15 A. That is a sign of a mixture. Typically I do see the
16 first two rows as an individual or a single source D-N-A
17 profile will have 1 or 2 numbers. If there are 3 numbers
18 it's a sign of a mixture.

19 Q. Because nobody has more than 2 numbers at any
20 particular locus is that ---

21 A. --- there are some scenarios where there may be
22 someone with 3 chromosomes; like if you had Down Syndrome
23 there is 3 copies of D-21 or chromosome 21. So there's
24 sometimes that. And looking at the actual result of the
25 peak heights, these are actually peak heights you can

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 tell by the ratio of peak heights that it's from a
2 mixture too.

3 Q. Okay. So you got a strong 12.2, and a strong 15.2,
4 a strong 12.2 and a strong 15.2 and a weak 14 is that
5 correct?

6 A. That's correct.

7 Q. Okay.

8 A. Here he's a 17-19 and the cell phone is 18; a weak
9 18.

10 Q. And what's the significance of that one? Why has
11 that not excluded Mr. Flowers?

12 A. That would exclude him from that location but
13 looking at the total profile I couldn't make a
14 determination whether to include or exclude from the
15 total profile.

16 Q. Because that 18 could be contributed by the other
17 contributor to this mixture is that correct?

18 A. That's correct.

19 Q. Okay. About T-POX --

20 A. I have a weak 8 and Frederick Flowers was an 8-11.

21 Q. That's another drop out situation, correct?

22 A. Possible.

23 MR. BUTLER: Judge, may we approach?

24 THE COURT: Yes, sir.

25 [Whereupon, an off the record bench conference is

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 held]

2 THE COURT: All right. Mr. Beattie, I understand
3 you have an objection to the testimony concerning the
4 drop out, is that correct?

5 MR. BUTLER: Yes, I do.

6 THE COURT: At this point in time that objection is
7 overruled. However, as far as the Solicitor is concerned
8 whenever we get to an exclusion we need to do it within a
9 scientific certainty, okay. Please proceed.

10 MR. DURANT: I understand. I'm almost through.

11 Q. [Mr. DuRant] And if we could continue with -- we
12 read at T-18 is 51 I believe?

13 A. Yes. Frederick Flowers was a 17-24 at this
14 location. I didn't get anything from the cell phone. At
15 D-5 he's an 11, from the cell phone I got an 11, FGA I
16 got a 22 and he's a 22. And then amelogenin...

17 Q. And based upon those results do you have an opinion
18 based upon a reasonable degree of scientific certainty as
19 to whether or not Mr. Flowers can be included or excluded
20 from the sample on the swab from the cell phone?

21 A. No, I cannot make that determination whether he's
22 included or excluded.

23 Q. And --

24 THE COURT: Where would you be more comfortable
25 there or back on the witness stand or does it matter? Go

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 have a seat on the witness stand.

2 [Whereupon, the witness returns to the witness
3 stand]

4 Q. [Mr. DuRant] And I think I just have one other
5 question. How many of those 15 loci would you have to
6 have match before you concluded that a person actually
7 contributed -- a person contributed to this mixture?

8 A. That individual would have to show up across the
9 entire profile for me to call that -- or it cannot be
10 excluded in this case. It cannot be excluded because
11 it's a mixture.

12 Q. Okay. And some of these -- in some of these loci
13 you didn't get a result at all is that correct?

14 A. That's correct.

15 Q. And in some of them you got weak results is that
16 correct?

17 A. That's correct.

18 Q. Okay.

19 MR. DURANT: I don't have anything else, Your Honor

20 ---

21 THE COURT: --- cross-examination ---

22 MR. DURANT: --- please answer any questions defense
23 counsel may have for you.

24 THE COURT: Mr. Butler, if you want to cross you're
25 welcome to do it or Ms. Ford; whoever wants to do it.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 MR. BUTLER: Ms. Ford is going to handle cross.

2 THE COURT: Pardon?

3 MR. BUTLER: Ms. Ford is going to handle the cross.

4 THE COURT: Okay. Whoever wants to do it is fine.

5 MS. FORD: Beg the court's indulgence. Just a few
6 questions.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. FORD:

10 Q. You were only -- you only looked at the D-N-A from
11 Frederick Flowers and Javon Smith in this case, correct?

12 A. As well as the cell phone.

13 Q. Right. You were trying to I.D. the D-N-A on the
14 cell phone, correct?

15 A. That's correct.

16 Q. From Freddie Flowers and Javon Smith, correct?

17 A. That's correct.

18 Q. You didn't look at anyone else?

19 A. There were no other samples submitted.

20 Q. If you had been given another D-N-A sample would you
21 have been able to compare that person's D-N-A to the
22 D-N-A on the phone?

23 A. Yes. If I was successful and generated a D-N-A
24 profile I would have compared it to the cell phone as
25 well.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 Q. And there were at least two people's D-N-A on that
2 phone?

3 A. That's correct.

4 Q. Okay. And one was not Javon Smith for sure?

5 A. That's correct.

6 Q. So at least two people or possibly three or four,
7 correct?

8 A. That's correct.

9 Q. And there is no way of knowing what a person was
10 doing when his or her D-N-A may have gotten on an object,
11 correct?

12 A. No, ma'am.

13 Q. No further questions.

14 THE COURT: Any redirect?

15 MR. DURANT: No sir, Your Honor.

16 THE COURT: Okay. You may step down. Any reason
17 she cannot be excused?

18 MR. DURANT: I would ask that the witness be
19 excused, Your Honor.

20 THE COURT: Any objections?

21 MS. FORD: No, Your Honor.

22 THE COURT: All right. You may be excused. Thank
23 you so very much. Y'all have a safe trip back to
24 Columbia.

25 [Whereupon, the witness is excused and exits the

1 witness stand]

2 THE COURT: Madame Forelady and ladies and
3 gentlemen, I am going to ask you to go to the jury room.
4 I think what I'll do is take the afternoon break for us
5 of about ten or fifteen minutes.

6 So y'all can take a break too because I need to take
7 up a matter outside your presence. Please don't discuss
8 the case amongst yourselves and leave your notepads in
9 the chair.

10 [Whereupon, the jury exits the courtroom at 3:50
11 p.m.]

12 THE COURT: All right. Mr. Butler, there were
13 several objections at the bench concerning the D-N-A
14 expert's testimony of Ms. Boehm.

15 I want to make sure the record is clear because I
16 don't know if it has picked it up. I want to give you an
17 opportunity to put it on the record so we can make sure
18 everything is on the record and make sure everybody makes
19 the appropriate arguments, okay.

20 MR. BUTLER: Thank you, Judge.

21 THE COURT: Please proceed.

22 MR. BUTLER: My objection was that the witness's
23 answers concerning certain, for lack of a better way to
24 put it, numbers dropping out was speculative and would
25 not comply with 702 and that the proper way to phrase

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 that question would be to a reasonable degree of
2 scientific certainty. She couldn't say that because one
3 of the ways for example -- this is marked for I.D. as the
4 State's what Mr. DuRant?

5 MR. DURANT: You're talking about the chart? I
6 believe 50.

7 MR. BUTLER: State's 50 ---

8 THE COURT: --- 50. State number 50.

9 MR. BUTLER: State's 50 for I.D. For example at
10 site the third one in the list D-7S820 where the cell
11 phone is 10. Well one possibility is that's Frederick
12 Flowers and the 11 dropped out.

13 But the other possibility is that the unknown sample
14 is Homo 10. That's another possibility but it's just a
15 possibility. You could say the same thing with D-16S539
16 and TPOX, T-P-O-X. All of those can be explained
17 different ways; not to a reasonable degree of scientific
18 certainty. So that was the basis of my objection to that
19 line of questioning under 702 and State v Council.

20 THE COURT: Okay.

21 MR. DURANT: And my response is as it was at the
22 bench, Your Honor and that goes to the weight and not the
23 admissibility of the evidence. Basically she -- her
24 conclusion at the end of the testimony was that based
25 upon a reasonable degree of scientific certainty she

1 could not include or exclude Mr. Flowers as a
2 contributor. And also with regard to that exhibit, Your
3 Honor, I would renew my motion to move this into
4 evidence.

5 I think it's clear that it is very demonstrative to
6 her testimony, that it made her testimony make sense to
7 this jury. And quite frankly the defendant doesn't want
8 it in because the defendant matched it 1, 2, 3, 4, 5, 6
9 loci and ---

10 THE COURT: --- I'm sorry, what?

11 MR. DURANT: The defendant matched it 1, 2, 3, 4,
12 5, 6 loci and couldn't be ruled out in 1, 2, 3, 4, 5 of
13 them. And he doesn't want the jury to see those numbers.

14 MR. BUTLER: That's right. But that's not clear.
15 I don't want the jury to see those numbers; absolutely
16 right because it's misleading. To match 6 loci makes it
17 sound like it's a match.

18 Mr. DuRant used the word match. It's not a match.
19 The witness says she can't include or exclude him. I
20 don't want this going back because it's misleading and
21 Mr. DuRant in his closing is going to say look how close
22 it is ---

23 THE COURT: --- back it up just a second so the
24 record is clear. Your 702 and your 703 motion is denied,
25 okay.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 MR. BUTLER: Yes, sir.

2 THE COURT: Now we're talking about the issue of
3 allowing State's exhibit number 50 to go into evidence,
4 okay.

5 MR. BUTLER: Yes, sir.

6 THE COURT: Please proceed.

7 MR. BUTLER: Yes, sir. It's misleading because
8 just as Mr. DuRant says he matches 6 loci he uses the
9 word match but the witness rightfully testified I can't
10 include him or exclude him. Mr. DuRant wants to use this
11 to say well, it's really close to a match.

12 But that's not what she said. If -- the document is
13 absolutely misleading, completely misleading as a
14 substitute to her testimony. It's also hearsay. Just
15 because a police officer testifies doesn't mean his
16 report comes in. A witness testifies and their statement
17 doesn't come in.

18 And yes, I proposed the diagrams as an alternative
19 to the photograph but diagrams aren't statements. This
20 is essentially her testimony reduced to one sheet of
21 paper that goes back to the jury room. I object to it.
22 It's hearsay. And it's more prejudicial and confusing
23 that could ever be probative especially in light of her
24 testimony.

25 THE COURT: Mr. DuRant, let me just ask you this

1 question. Do you have 702 in front of you?

2 MR. DURANT: No, but I can get it in front of me.

3 THE COURT: Get it in front of you. I want to ask
4 you a question. Do you have it in front of you?

5 MR. DURANT: Yes, sir.

6 THE COURT: Where it says scientific, technical, or
7 other specialized knowledge will assist the trier of fact
8 to understand the evidence or to determine a fact in
9 issue. Now, the ultimate result from the expert was she
10 could not include or exclude the defendant. So what fact
11 in issue are we trying to prove with that witness?

12 MR. DURANT: The sentence here scientific,
13 technical or other specialized knowledge will assist the
14 trier of fact to understand this evidence. That document
15 helps ---

16 THE COURT: --- but ---

17 MR. DURANT: --- the trier of fact understand that
18 evidence.

19 THE COURT: I understand. But the evidence doesn't
20 indicate whether it was his phone through D-N-A analysis
21 or not.

22 MR. DURANT: Judge, I haven't tried to change this
23 witnesses opinion. Her opinion is her opinion.

24 THE COURT: Right.

25 MR. DURANT: All I said was that that -- and she

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 agreed that assisted her in being able to explain her
2 opinion to the jury.

3 THE COURT: I understand that.

4 MR. DURANT: And I think that that -- just as 702
5 says assists the trier of fact to understand.

6 THE COURT: All right. I'm going to grant the
7 motion -- I'm going to sustain the motion. I'm not going
8 to allow State's exhibit number 50 to go back to the jury
9 because of the possibility of confusion especially since
10 the expert testified they could not exclude or include
11 the defendant in the case. And I'm not going to allow
12 that to go back into evidence. And that motion is
13 sustained. Anything else before we take a break?

14 MR. DURANT: No, sir.

15 THE COURT: All right. Thank you very much.

16 [Whereupon, a recess is held from 3:57 p.m. to 4:11
17 p.m.]

18 THE COURT: And under 403 I also don't think the
19 probative value outweighs the prejudicial value. We need
20 Mr. Flowers here. Mr. DuRant, is this going to be your
21 last witness you think?

22 MR. DURANT: Yes, sir.

23 THE COURT: Okay. Is the defense ready to
24 proceed?

25 MS. FORD: Yes, Your Honor.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 THE COURT: All right. Bring us the jury, please?

2 [Whereupon, the jury enters the courtroom at 4:13

3 p.m.]

4 THE BAILIFF: All jury is present, Your Honor.

5 THE COURT: Okay. Thank you. Call your next
6 witness please, sir.

7 MR. DURANT: Yes, sir. The State would call Doctor
8 Ellen Riemer.

9 THE COURT: Doctor Riemer if you will come around
10 please.

11 [Whereupon, Doctor Riemer comes forward]

12 [Whereupon, the witness is duly sworn by the Clerk
13 of Court as follows: do you swear or affirm your
14 testimony will be the truth, the whole truth, and nothing
15 but the truth so help you God]

16 DOCTOR RIEMER: I do.

17 CLERK OF COURT: State your full name and spell
18 your last name.

19 DOCTOR RIEMER: My name is Doctor Ellen Riemer,
20 R-I-E-M-E-R.

21 [Whereupon, the witness takes the witness stand]

22 - - - - -

23 ELLEN RIEMER,

24 Having been first duly sworn,

25 Was examined and testified as follows:

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 DIRECT EXAMINATION

2 BY MR. DURANT:

3 Q. And Doctor Riemer, could you tell our jury what you
4 do?

5 A. I'm a forensic pathologist and medical examiner,
6 which is a medical doctor who specializes in diagnosing
7 injuries and natural disease and determines the cause and
8 manner of death of individuals by performing autopsy
9 examinations.

10 THE COURT: Does the defense agree that she is
11 qualified as a forensic pathologist?

12 MS. FORD: Yes, Your Honor.

13 THE COURT: The court so finds. I'm not trying to
14 stop you from introducing her to the jury, okay. Do what
15 you think is appropriate, okay.

16 MR. DURANT: Thank you, sir.

17 THE COURT: Please proceed.

18 Q. [Mr. DuRant] You're affiliated with the Medical
19 University is that correct?

20 A. Yes.

21 Q. And what is your connection with the Medical
22 University of South Carolina?

23 A. I'm employed as a faculty member and attending
24 pathologist at the Medical University of South Carolina.

25 Q. Okay. And as part of your affiliation with the

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 Medical University have you had an occasion to perform an
2 autopsy in this case on Mr. James Javon Smith on March
3 2nd, 2011?

4 A. Yes.

5 Q. And could you tell us what Mr. Smith's age was?

6 A. I'm just going to pull out a copy of my autopsy
7 report to refresh my recollection.

8 [Whereupon, the witness reviews documents]

9 A. Mr. Smith was a 25 year old man.

10 Q. And how tall was he?

11 A. He was 69½ inches in length, which is 5 foot 9½
12 inches in length.

13 Q. And his weight?

14 A. He weighed 190 pounds.

15 Q. Okay. And as part of your autopsy did you take
16 photographs during the course of the autopsy?

17 A. Yes.

18 Q. And I'll hand you what's previously been marked as
19 State's exhibits 24, 25, 26, 27, 28, and 29 and ask you
20 if reference to those photographs would assist you in
21 explaining your findings to the jury in this case?

22 [Whereupon, the witness is shown exhibits]

23 A. Yes, they would.

24 MR. DURANT: Your Honor, at this time we would
25 offer State's exhibits 24, 25, 26, 27, 28, and 29.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 THE COURT: Now the defense had objections to which
2 numbers? I don't remember the numbers.

3 MR. DURANT: It was 24, 26, and 27.

4 THE COURT: All right. Defense had objections to
5 State's exhibits 24, 26, and 27, which we previously
6 heard. And I overrule those objections. So 24 is
7 admitted with objection, 25 without, 26 with objection,
8 27 with objection, 28 without objection, 29 without
9 objection. Is that correct?

10 MS. FORD: Yes, Your Honor.

11 THE COURT: Thank you, very much.

12 [Whereupon, State's exhibit numbers 24, 25, 26, 27,
13 28, and 29 are entered into evidence by the court]

14 Q. [Mr. DuRant] As part of your autopsy did you
15 perform an external examination of the body?

16 A. Yes.

17 Q. And based upon your external examination of the body
18 what evidence of recent injury did you find?

19 A. I found a gunshot wound to the right side of the
20 chest and a gunshot wound to the right hip.

21 Q. Okay. And the gunshot wound to the right side of
22 the chest is the one that you designated as gunshot A is
23 that correct?

24 A. Yes, arbitrarily.

25 Q. Okay. And the gunshot wound to the right hip?

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 A. I labeled B.

2 Q. Okay.

3 A. For clarity.

4 Q. I understand. And I'd like to start with the
5 gunshot wound designated as gunshot wound A in your
6 autopsy report. Could you tell us -- could you put it
7 up? Could you tell us what -- where the point of entry
8 was on there. If you can, stand up.

9 A. Is that okay?

10 Q. Yes, that's quite all right if you want.

11 A. This is the photograph of the lateral, the right
12 side [indicates] of the decedent as he -- the deceased
13 individual as he is lying on the autopsy table. And we
14 can see that there is an entry gunshot wound on the right
15 side of the chest. It's just -- which is below the
16 armpit [indicates].

17 Q. And in the examination of that wound was there any
18 evidence of soot deposition or stippling around the
19 wound?

20 A. No there was not.

21 Q. And if you would briefly, what is soot deposition
22 and stippling?

23 A. Soot deposition and stippling is gunpowder that is
24 deposited on the skin when a firearm is fired in close
25 proximity to the person's skin.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 Q. And in forensic terms you have forensic --
2 pathological terms I guess you'd say you have close
3 gunshot wounds, distant gunshot wounds, contact wounds,
4 is that correct?

5 A. That's right. If there is soot I designate it a
6 contact wound; a close range.

7 Q. And with contact wound you mean basically a gun to
8 the -- right to the skin is that correct?

9 A. It's when the muzzle of the gun is pressed up
10 against the skin.

11 Q. Okay. And what is considered close gunshot wound?

12 A. When I see gunpowder stippling it usually indicates
13 that the firearm was fired within a scant few inches --

14 Q. Okay. So what kind of...

15 A. Well, I cannot tell the difference -- the distance
16 that this gun was fired because it didn't leave any
17 evidence ---

18 Q. --- and that's because of what?

19 A. Well, it's possible it could have been deposited on
20 an intermediate object, like if it was a book pressed up
21 against -- it's just before -- when the bullet hit the
22 book the book would have absorbed the stippling.

23 Q. Or if he is wearing clothes?

24 A. That's right. If he's wearing clothing that could
25 have absorbed it as well.

1 Q. Okay. So if he's wearing clothing unless it's a
2 contact wound you couldn't tell if it was close or
3 distant ---

4 A. --- that's correct. So it's of indeterminate range.

5 Q. Okay. And basically when you're talking about a
6 distant gunshot range in forensic pathology terminology
7 you're probably talking about two or three feet anyway?

8 A. That's correct.

9 Q. And what was the trajectory of that bullet wound or
10 gunshot wound?

11 A. The trajectory, which is another word for the
12 direction of the wound path, the direction of the wound
13 path is from the right to left.

14 So it would be coming from the right side of the
15 body to the left side of the body. And it was going
16 toward the back so it veered toward the back of the body
17 and it was going downward.

18 Q. Okay. So it was a downward angle as well ---

19 A. --- downward angle from right to left and slightly
20 front to back.

21 Q. Okay. And if you would could you tell us what
22 internal injuries were caused by that gunshot wound?

23 A. Yes. After the bullet entered the right lateral
24 side of the chest, which is the skin and the muscle, it
25 went through the right -- one of the ribs on the right

1 side specifically the right 6th rib and then went through
2 the right lung, two lobes of the lung; the middle lobe
3 and the lower lobe and then proceeded through the
4 thoracic aorta, which is the major blood vessel that
5 supplies blood to the body and it continued into the left
6 lung.

7 And the core of a bullet terminated in the left side
8 of the chest, between a couple of ribs. And
9 interestingly enough the bullet separated into the jacket
10 and the core along the wound path; so that the jacket --
11 when the bullet separated the jacket was left behind in
12 the right lung.

13 Q. And that would be depicted on State's exhibit here
14 [indicates], which I believe that last one was State's
15 24. This would be State's 25.

16 A. So this [indicates] is an x-ray that I took through
17 the victim's chest to give me an idea what sort of
18 bullets or projectiles or other objects I might find
19 within the body.

20 And I did it of the chest because I saw the entrance
21 gunshot wound on the right side of the chest. And here
22 [indicates] I can see -- you can see it's sort of a semi-
23 circular shape irregular piece of metal.

24 Metal comes out looking very white on an x-ray. And
25 that's the -- and here [indicates] is another piece and

1 this looks just like a projectile. So I know that there
2 is going to be a bullet somewhere in the left side of the
3 chest. And this [indicates] was something that indicated
4 a piece of the bullet may have broken off. And in fact
5 when I recovered that, that was the jacket of the bullet
6 and then this [indicates] was the bullet core.

7 Q. So the jacket was recovered in the right lung. The
8 bullet core was recovered adjacent to the left rib cage
9 is that correct?

10 A. That's correct.

11 Q. And what is the effect of those injuries on the
12 human body? You indicated that the aorta is the major
13 artery in the body and obviously he had two lungs
14 perforated. What is the physical affect of that on the
15 body?

16 A. Well, as a result of this gunshot wound to the chest
17 the victim suffered an extensive amount of internal
18 bleeding. So there were one and half liters of blood
19 that I recovered in the left chest cavity and 1300
20 milliliters of blood in the right chest cavity.

21 So basically the lungs, as a result of the damage
22 from the bullet and just blood loss within the chest
23 cavity and combined -- and along with the aorta so the
24 aorta is continuing to bleed into the left chest cavity.
25 And between all the blood that I recovered within the

1 chest cavity it was 3 liters, which is basically like
2 three quarters of a gallon. So nobody could lose that
3 much blood and survive.

4 Q. Okay. And getting back to this little bit of
5 jacket and the core this was obviously not a through and
6 through injury is that correct? You recovered the bullet
7 but obviously ---

8 A. --- and that's right and ---

9 Q. --- there is no exit wound?

10 A. I did not. There was no exit wound. So -- and this
11 [indicates] also confirms that.

12 Q. And you recovered the bullet core and the jacket
13 fragment as part of your autopsy is that correct?

14 A. That's correct.

15 Q. Now I want to move on to gunshot wound B and
16 referring to State's exhibit 26 at this time.

17 A. So this is also a photograph [indicates] of Mr.
18 Smith lying on the table. This is a view [indicates] of
19 the right hip. And we can see that there is another
20 entrance gunshot wound on the right lateral side -- the
21 right side of the hip.

22 And that gunshot wound went through muscle, skin,
23 and fat of the right hip and the right buttock and
24 actually exited the back of the right buttock.

25 Q. Okay. And that would be depicted in State's

1 exhibit I believe 27?

2 A. Right. Since this is a very close up picture it may
3 not be obvious what we're looking at. But this line
4 [indicates] is the intergluteal fold so that's where the
5 two buttocks come together. And this [indicates] is the
6 top of the buttocks and this [indicates] is the back of
7 the right buttock.

8 Q. Okay. So that's basically the right buttock is
9 that correct?

10 A. The right buttock.

11 Q. And once again there was no stippling associated
12 with this wound was there?

13 A. No, there was not.

14 Q. And I believe you also recovered a projectile with
15 regard to this particular wound [indicates] as well is
16 that correct?

17 A. Yes. Although the projectile exited the body it
18 would -- it was actually in the decedent's hand when I
19 removed the pads.

20 Q. Okay. And with regard to the -- and we've gone
21 basically just through the -- I think 28 and 29. This is
22 28 [indicates]. And what does this depict?

23 A. That's a -- that's the jacket ---

24 Q. --- the bullet jacket and the core ---

25 A. --- yes, the bullet jacket and the core ---

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 Q. --- from gunshot wound A ---

2 A. --- from gunshot wound A. So this [indicates] is
3 the jacket and we actually see it has the same shape that
4 we saw in the x-ray and that's the core [indicates] that
5 was recovered in the left side of the chest. That's in
6 the little piece.

7 Q. And in State's 29?

8 A. That's a bullet that the jacket and core are still
9 together and so it's a jacketed bullet and that was the
10 one that was in the pants.

11 Q. Okay. And those of course were turned over to I
12 believe Mr. Weir's -- of the Charleston Police Department
13 is that correct?

14 A. Yes.

15 Q. And you also turned over to him a blood spot from
16 the victim, James Javon Smith?

17 A. Yes.

18 Q. Okay. Thank you very much. Those are all the
19 photos I have. I did want to ask you just a couple more
20 questions and we will be done. As part of your autopsy
21 was a toxicology screen done for alcohol and drugs?

22 A. Yes.

23 Q. And is that done is all autopsies?

24 A. That's standard procedure that is performed on all
25 autopsies.

1 Q. And what were the results of the toxicology screen?

2 A. The toxicology testing was positive for Delta Non-
3 THC and Delta carboxy-THC, which is marijuana and
4 metabolites.

5 Q. Okay. And how about for ethanol?

6 A. Ethanol was negative.

7 Q. Okay. Ethanol basically means alcohol ---

8 A. --- alcohol.

9 Q. So there is no evidence that he had been drinking
10 and no evidence that he had used marijuana?

11 A. That's correct.

12 Q. Any evidence that he used any other illegal
13 substances besides marijuana?

14 A. Nothing illegal. The other substances that were
15 identified on the drug we tested was caffeine. So we all
16 know we could have caffeine and the metabolite of
17 cotinine, which is a metabolite of nicotine.

18 So it indicates that at some point the victim had
19 had nicotine and then homoproline [phonetic], which is a
20 chemical that's present in tea as well as in chocolate.

21 Q. Okay. Based upon the history you obtained in this
22 case, the finding from your autopsy do you have an
23 opinion based upon a reasonable degree of medical
24 certainty as to a cause of death in this case?

25 A. Yes, a gunshot wound to the chest and right hip.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 Q. And principally the one to the chest is that
2 correct?

3 A. That did the most damage.

4 Q. And in layman's terms he essentially bled to death
5 internally from that gunshot wound?

6 A. Absolutely.

7 Q. Thank you very much. Could you please answer any
8 questions that defense counsel may have?

9 THE COURT: Cross-examination?

10 MS. FORD: I have no questions for this witness,
11 Your Honor.

12 THE COURT: Okay. Any reason the doctor cannot be
13 excused?

14 MS. FORD: No, Your Honor.

15 THE COURT: Doctor, thank you so very much. You
16 may be excused. Thank you.

17 MR. DURANT: Thank you, Doctor Riemer.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 MR. DURANT: The State rests, Your Honor.

21 THE COURT: Okay. Can I see the attorneys up here
22 very briefly please; not on the record.

23 [Whereupon, an off the record bench conference is
24 held]

25 THE COURT: All right. Madame Forelady and ladies

1 and gentlemen of the jury, I'm going to let you go at
2 this time. If you would be back in the morning at 9:30
3 we'll finish the case tomorrow. Please don't discuss the
4 case amongst yourselves and leave the note pads in the
5 chairs. I hope you have a good evening.

6 [Whereupon, the jury exits the courtroom at 4:34
7 p.m.]

8 THE COURT: Thank you, sir. Any motions from the
9 State?

10 MR. DURANT: No sir, Your Honor.

11 THE COURT: Any motions from the defendant?

12 MOTION FOR DIRECTED VERDICT

13 MS. FORD: Your Honor, at this time we would ask
14 for a directed verdict.

15 THE COURT: Do you have any argument or anything
16 you want to put on the record?

17 MS. FORD: No, Your Honor.

18 THE COURT: Okay. Is there anything the State
19 would like to put on the record?

20 MR. DURANT: I think the evidence speaks for itself
21 in this case, Your Honor.

22 THE COURT: I understand. I'm just giving you the
23 opportunity.

24 MR. DURANT: I understand. I'm just trying to ---

25 THE COURT: --- okay, motion denied.

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 MS. FORD: Thank you, Your Honor.

2 FIFTH AMENDMENT RIGHTS

3 THE COURT: All right. Mr. Flowers, I'm going to
4 ask you some questions about your right to testify or
5 your right to remain silent under the Fifth Amendment.
6 During this process if you don't understand my questions
7 please tell me you don't understand or if you want to
8 stop and talk to your attorneys about the question I will
9 allow you to do that. Do you understand?

10 MR. FLOWERS: Yes, sir.

11 THE COURT: All right. Would you please stand and
12 raise your right hand please?

13 [Whereupon, Mr. Flowers stands]

14 [Whereupon, the witness is duly sworn by the court
15 as follows: Mr. Flowers, do you swear to tell the truth
16 and nothing but the truth so help you God?]

17 MR. FLOWERS: Yes, sir.

18 THE COURT: Are you more comfortable standing or
19 sitting?

20 MR. FLOWERS: Standing.

21 THE COURT: Standing?

22 MR. FLOWERS: Yes, sir.

23 THE COURT: Okay. Under the Fifth Amendment of
24 the Constitution and under the South Carolina
25 Constitution no one can be compelled in a criminal case

1 to be a witness against themselves, which is commonly
2 referred to as the right to remain silent. Do you
3 understand?

4 MR. FLOWERS: Yes, sir.

5 THE COURT: Have you talked to your attorneys about
6 this previously?

7 MR. FLOWERS: Yes, sir.

8 THE COURT: No one can compel you or require you to
9 testify. Do you understand?

10 MR. FLOWERS: Yes, sir.

11 THE COURT: And this is a personal privilege that
12 you have.

13 MR. FLOWERS: Yes, sir.

14 THE COURT: It's your privilege and no one else can
15 exercise or waive that right to testify. Do you
16 understand?

17 MR. FLOWERS: Yes, sir.

18 THE COURT: Or waive the right to not testify. Do
19 you understand?

20 MR. FLOWERS: Yes, sir.

21 THE COURT: You have the right to testify but you
22 have the right not to testify. Do you understand?

23 MR. FLOWERS: Yes, sir.

24 THE COURT: You have the right to consult your
25 attorneys before you make a decision on whether you want

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 to testify or not testify. I am not going to ask you for
2 a decision this afternoon. I will wait until in the
3 morning to receive your decision in case you want to
4 discuss it further with your attorneys tonight or later
5 this afternoon. Do you understand?

6 MR. FLOWERS: Yes, sir.

7 THE COURT: If you elect not to testify there is
8 not any inference of guilt and your failure to testify
9 cannot be considered by the jury at deliberations and I
10 will so tell the jury that. Do you understand?

11 MR. FLOWERS: Yes, sir.

12 THE COURT: I will inform the jury that it's the
13 State's obligation to prove you guilty beyond a
14 reasonable doubt. You have no obligation to prove
15 yourself innocent and they cannot infer at all or even
16 consider the fact in the deliberations that you did not
17 testify. Do you understand?

18 MR. FLOWERS: Yes, sir.

19 THE COURT: If you elect to testify then you will
20 assume the role of a witness. Do you understand?

21 MR. FLOWERS: Yes, sir.

22 THE COURT: And you've been in the courtroom all
23 week and you've heard witnesses testify. Do you
24 understand?

25 MR. FLOWERS: Yes, sir.

1 THE COURT: Now if you assume the role of a witness
2 and the question is proper under the rules of evidence
3 and the rules of court you will be required to answer the
4 question. Do you understand?

5 MR. FLOWERS: Yes, sir.

6 THE COURT: In other words you either have to take
7 the Fifth Amendment and not testify or decide to testify.
8 Do you understand?

9 MR. FLOWERS: Yes, sir.

10 THE COURT: It's not like on television where they
11 get on the witness stand and take the Fifth to one
12 question and answer the next question. Do you
13 understand?

14 MR. FLOWERS: Yes, sir.

15 THE COURT: You either take the Fifth Amendment and
16 not testify, or you testify and then you become a
17 witness. Do you understand?

18 MR. FLOWERS: Yes, sir.

19 THE COURT: Do you have any questions about that
20 concept?

21 MR. FLOWERS: No, sir.

22 THE COURT: As I told you earlier it's your
23 decision and it must be freely and voluntarily and
24 intelligently made with knowledge of the Fifth
25 Amendments. Has anybody forced you not to testify?

State v Frederick Flowers (2011-GS-10-4314)
August 30, 2012 - Volume 4 of 5

1 MR. FLOWERS: No, sir.

2 THE COURT: Has anybody threatened you about
3 testifying?

4 MR. FLOWERS: No, sir.

5 THE COURT: Has anybody forced you or threatened
6 you to try to make you testify?

7 MR. FLOWERS: No, sir.

8 THE COURT: Has anybody put any pressure on you to
9 testify or not testify?

10 MR. FLOWERS: No, sir.

11 THE COURT: Do you have any questions about what I
12 have told you?

13 MR. FLOWERS: No, sir.

14 THE COURT: Have you understood what I've told you?

15 MR. FLOWERS: Yes, sir.

16 THE COURT: Have you understood the discussions
17 that you have had with your attorneys concerning the
18 right to testify?

19 MR. FLOWERS: Yes, sir.

20 THE COURT: Or the right to remain silent?

21 MR. FLOWERS: Yes, sir.

22 THE COURT: Did you understand all the
23 conversations?

24 MR. FLOWERS: Yes, sir.

25 THE COURT: Have you had ample time to talk to your

1 together and we can have as the rules require an informal
2 charge conference. And of course you'll take your
3 exceptions to the charge after it's been given at the
4 appropriate time. We'll go off the record and y'all can
5 come forward and take a look at it.

6 [Whereupon, court adjourns at 4:40 p.m.]

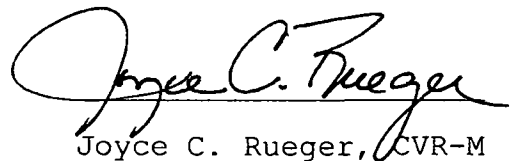
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Family Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Susan Mia Perron in the Court of General Sessions for Charleston County, South Carolina on the 30th day of August, 2012.

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

December 12, 2012

A handwritten signature in cursive script, reading "Joyce C. Rueger". The signature is written in dark ink and is positioned above the printed name.

Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT #: 2011-GS-10-4314
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
FREDERICK FLOWERS	)	
	)	
	)	
Defendant	)	
	)	
	)	

JURY TRIAL

VOLUME 5 OF 5

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on August 31, 2012, Commencing at 9:45 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: D. Bruce DuRant, Esquire
9th Circuit Solicitor's Office
101 Meeting Street
Charleston, South Carolina 29401

FOR THE DEFENDANT: Mary A. Ford, Esquire
Beattie I. Butler, Esquire
Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, South Carolina 29401

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
CLOSING ARGUMENTS	
Mr. DuRant	10
Ms. Ford	24
CHARGE OF THE COURT	48
VERDICT	64
SENTENCE OF THE COURT	69
CERTIFICATE OF THE COURT REPORTER	86

INDEX TO EXHIBITS

[Exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

COURT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
2	Request to charge	62
3	Note from Jury	65

DEFENDANT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
2	Warrant	
3	Affidavit	

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 PROCEEDINGS

2 MS. FORD: Your Honor, may I approach?

3 THE COURT: Yes, ma'am.

4 MS. FORD: I did think of one other charge ---

5 THE COURT: --- is Mr. Flowers here?

6 MS. FORD: Yes, sir.

7 MS. FORD: I handed a copy to the Solicitor.

8 THE COURT: Do what now?

9 MS. FORD: A possible charge.

10 [Whereupon, Ms. Ford proffers documents to the

11 court]

12 THE COURT: What is it?

13 MS. FORD: It's basically a charge saying -- to

14 provide evidence against the defendant of personal damage

15 or for the hope of -- treatment from the prosecution must

16 be examined and weighted by the jury with a greater care

17 than the testimony of an ordinary witness. The jury must

18 determine whether the witness's testimony has been

19 affected by interest or by prejudice against the

20 defendant.

21 THE COURT: All right. This is a 4th Circuit case,

22 an 8th Circuit case, a Fed 2nd, a 9th Circuit, and North

23 Carolina v North Carolina Appellate Court.

24 MS. FORD: I agree it's not -- hasn't been in South

25 Carolina but...

1 THE COURT: Well, what would South Carolina say
2 about it? Whereas -- I am of the opinion that South
3 Carolina law says -- I don't know of any case that says
4 you got to treat that type of testimony different from a
5 standpoint of a charge and that's what this charge says.

6 MS. FORD: Correct, Your Honor ---

7 THE COURT: --- it must be examined and weighed by
8 the jury with greater care. I guess the thing is the
9 greater care. I don't know of any case in South Carolina
10 that says you've got to examine it with greater care. I
11 think it just goes to the general bias issue.

12 MS. FORD: Yes, sir. I agree that there is no
13 South Carolina case. I would just request the law has to
14 be made at some time.

15 THE COURT: Well, I'm not going to charge it.

16 MS. FORD: Yes, sir.

17 THE COURT: I don't have any real problem with the
18 charge personally, okay. But it's the -- I don't think
19 it's the law in South Carolina but I'll mark it as your
20 request and you can take exception to it at the
21 appropriate time.

22 MS. FORD: Yes, sir.

23 THE COURT: And if the Supreme Court says we've got
24 to charge it in the future that's fine with me.

25 MS. FORD: Okay. Thank you, Your Honor.

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 THE COURT: Okay. I'm sorry, I didn't mean to cut
2 you off if you want -- do you agree for it to charge?

3 MR. DURANT: You said exactly what I was going to
4 say.

5 THE COURT: Huh?

6 MR. DURANT: You said exactly what I was going to
7 say.

8 THE COURT: Okay. So your mental telepathy you
9 passed it on to me, huh. Is there anything else you want
10 to say about it? I didn't mean to cut you off.

11 MS. FORD: No, Your Honor.

12 THE COURT: Let me look at something real quick,
13 okay.

14 MS. FORD: Yes, sir.

15 THE COURT: Evidence.

16 {Whereupon, the court views documents}

17 THE COURT: What I want to quote to you and I'll
18 quote it to you on my charge when I talk about the
19 creditability of the witnesses, which is number 4 and
20 I'll read to you what it says.

21 The reason a witness would want to give testimony
22 which would help or hurt one side or the other, has the
23 witness exhibited any bias, prejudice, or other motive in
24 the case but you may consider whether a particular
25 witness may gain some reward, payment, personal advantage

1 of vindication through his or her testimony.

2 Now, that's saying the same thing but that's not
3 specifically saying hey, you got to talk about leniency
4 with greater care. I'm not going to put that in, but
5 I've told you what I will charge, which I think covers
6 the bias issue, okay. Anything else?

7 MS. FORD: No, Your Honor.

8 THE COURT: Okay. Are y'all ready for closing
9 arguments?

10 MR. BUTLER: Judge, can I put just 3 things on the
11 record that we talked about yesterday citing the Fletcher
12 [phonetic] case and object to malice can be inferred from
13 deadly weapon, and citing Schrock, Arnold, and Bostick
14 object to the circumstantial evidence charged that the
15 law makes no distinction.

16 THE COURT: That's fine, put it on the record, but
17 I think the proper time to put it on the record is take
18 exception to my charge ---

19 MR. BUTLER: --- yes, sir ---

20 THE COURT: --- after I finish the charge, okay.

21 MR. BUTLER: Thank you.

22 THE COURT: But I have no problem memorializing
23 what we discussed at the bench yesterday. And the court
24 reporter -- this recorder will record what occurs up
25 here, okay. And I'm going to start recording the

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 objections up here in the future so we don't have to go
2 back and waste time and put it all on the record, okay.

3 MR. BUTLER: Yes, sir.

4 THE COURT: Anything else?

5 MS. FORD: No, Your Honor.

6 THE COURT: Is the State ready -- are you going to
7 open and close or have y'all talked about that?

8 MR. DURANT: I think I've got to open, Your Honor.

9 THE COURT: Well, unless she waives it I mean.

10 MS. FORD: No, Your Honor. I would not waive it.

11 MR. BUTLER: She would go last ---

12 MR. DURANT: --- I -- she could ---

13 THE COURT: --- pardon?

14 MR. DURANT: --- I would invite her to.

15 THE COURT: Pardon?

16 MR. BUTLER: She goes last.

17 MS. FORD: I go last. I didn't put up any
18 evidence, Your Honor.

19 THE COURT: That's right. I'm sorry. You're
20 right. Thank you; that passed me by. And another thing
21 I got -- Mr. Flowers?

22 MR. FLOWERS: Yes, sir.

23 THE COURT: Yesterday we talked about your right to
24 testify and your right to remain silent and Fifth
25 Amendment. I told you I would wait until today for you

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 to give me your decision. What is your decision?

2 MR. FLOWERS: The Fifth Amendment.

3 THE COURT: You want to remain silent?

4 MR. FLOWERS: Yes, sir.

5 THE COURT: You do not want to testify?

6 MR. FLOWERS: Yes, sir.

7 THE COURT: All right. Do you have any questions
8 at all?

9 MR. FLOWERS: No, sir.

10 THE COURT: All right. Thank you so very much.
11 You ready for your opening?

12 MR. DURANT: Yes.

13 THE COURT: Okay -- or your closing. Bring us the
14 jury please?

15 [Whereupon, the jury enters the courtroom at 9:49
16 a.m.]

17 THE BAILIFF: All present, Your Honor.

18 THE COURT: Thank you very much. Ladies and
19 gentlemen of the jury the State has rested their case and
20 the defendant has exercised his right under the Fifth
21 Amendment not to testify.

22 And I will instruct you that the State is
23 responsible for proving the defendant guilty beyond a
24 reasonable doubt. The defendant has no obligation to
25 prove himself innocent, and he has the right under the

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 Fifth Amendment of the Constitution to remain silent.
2 And that cannot be considered by you in any manner
3 whatsoever during your deliberations because he has that
4 constitutional right. And that should not enter into
5 your discussions at all concerning his innocence or his
6 guilt. Solicitor?

7 MR. DURANT: Thank you, Your Honor.

8 THE COURT: We're going into closing arguments now
9 and after the closing arguments I'll charge you on the
10 law that is applicable in this particular case. And I do
11 send my charge back to the jury room that I read to you.

12 CLOSING ARGUMENT

13 BY MR. DURANT:

14 It's been a long week. And y'all have heard a lot
15 of testimony in this case. And in a few minutes after
16 I've had the opportunity to address you and Ms. Ford has
17 had the opportunity to address you and the Judge has
18 charged you on the law you will be asked to go to your
19 jury room and return a verdict in this case.

20 I would submit this would be a relatively easy case
21 for you to decide. In a lot of death cases, shooting
22 cases, cases involving a killing the only job of the jury
23 is to decide is it murder, is it the result of
24 provocation or voluntary manslaughter, or criminal
25 negligence, or involuntary manslaughter. Was the killing

1 perhaps even justified because of self defense? That
2 never happened in this case. There is no evidence of any
3 provocation by James Javon Smith. There is no evidence
4 of any criminal negligence. Even if the first shot was
5 fired by mistake the ones that were not -- there is no
6 evidence whatsoever that James Javon Smith was armed but
7 that -- or that Freddie Flowers acted in self-defense in
8 this case as confirmed by lack of G-S-R or gunshot
9 residue on the victim's hands.

10 There is no question that James Javon Smith was
11 murdered. The only question you need to resolve as a
12 jury is this: is he the one who killed him period.
13 Ladies and gentlemen, every bit of the evidence you have
14 heard in this courtroom this week points to Frederick
15 Flowers as being the man that walked up to that Toyota
16 and fired that pistol into James Smith.

17 With that in mind I would like to kind of run
18 through the evidence you've heard in this case starting
19 with Kennedy Smith. Kennedy Smith is a piece of work.
20 You may not like him. The detectives certainly didn't
21 like him.

22 They did not like him because they did not believe
23 he was being straight with them. Not about what had
24 happened; he's always been consistent about what went on
25 out there that day. But they always believed he was

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 being evasive in identifying the shooter and also about
2 the marijuana. And he told you why that was. And as a
3 father his desire for revenge is understandable. I mean
4 after all he had just sat in a car by his son and watched
5 his son be murdered in cold blood.

6 But his desire in street justice very clearly
7 compromised this case. Luckily after a week had passed
8 he had had time to cool down and think about it some more
9 and realized that the street justice he hoped for was not
10 going to come to pass. He finally decided to cooperate.

11 And when Detective Osborne went to him on March the
12 9th of 2011 and showed him the photo lineup that you have
13 -- will have in evidence -- who did he pick out as the
14 shooter? Freddie Flowers; not Cornelius Jenkins, not
15 Carlos Jones, not Michael Quarles.

16 He had seen photo lineups with all those people and
17 he did not pick any of them out. He picked him out as he
18 saw his picture in the lineup. And he took the stand on
19 this past Tuesday and told you that this was the man that
20 walked up to his car and killed his son.

21 Once again, not Cornelius Jenkins, not Carlos Jones,
22 not Richard Wescott, not Myhesa Wine, not Michael
23 Quarles. Frederick Flowers. Now given his behavior in
24 this case I can understand his reluctance on his part --
25 based solely upon his testimony. And quite frankly if

1 this case was just his testimony we would -- in all
2 likelihood we would not be here today. But that is not
3 the evidence that you have -- all the evidence you have
4 with this case. You have the testimony of his friends,
5 Reginald Wescott, Michael Quarles, Myhesa Wine, Carlos
6 Jones. Those are his friends; not Tiddy Smith's friends.

7 They have no allegiance to Kennedy Smith. They have
8 no reason to come in here and lie on Freddie Flowers for
9 the benefit of someone that most of them barely even
10 knew. And it is true that not a single one of them when
11 first questioned by the police told the truth. And I
12 have never tried to hide that fact from you.

13 But getting to the truth in a criminal case is a
14 process. And this case is a perfect example of that
15 process. When dealing with witnesses of a crime in a
16 criminal case to a crime in a criminal case; particularly
17 when those witnesses are friends of the defendant you
18 never get the truth when you talk to them the first time.

19 And that's understandable for a lot of reasons.
20 First and foremost nobody wants to get in trouble. Or
21 they don't want to get involved. Or they don't want to
22 see their buddy get in trouble. Or they don't want to be
23 a snitch. It's against the code; the code that is
24 perpetrated as violence in our community because nobody
25 wants to come forward and get it right. Or they may be

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 afraid of retribution. So they always lie just as they
2 lied in this case. But when confronted by the police and
3 the police kept the heat on and the police present them
4 with evidence letting them know that the police know that
5 what they've told in court is not the truth. They start
6 moving towards the truth. Always start with a lie and
7 move to the truth; it's never the other way.

8 You know it's like walking in the kitchen and
9 catching your child with his or her hand in the cookie
10 jar. And you say what are you doing? I told you, you
11 could not have any cookies. And they said well, I didn't
12 eat any cookies, I didn't have any cookies.

13 And you say well, why is your hand in that cookie
14 jar. Well, I was just counting the cookies. I wanted to
15 see how many cookies we had left but I was not eating any
16 of them. What are those crumbs down there at your feet,
17 those cookie crumbs? How did those get there?

18 Oh, I dropped one of those cookies when I was
19 counting them and I had to pick it up and throw it away.
20 But I didn't eat it. Well, how did you get all those
21 cookie crumbs on your lips and stuck between your teeth?
22 Okay, I ate the cookie.

23 That's what you have in this case. So in the end
24 you get a pretty good idea of what went on out there that
25 day at [REDACTED] St. Clair. You didn't get the whole truth

1 from all of them. I think probably the closest version
2 you got to the truth was from Carlos Jones. Because
3 really the fact of the matter is, ladies and gentlemen,
4 these people, these witnesses, were his friends. And
5 because they were his friends every one of those people
6 out there knew that Freddie was going to do little Tiddy.

7 There is no way in the world that those guys didn't
8 hang out there that day and that was not a topic of
9 conversation. You can bet your bottom dollar that every
10 one of them knew about Freddie going to do that -- on
11 Tiddy.

12 And you can bet your bottom dollar that despite you
13 know what Reginald Wescott and Michael Quarles want you
14 to believe that they -- Freddie shot Tiddy. They come in
15 here and say, yeah Freddie walked up to the car and he
16 was -- at the car and there were gunshots at the car, but
17 I never saw a gun in Freddie's hand. Bull. Every one of
18 them saw that gun in Freddie's hand.

19 It's just not every one of them wanted to admit
20 that. I don't know if they think that makes them less
21 involved or what but every one of them saw it. And any
22 link to the contrary is just ridiculous, ludicrous.

23 That's not to say that these guys knew that Freddie
24 Flowers was going to kill Tiddy. I don't think any of
25 them believe that. I don't believe any of them believe

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 that that was what was going to happen that day. But
2 they all knew that Tiddy -- that Freddie was going to do
3 that. And in the end every one of them independent of
4 each other came around to admit it that that man, their
5 friend, their associate walked up to that car and fired
6 the fatal shots into Tiddy Smith, which corroborates
7 Kennedy Smith's version of how the shooting took place.

8 Next I'd like to address the Cricket cell phone.
9 You heard an awful lot about the phone in this case.
10 There is no question that is one of Freddie's phones.

11 You'll have the exhibits up there of contacts in
12 that phone of Freddie's friends, Freddie's family, Myhesa
13 Wine, old lady; Freddie's mother, Danny, Freddie's
14 cousin, Big -- Freddie's good friend Cornelius Jenkins,
15 Butta, Freddie's good Carlos Jones, Nasty, Freddie's
16 friend Reginald Wescott, and last but not least not a
17 friend but notable Tiet, T-I-E-T, the dead guy.

18 Reginald Wescott, Carlos Jones have all identified
19 that phone as big Freddie's phone. They've all talked to
20 Freddie on that phone and received calls from Freddie on
21 that phone. That phone number [REDACTED]-3437 was Michael
22 Quarles cell phone under the contact, Freddie.

23 The fictitious Sigfield Treen whose name that phone
24 was in just happened to have the same date of birth of
25 Freddie Flowers. It's his phone. Put everything

1 together; it's his phone. And it's true that he had
2 other phones; that is true. But the number to one of
3 those phones I believe was [REDACTED]-2382 and it also shows
4 that there were calls between that phone and the Cricket
5 on the day of the murder as Ms. Ford pointed out.

6 Now we don't know who had that [REDACTED] phone that day.
7 Perhaps it was one of Freddie's other friends down the
8 road giving the heads up when Tiddy showed up. But what
9 we do know is that on the day of the murder he had that
10 Cricket phone. At the time of the murder he had that
11 Cricket set up; the one with the [REDACTED] number.

12 If you'll look at the call history on the date of
13 the murder from like 11:30 in the morning going all the
14 way up to 16:45 around the time every one of the numbers
15 dialed by that phone are to one of Freddie's contacts
16 followed by the CT, CP -- Old Lady, Butta, -- Tiet,
17 Nasty, -- Tiet, Tiet, -- and this phone calls -- dials
18 Freddie's contacts.

19 Likewise, if you go to the calls received by that
20 phone on the day of the murder from 2:30 up until the
21 time of the murder, calls received by that phone --
22 Cornelius Jenkins, Danny, -- Big -- Butter -- CT, CP;
23 once again, all contacts listed in the address book of
24 the Cricket cell phone that belongs to Freddie Flowers.
25 Myhesa Wine, Carlos Jones both saw him with that phone on

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 the day of the murder. Myhesa saw him at around 1 or
2 1:30 -- went earlier in the day and Freddie was talking
3 about doing the -- saw the phone on the table when he
4 arrived. Carlos Jones at [REDACTED] St. Clair sees Freddie
5 using that phone to call Tiddy -- sees Freddie with that
6 phone in his hand when he walks up to the car and shoots
7 Tiddy.

8 After the shooting Carlos sees Freddie trying to
9 find that phone in the ditch after the shooting when My
10 and Freddie meet back up at Freddie's place on Wemby
11 Freddie tells My I must have dropped my phone in the car.

12 And then you have the D-N-A evidence, which
13 admittedly is not conclusive. You get a mixture of the
14 D-N-A and that it was a very weak sample, which is very
15 common in contact D-N-A situations. And the opinion of
16 the analyst was that Freddie cannot be included or
17 excluded as a contributor. SLED will only call a match
18 if there is a match on all 15 loci; and they did not have
19 a match on all 15 loci.

20 But I tell you this ladies and gentlemen of the jury
21 Freddie Flowers' profile sure had a lot of numbers in
22 common with the D-N-A profile developed from that Cricket
23 cell phone. And speaking of D-N-A this is just not a
24 forensic evidence kind of case. I know you're used to
25 seeing that on T.V. and real life doesn't happen that

1 way; however what little forensic evidence there was in
2 this case corroborates what you heard from the witnesses.
3 We know from the firearms guy, Mr. Whitler, that there
4 was one gun used to murder Tiddy Smith. We know from the
5 G-S-R lady, Ms. Woodward a couple of things.

6 Number 1, we know that Tiddy Smith didn't have a
7 gun. He didn't have G-S-R on his hands, nor is there any
8 evidence that he ever possessed a weapon of any kind.
9 And we also know from her that whoever shot Tiddy did it
10 at the passenger window of that car because of the
11 gunshot residue around the passenger window.

12 And we also know from the testimony of the medical
13 examiner that that is the case as well because if you
14 remember Doctor Riemer's testimony regarding the
15 trajectory is consistent with Tiddy Smith having been
16 shot while he sat in the passenger seat of that car by
17 somebody standing at the passenger door, an entrance
18 wound here [indicates] down, here [indicates] down.

19 And when we put all this together it's pretty clear
20 what happened out there that day at [REDACTED] St. Clair.
21 Freddie early on that day 1 or 1:30 when Myhesa Wine was
22 over there was already talking about doing a lick.

23 I don't know if that was for money. I don't know if
24 it was for drugs. I don't know if it was to teach Tiddy
25 a lesson. I don't know if it was for street -- but he

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 already had the idea in his head then. Later on he meets
2 up with his crew over at 1339 St. Clair and because they
3 are Freddie's crew they all knew Freddie was going to do
4 this lick. You can bet that that was the topic of the
5 day.

6 So Freddie takes his cell phone, calls up Tiddy,
7 Freddie needs some reefer. Can you come on over and take
8 care of us? And sure enough Tiddy comes driving up --
9 riding up as a passenger in his father's car.

10 And Freddie walks up to that car, just as Carlos
11 Jones said, cell phone in one hand -- that cell phone in
12 one hand, the gun behind him and brings it around -- just
13 as Mr. Smith said, Tiddy sees that weapon and makes a
14 grab for it and Freddie shoots; and when he shoots that
15 gun jams.

16 And in his haste to get that jam cleared he let's go
17 of the phone because he's got to use that other hand to
18 rack the slide on that semi automatic and he drops his
19 phone in the passenger window, and it ends up on the
20 passenger floor board of Mr. Smith's car.

21 Freddie clears the jam and he says well, I've gone
22 this far I may as well seal -- I may as well close the
23 deal and he continues shooting. And one of those shots
24 goes through Tiddy's -- and he dies of massive internal
25 bleeding. This was no accident. The only accident here

1 was Freddie dropping his phone in that car. Tiddy's
2 death was a murder. And I know Tiddy was a drug dealer
3 but in the beginning of the case I also told you that
4 that does not mean he deserves to die.

5 And I know this is Freddie Flowers trial and Freddie
6 Flowers is entitled to justice, but Tiddy Smith who is
7 the victim in this case is also entitled to justice. And
8 he is looking to you for that justice.

9 A couple of more points I want to make and I'm going
10 to sit down. Ms. Ford in her opening statement indicated
11 that for some reason everyone was conspiring to frame her
12 client. I don't know what that reason is. It does not
13 make sense to me; perhaps it makes sense to you as
14 jurors.

15 This was a conspiracy between his friends and police
16 and presumably my office to frame an innocent man and
17 probably did a pretty poor job of it. You know if this
18 was a frame job don't you think everybody's testimony
19 would have been bam, bam, bam; just like everybody else's
20 testimony.

21 What you had in this case is not what you have in
22 any case. The fact that there are variations in the
23 testimony is really indicative of truth. That's true
24 because when people witness a major event they later
25 recount better than -- those accounts will always vary in

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 minor details, but not as to the nature of the witness.

2 For example, I think probably most of y'all were
3 around when the planes flew into the World Trade Center
4 in New York. That is an event that is engraved and
5 etched in your minds. The details of what you did that
6 day are not what that is.

7 And in this case the main event was the shooting of
8 Tiddy Smith by Freddie Flowers and that is the common
9 theme amongst all the testimony that you have heard here
10 this week. And as I said these are Freddie's friends.

11 They are not Tiddy's friends. What is their motive
12 for turning on their friend? They could have just as
13 easily stuck to their original lies. They could have
14 just as easily made up a shooter that did not exist.
15 They could have just as easily if they wanted to frame
16 somebody they don't like.

17 Why are they going to frame their own boy, their
18 friend? And it is apparent from every one of his friends
19 who testified from that stand that they were not really
20 pleased to have to come in here under subpoena and
21 testify against Freddie Flowers.

22 Did any of them look like they were having a good
23 time to you? It's apparent that all of those guys would
24 have rather been anywhere else in this world this week
25 other than in this courtroom sitting in that chair

1 testifying against their friend. But the bottom line is
2 that every one of them was out there. Every one of them
3 saw what happened. Every one of them saw Freddie shoot
4 Tiddy. And every one of them finally reached the
5 conclusion why should I go down for something that he
6 did?

7 And so they came here and they told you what
8 happened. And what happened that day was Freddie walked
9 up to that car and murdered Tiddy without provocation as
10 Tiddy sat in the passenger seat. And that ladies and
11 gentlemen is murder.

12 And I just want to make a very brief mention of the
13 burden of proof and then you won't have to hear from me
14 anymore. The judge is going to charge you on the law in
15 a little bit before you go back and deliberate.

16 And before you retire to deliberate Judge Nicholson
17 will charge you that the burden is on the State of South
18 Carolina to prove Freddie Flowers guilty beyond a
19 reasonable doubt. Beyond a reasonable doubt does not
20 mean beyond all doubt. It does not mean certainty.

21 When dealing with matters of human affairs there is
22 never anything that is certain and the law does not
23 require certainty in criminal cases. But the laws
24 require that you as jurors be firmly convinced, firmly
25 convinced of Freddie Flowers guilt. So ladies and

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 gentlemen, if after considering all the evidence you have
2 heard in this case you are firmly convinced that this is
3 the man that walked up to Mr. Smith's car and shot Tiddy
4 Smith then the oath you took as jurors requires you to
5 find him guilty of Murder and requires you to find him
6 guilty of Possession of a Firearm during the Commission
7 of a Violent Crime. All I can ask is that you do your
8 duty. Thank you.

9 MS. FORD: May it please the court?

10 THE COURT: Yes ma'am, Ms. Ford.

11 CLOSING ARGUMENT

12 BY MS. FORD:

13 Persistence, intimidation, harassment, bullying;
14 whatever you want to call it those things do not lead to
15 the truth. Instead they lead to people saying what they
16 have to say or what they think they have to say.

17 A drug dealer was killed. And the police wanted a
18 quick arrest, a conviction. Their strategy never was who
19 killed Tiddy. Their strategy was we heard a name
20 Freddie; let's get people to confirm that. But it was
21 not Freddie.

22 And the witnesses have demonstrated that the truth
23 is simply not important to them. There was a murder as
24 Mr. DuRant said. And I'll not object to that. Tiddy was
25 certainly tragically killed. There was not much to go on

1 when it first happened. There was a phone in the car and
2 so I want to talk about that phone real quick. Kennedy
3 Smith never mentioned that he saw the shooter throw or
4 drop a phone in the car. He didn't know that that phone
5 belonged to the shooter; people just knew that they
6 didn't recognize it.

7 And Detective Osborne told you that he didn't think
8 it made sense that Tiddy was calling himself on possibly
9 his two phones. And so that phone did belong to Freddie
10 Flowers. But it's only one phone that belonged to him.
11 There were some calls to his Mom and his cousin but that
12 was hours earlier; the one o'clock hour. A lot can
13 happen in over three hours. No one even knows where
14 Tiddy lives on that day.

15 Then there is the talk of the D-N-A. It was
16 inconclusive when it came to Freddie. But what do we
17 know? We know that there was multiple people's D-N-A on
18 that phone; two but possibly more. The lady from SLED
19 said she couldn't say for sure how many people's D-N-A
20 was on that phone.

21 But that proves that multiple people were handling
22 that phone. And no one was even a major contributor.
23 You heard multiple people said that Freddie had several
24 phones. One phone he had was [REDACTED]-2382 number. And you
25 heard that that number and the Cricket phone were calling

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 each other all day, including at that 4 o'clock hour.
2 Detective Osborne already said that he didn't think it
3 made sense that somebody would be calling himself.

4 So what makes sense is that two different people
5 have those two different phones. Myhesa mentioned that
6 Carlos would use Freddie's phone sometimes. She said
7 that day she thought that Carlos was using a [REDACTED] number.

8 But Carlos insisted that he had his own phone that
9 day. Why is it so difficult to believe that maybe Carlos
10 or somebody else had that Cricket phone number? The
11 Solicitor mentioned the call to and from the contact.
12 Well, these boys knew a lot of the same people.

13 Now I want to talk about Kennedy Smith. The police
14 decided from the very beginning that they did not like
15 him. Why? Well, because he abandoned his son at the
16 fire station. And that didn't make sense to them. And
17 then why else? Well, because of the marijuana.

18 The police saw him throw a bag of marijuana, but he
19 had the nerve to not only deny it but to say that the cop
20 was lying. So things did not start out well between Mr.
21 Smith and the police.

22 But what did Mr. Smith say from the very beginning?
23 He said over and over I couldn't get a good view of the
24 shooter. And that makes perfect absolute sense. Now he
25 says the shooter stood out to me because he was a head or

1 two taller than everyone else out there. So that would
2 maybe make sense. But he didn't say that because that
3 wasn't the case. He told us -- he tried to make a big
4 deal of how he got all of these good looks at the
5 shooter.

6 Well, he also told us that he wasn't paying
7 attention because he had no reason to pay attention when
8 he drove up. He drove up past the driveway so all the
9 boys were behind him. He was dropping his son off.

10 And he probably didn't want to get too involved in
11 his son's drug transaction because he saw this group of
12 guys; he mentioned he thought it was nine. He heard
13 someone say he would be riding dirty but he told us that
14 that didn't even register with him. He didn't think
15 anything of it.

16 He saw a black male walking to the car, but he
17 couldn't see his hands. He told us he doesn't remember
18 what the person was wearing. He said the shooter, when
19 the shooter got to the door he never crouched down or
20 anything.

21 At one point he steps back and that's when he gets a
22 good view. But he said he only stepped back like a foot
23 or two. If someone is standing at a car window;
24 especially this is Celica, it's a small car. Then
25 anyone's head is pretty much going to be way above the

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 window. But especially someone as tall as Freddie
2 Flowers; their face would not be able to be seen. So for
3 him to say that he saw anyone's face that does not make
4 sense.

5 He also told us that it happened so fast. He
6 mentioned seconds. We also heard that he was actually
7 trying to start the car to try to get away. He was
8 preoccupied trying to escape, not seeing someone's face.

9 He told the police from the very beginning I swear I
10 couldn't get a good view. But he did say he did see a
11 general view and the guy had twists, that he had a dark
12 complexion, that he was slender, and that he was average
13 height. He said between maybe 5'7 and 6 feet tall.

14 But Detective Osborne -- I already told you that the
15 police didn't care too much for Mr. Smith. They were mad
16 that he had the nerve to lie about the marijuana. And so
17 even though it makes perfect sense that he wouldn't have
18 been able to get a good view Detective Osborne said I
19 don't believe you.

20 And so what happened from there? Well, he decided
21 to arrest him, not only for the drugs but for Obstruction
22 of Justice the very next day. And at that point after
23 being arrested he -- at the time that he was arrested he
24 still didn't change his story. He still said I didn't
25 get a good view; the guy had twists I told you. And so

1 it wasn't for over a week after he had been sitting in
2 jail not able to be outside with his family. But at that
3 time Detective Osborne picked him up from the jail and
4 took him to Charleston Police Station.

5 And even though he told you that they had a special
6 room there dedicated to recording interviews and that
7 other interviews had been recorded, for some reason that
8 most important interview where Freddie is supposedly
9 identified is not recorded.

10 There is no reason for why it wasn't recorded; it
11 just wasn't recorded. So Kennedy makes an identification
12 of Frederick Flowers. But did he really -- did he really
13 positively identify Freddie?

14 He says this looked -- this looked the closest to
15 the person who shot my son, neck and side of face,
16 complexion is what I saw. So he admits again I didn't
17 get a great look at the guy. This was the closest.

18 And even several weeks later on March 31st the second
19 meeting after Kennedy had supposedly decided to be
20 truthful and honest because he wanted justice for his
21 son, when Detective Osborne asked at what point he saw
22 the shooter he responded with when he racked the slide of
23 the gun. But then, of course, he went on and on about
24 all the multiple times he saw the shooter. And when I
25 asked him about that his response was well Detective

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 Osborne just didn't ask the right questions. He said at
2 what point and not what point plural. Really. No doubt
3 -- I have no doubt that he mourns his son, that he is
4 upset over his son's death, of course. But it was very
5 -- it's truly an awful experience for him.

6 But he simply is not credible. He was so sure on
7 the stand. I'm absolutely sure that it was Freddie. He
8 was talking about Freddie like he knows this person. He
9 told us that he never knew Freddie Flowers and he never
10 knew the shooter who he saw that night.

11 So he's so sure. He's gotten on the stand and he's
12 adopted a belief because Freddie Flowers is the person
13 who is sitting in that chair [indicates] where the
14 defendant sits. He doesn't care of someone is
15 wrongfully arrested. We know that because of things that
16 he's done.

17 When he first met with detectives -- Detective
18 Osborne -- Detective Burckhardt he was shown some
19 pictures. And he actually -- he said I'm going to think
20 about this picture. And then he said well I'm 65 percent
21 sure that could be the shooter.

22 And so Detective Burckhardt says okay, well then
23 that's not a positive I.D., which was the right thing to
24 do. But instead Mr. Smith argued with him about it
25 wanting to I.D. that person who was just a random filler

1 that had been chosen. He didn't care who was arrested
2 for this charge. And he still doesn't. Recently he told
3 you that he met with the Solicitor within the past few
4 months and he was shown some pictures. And he picked
5 someone else out of the pictures he was shown who
6 resembled the shooter.

7 Why did he change his story? Well, he told us he
8 started to change his story originally about the
9 marijuana because he said well, I thought about it and I
10 figured that they probably could get a fingerprint off
11 the bag. And that maybe there was a video.

12 And then he said I was told I'm going to rot in jail
13 and I deeply believed it. And then, of course, he
14 mentioned oh, and justice for my son. He's the type of
15 person who exaggerates. He would say the sky is yellow,
16 the sky is yellow, people would have to -- they can show
17 him all kind of evidence but he would just persist.

18 He's just that type of person. He has a mental
19 illness he told us about. Apparently it's bad enough
20 that he hasn't been able to work in seven years. Perhaps
21 he does things a little differently than the average
22 person. He also has some making up to do because again
23 he left his son while he was dying. And that doesn't
24 look good to the family or to the State. He still has
25 these pending charges of Obstruction of Justice and

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 Possession with Intent to Distribute Marijuana. He came
2 up with some story that he intentionally came up with a
3 false description because he was hoping for street
4 justice.

5 He didn't tell that to Detective Osborne on March 9
6 -- March 31st, the point in time in which he had decided
7 to be honest. He came up with that recently. Why?
8 Because he had to explain something.

9 He had told police before it was basically just a
10 trick. He thought he saw something moving at the base of
11 the shooter's neck. But he knew that wasn't going to cut
12 it. So now he's come up with a different story.

13 What he originally said is the truth because it
14 makes the most sense; he didn't get a good view of the
15 shooter. But the shooter he saw had twists. And the
16 shooter he saw was of average height. In every
17 description including the description he gave on the
18 stand the shooter was at most 6 feet.

19 When I started at a taller height I think 5'8 he
20 corrected me and said no, no, no. I said like 5'7 or
21 something. Freddie Flowers is 6'5. My father is 6'5
22 and growing up my whole life that's the first thing
23 people notice. That's the description people use when
24 they are referring to him; wow he's tall. It would stand
25 out. And it would have stood out to Mr. Kennedy Smith if

1 it were true. So Mr. Smith is not credible. Well who
2 else is not credible? No one. No one in this case is
3 credible. And Detective Osborne told you a few times
4 well, I just didn't believe him.

5 So are they believable now; because it's not
6 possible that they are all telling the truth because
7 their stories don't match up. Is anyone telling the
8 truth? No. No one is telling the truth. How can we
9 tell that? Their stories don't match up with one
10 another.

11 They don't all fit Kennedy Smith's version of what
12 happened. Some of the elements don't make sense. And
13 then there is one thing; they are all clearly trying to
14 protect themselves. So why would they say Freddie? The
15 Solicitor, Mr. DuRant, brought that up. I'm not saying
16 it's some big conspiracy where they all got together and
17 said let's say it was Freddie. Again, the strategy was
18 we heard this name; tell us it was Freddie.

19 Detective Osborne he never even tried to say was it
20 Myhesa? Was it Carlos? Was it Reggie? Was it Michael
21 Quarles? Was it C.J? Was it Homer? Was it Brandon
22 Smalls? Was it Michael Deas? These are just some of the
23 people you've heard mentioned in this trial. And again,
24 there could have been other people outside who have never
25 been accounted for. Detective Osborne would tell them

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 it's okay if you were there. Just tell me. Just tell me
2 Freddie did it or you heard Freddie did it or someone
3 told you they saw Freddie do it.

4 Now I'm going to talk about each one of these
5 witnesses individually a little bit okay. I'm going to
6 start with Myhesa first started to really talk about
7 Freddie last year June of 2011.

8 And he only -- he says that he doesn't -- at that
9 time he didn't actually admit to being there at 1339 St.
10 Clair but he says that Freddie was down the street. And
11 he said earlier Freddie was talking about doing a lick
12 and Carlos was encouraging him.

13 But then he changed -- he really changed his story
14 when Detective Osborne said to him, and he admitted to
15 this and so did Detective Osborne, there is nothing you
16 can do to help Freddie. He's already going to prison.

17 And at that point it was clear what he had to do --
18 what he could do to save himself make -- Myhesa made a
19 decision that Freddie was a goner. He was a lost cause.
20 It didn't matter if it is the truth. He was now
21 disposable.

22 This man wouldn't leave him alone and he had to say
23 something. And Detective Osborne was clearly looking for
24 something to be said about a certain person. And so
25 Freddie at that point became interchangeable with whoever

1 may have been the shooter. And the ball started rolling
2 until it reached all of the others who mostly just came
3 up with their version of the story within the past few
4 weeks.

5 But back to Myhesa and specifically what he says.
6 He originally told police that Carlos was encouraging
7 Freddie to do a lick. And while that possibly could have
8 led to something -- that suggested certainly that Carlos
9 was involved with this.

10 Detective Osborne didn't really do anything with
11 that information. And instead the Solicitor and the
12 defendants didn't learn that this statement was even
13 given until the past month. Detective Osborne said it
14 was a mistake, he made a mistake.

15 And I only point that out not to say that he was
16 hiding something but that's the point at which all the
17 other defendants and all of the people he heard from then
18 they started to hear that Myhesa was naming Carlos. And
19 so that's when things really started to change.

20 Myhesa told you that he and Reggie are cousins. But
21 they are more than cousins; they are really close. And
22 then Michael Quarles said he is close to Myhesa as well.
23 Myhesa told me that he's been talking to Carlos. Carlos
24 and C.J. are super tight. Carlos said he helped raise
25 C.J. So that's how everything got started with the other

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 -- and the State they weren't really satisfied with
2 Myhesa's story because it didn't explain everything like
3 how did the phone get in the car. So then -- so they
4 speak to him several more times.

5 And at this point Myhesa has told you that Carlos is
6 not happy with him for putting his name in this. And he
7 told us as well that Carlos is an influential guy. You
8 heard that Carlos is about 5 years older than all of
9 these other boys involved.

10 So what did he do at that point? He starts leaving
11 Carlos's name out of the story. When he testified on the
12 stand he didn't even mention Carlos, and how Carlos had
13 been encouraging Freddie. I had to point out that in his
14 original statement that is what he had said. But what
15 does that show? It shows that maybe he is afraid of
16 Carlos.

17 And then there are other things about Myhesa's story
18 that don't make sense. Not long ago he told the
19 Solicitor that he saw Freddie with the gun earlier. But
20 then he changed his story and now says no, I never saw
21 him with a gun earlier.

22 Why would he lie about that? Wouldn't it make more
23 sense if he would start out saying I didn't see him with
24 a gun and then later say I did see him with a gun? That
25 doesn't make sense. That shows he's trying to distance

1 himself from the situation. He talks about how Freddie
2 left on a bike to go to his uncle's house. Why would
3 Freddie leave to go on his bike if he was waiting for
4 Tiddy to come over to rob him? That doesn't make any
5 sense.

6 Perhaps Freddie was just riding on his bicycle. Why
7 would Myhesa still go to Freddie's house to borrow a
8 bicycle after this all happened? That makes no sense.

9 During all of his story he maintains he didn't
10 conspire with anybody about an armed robbery. He
11 actually tried to discourage Freddie. When asked why he
12 didn't tell the police the truth originally he admitted
13 one reason was to save myself. He admitted that.

14 You've also heard that Carlos is now claiming again
15 for the first time within a few weeks before trial that
16 it was Myhesa who handed Freddie a gun. And Detective
17 Osborne told you they are considering charging Myhesa
18 with something related to this murder. Myhesa has to
19 work to make sure that doesn't happen so that he can
20 survive and his freedom is not lost.

21 Now I want to go to Myhesa's cousin Reginald
22 Wescott. Originally when Detective Osborne talked to him
23 he kept questioning him did Myhesa tell you Freddie did
24 it? Did Myhesa tell you Freddie did it? Again, not did
25 Myhesa do it or who did it; he just wanted to know about

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 Freddie. But as of last week his story changed. And now
2 he says I was just rolling a blunt. Just rolling a blunt
3 and I don't know anything about anything. However, what
4 we know is that Carlos had accused not only Reggie's
5 cousin and good friend of having a gun and giving it to
6 Freddie; he's accused Reggie of having a gun that day.

7 We also know that there was interaction with
8 Detective Osborne a few months ago when Reggie was
9 arrested on his pending charges. Even though Detective
10 Osborne wasn't involved in that case I guess it's a
11 coincidence that Detective Osborne was the one who drove
12 Reggie to talk to the police of who were involved in that
13 case.

14 So what was said in that interaction? We don't
15 know. We do know that he had pending charges; Attempted
16 Murder is just one of them. It carries up to 30 years in
17 prison. And he tried to tell us that he didn't know --
18 he didn't know that the State would maybe drop charges or
19 reduce charges. He doesn't understand that. He was in
20 jail but he doesn't understand how that works.

21 No, he has a reason not to make the State upset. He
22 does understand how things work; how things work. And he
23 has to say what he has to say in order to survive and
24 save himself. Then there is Michael Quarles. And while
25 he has given multiple stories as well and he's even been

1 convicted of giving false info to police before as well.
2 He sounded like he was telling some story up there. He
3 referred to the victim and his dad as the two suspects
4 drove up. The police were clearly harassing him in the
5 beginning. Not long ago he had been shot in the ankle.

6 He was talking to police about that case and then
7 Detective Osborne comes in and keeps trying to get him to
8 say something about Freddie, but he doesn't. Instead he
9 just talked about recently -- about how yes, I was there.
10 I didn't know anything was going to go down, but Freddie
11 was at the car and there was a shooting when he was at
12 the car.

13 What do we know about Michael? We know that he's
14 closest to Myhesa. He said Myhesa had been accused of
15 having a gun. We know that Carlos had accused Michael of
16 having a gun. We also know that he is in prison under a
17 youthful offender act.

18 And that's not a normal prison sentence where you
19 are given a definite term. It's changeable; it's 10 to
20 13 months originally, but they can keep you in longer if
21 they want to depending on what is going on with your
22 living situation or your behavior. They don't parole.
23 If you mess up they can keep sending you back and back to
24 prison for up to 6 years. He doesn't want to deal with
25 that. He doesn't want to get in trouble or have his

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 buddy Myhesa get in trouble. He's saying what he has to
2 say so he can survive. And then there's Carlos Jones who
3 Mr. DuRant has told you is probably the most truthful.
4 Well, Carlos Jones story didn't even come out at all
5 until within the past couple of weeks.

6 And it's the point in time again in which after he
7 had heard likely from talking to his good buddy, C.J. who
8 he helped raise who had been charged with Obstruction of
9 Justice and who had all the evidence in their case. He
10 heard that Myhesa brought his name into it. And that did
11 not make him happy. Myhesa told me that.

12 Myhesa and Carlos were sitting outside of this
13 courtroom while we were in trial. What we know about
14 Carlos is that certain parts of his story don't match up
15 and don't make sense; and clearly are to protect himself.

16 It starts with earlier in the day. Myhesa had said
17 Carlos was at Freddie's uncle's house earlier in the day.
18 But Carlos he says my ex-girlfriend she drove me there
19 but I never got out the car because she realized she was
20 hungry so we went to Wendy's instead and then she later
21 dropped me off at St. Clair.

22 Does that make sense that she would be going to drop
23 him off at Freddie's and then remember that she's hungry?
24 He says that he was on the porch. But no one's story
25 purports that anyone was on the porch. Mr. Smith didn't

1 testify that he saw someone separate from the group on
2 the porch. And none of the other witnesses mentioned
3 that. He said that because he was trying to distance
4 himself from the trial to make himself sound like he is
5 the innocent party here.

6 He also insisted even though from where he was he
7 wouldn't have been able to see exactly what happened
8 because he was on the porch and the shooter's back would
9 have been covering the door frame. But he insisted that
10 no, no, no I really got a good look at the actual
11 shooting because he's trying to make himself sound like a
12 better witness; that's what he's doing.

13 Carlos says he was yelling at Freddie. However, not
14 everybody purports that. Michael Quarles said he didn't
15 think Carlos had said anything. And Myhesa says it was
16 actually C.J. cursing at Freddie. Again, that's Carlos
17 trying to make himself sound better.

18 And then he gives the magical explanation that the
19 State has been waiting for all along about the phone in
20 the car. Again, Carlos knew from talking to C.J. or
21 whoever that that phone was an issue. He said that
22 Freddie was like talking on the phone and had a gun in
23 his other hand. But that's not supported by Kennedy's
24 statement who says the shooter was kind of walking
25 towards him aggressively. Again, he made up the story to

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 make himself sound like a better witness to give the
2 State the evidence that he knew they wanted. He knew
3 what they wanted from talking to other people. He also
4 said that I stayed at the house because I had nothing to
5 hide.

6 Okay, so then is he that cold blooded and heartless
7 that he just watched someone murdered, someone he knows,
8 and the police come to the house and he is able to sit
9 there stone faced and without raising that much suspicion
10 just say no, I didn't see anything.

11 So is that what he's trying to portray himself of
12 because that's not good either. But perhaps he stayed
13 there for other reasons; other than well, I didn't do
14 anything wrong. Perhaps he stayed there as sort of an
15 alibi if you will.

16 Perhaps he stayed there to intimidate people into
17 not saying things to see what was going to be said.
18 There are a lot of reasons he could have stayed there.
19 Maybe he had nowhere else to go. He also talked about a
20 call to Mr. Wilder.

21 However, even though we heard about the phone
22 records that has not been supported by evidence. And you
23 may have noticed that when Mr. DuRant asked him who
24 called Tiddy he said Myhesa and then he said oh, Freddie.
25 But first he said Myhesa. But he realized that was the

1 wrong answer. There has been talk of arresting Myhesa
2 and maybe C.J. for a charge related to this murder. But
3 there was no talk of mentioning -- no talk of arresting
4 Carlos; even though according to Myhesa's story given
5 over a year ago that Carlos was the one encouraging
6 Freddie.

7 There is no talk of that because the State likes
8 what they hear from Carlos because it ties up the loose
9 ends. Carlos Jones is saying what he has to say to
10 benefit Carlos Jones and no other so he can survive; so
11 none of these people are believable.

12 And it's not believable either that they would
13 somehow care more about Freddie Flowers than they would
14 care about themselves or each other. Yet they all have
15 in common their story. The one thing they have in common
16 is that it was Freddie who shot Tiddy.

17 However, what they also have in common is that they
18 all are completely innocent of anything and they
19 themselves didn't do anything. Maybe the others did some
20 stuff but they themselves are completely innocent. They
21 are clearly out for themselves, their survival.

22 The State would have you believe that these boys are
23 trying to protect Freddie. Why would they cop on their
24 friends? None of them said they were great close buddies
25 with Freddie. You heard that Freddie didn't even really

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 live in the area. His uncle lived there but he just
2 stayed there but that his Aunt and Mom lived in Goose
3 Creek. You heard that Myhesa and Reggie are cousins and
4 good friends.

5 You heard Carlos say he helped raise C.J. You heard
6 Michael Quarles say Freddie was just an associate of his
7 and that he was really closest to Myhesa. There has been
8 no indication that any of these boys have great love for
9 Freddie Flowers and that they wouldn't want to say
10 something against him; whether it's the truth or not.

11 Did any of them -- Mr. DuRant pointed out that none
12 of them seemed like they wanted to be here. But did any
13 of them seem like they were up there torn apart that they
14 were having to testify against their friend? No. Did
15 any of them seem like they were up there because the
16 burden of everything finally got to them and they wanted
17 to see justice for Tiddy or they couldn't live with it
18 anymore? No. None of them seemed like that. Instead
19 each of them got up there and told a story.

20 And we know that they all can't be true because all
21 of their stories are different. They had to protect
22 themselves and that's why they testified. So from the
23 beginning you know there was a name, Freddie's phone, the
24 day before there had been this incident Carlos told you a
25 little about that. Jennifer Myers was there but the

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 State didn't put her up. But she described someone she
2 saw that she thought was Freddie, short and muscular.
3 That certainly is not Freddie Flowers. There are some
4 other possibilities too in this case and the police
5 didn't really look into them.

6 Detective Osborne told you about Big Head that there
7 were multiple calls between the Cricket phone and Big
8 Head. I'm sorry -- not the Cricket phone, Tiddy's phone
9 and Big Head that he called him once but he never heard
10 back so he just didn't pursue that any further.

11 Detective Osborne again he didn't ask about anyone
12 else possibly doing anything. Mr. Smith told us that
13 there were 9 people out there. So perhaps there were
14 other people out there; other people who have not been
15 named because people don't want to name them because they
16 are on the street and they don't want to fear retribution
17 from that person.

18 There are unaccounted for fingerprints on the car.
19 They didn't belong to Freddie. They didn't belong to Mr.
20 Smith or Tiddy. There is unaccounted for D-N-A on the
21 phone as we heard about.

22 The State didn't even test the D-N-A of the other
23 boys involved. They just looked at Freddie and Tiddy.
24 The State -- they've also been playing a game a lot with
25 this Obstruction of Justice charge. Mr. Smith was

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 arrested in part for that charge and because supposedly
2 he lied and said he picked his son up from the gas
3 station but he really picked his son up from Brandon
4 Smalls' house. So Brandon Smalls or someone indicated
5 that that was the truth.

6 And so Detective Osborne arrested Kennedy for that
7 charge. However, later when he did his investigation
8 after arresting Kennedy Smith and he got the video from
9 the store he learned that that was true. So he arrested
10 the person who had said originally that Tiddy was picked
11 up from his house.

12 Detective Osborne admitted that from the evidence he
13 had he could have charged each and every single person
14 with something but he didn't. The State can pick and
15 choose. They are just doing at random; I don't know what
16 their reasons are.

17 What happened here is that Freddie Flowers was
18 arrested on weak evidence. And then a bunch of boys were
19 harassed and intimidated to say a certain thing. They
20 weren't told -- I'm not saying they said tell us this. I
21 want you to say A, B, C, D, E. They weren't told that.

22 But they were told tell us Freddie did it. Tell us
23 you saw Freddie do it. Tell us you saw -- somebody told
24 you they saw Freddie do it. They are not Freddie's dear
25 friends. They are not trying to -- they never were

1 trying to be nice or help him out. Several people,
2 Michael Quarles and Reggie they were reluctant to say
3 that Freddie was the actual shooter. And Mr. DuRant gave
4 them a hard time.

5 They said that Freddie walked to the car and then
6 there were shots. I didn't actually see Freddie shoot
7 anyone. And it was actually true when they said I didn't
8 see Freddie shoot anyone because I couldn't really see.
9 Well, possibly they were reluctant on the stand to say
10 Freddie Flowers -- they didn't see Freddie Flowers shoot
11 Tiddy because they didn't -- because it's not true.

12 And don't forget Tiddy himself. Tiddy did not die
13 immediately. He was able to talk a little. And he said
14 I've been shot. But at no point when the shooter
15 approached him did he say a name. At no point after he
16 had been shot did he say a name. That purports that
17 maybe he didn't even know the shooter.

18 There is doubt in this case. There is very real
19 doubt. And Mr. DuRant said that this should be easy for
20 y'all. This is a very hard job that y'all have. It's a
21 very heavy burden. And I don't think it would be easy.
22 I don't know.

23 But these witnesses they have determined that
24 Freddie Flowers -- they can throw him away. That he is
25 interchangeable with whoever. He's not. He is a real

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 human. And while Tiddy deserves justice so does Freddie
2 Flowers. He did not shoot and kill Tiddy on March 1st of
3 last year. He is an easy target, a scapegoat. And when
4 you look at all the evidence, the lack of evidence, when
5 you look at the credibility of witnesses; because that is
6 key in this case it all does not support finding Freddie
7 guilty. It supports finding him not guilty. Thank you.
8 Thank you, sir.

9 CHARGE OF THE COURT

10 Madame Forelady and ladies and gentlemen of the jury
11 I'm going to instruct you on the law that is applicable
12 in this particular case.

13 I instructed you and stated earlier and emphasized
14 the fact that the defendant did not elect to testify on
15 his own behalf is not a factor to be considered by you in
16 any way in your deliberations and in your consideration
17 of the question of the guilt or innocence of the
18 defendant. It must not be considered by you in any
19 manner whatsoever.

20 A defendant has a constitutional right to remain
21 silent. And the assertion of this right must not be
22 considered by you in your deliberations. I repeat under
23 your oath you are to draw no conclusion whatsoever from
24 the fact that the defendant in this case did not testify.
25 The fact that this defendant did not testify should not

1 even be discussed in the jury room. The burden of proof
2 as I will state to you is on the State. The defendant is
3 not required to prove his innocence. The burden of proof
4 remains on the State to prove guilt beyond a reasonable
5 doubt.

6 I've allowed you to take jurors -- notes during the
7 course of the trial. You have not been obligated to take
8 notes but if you have taken notes they should be used
9 only as memory aids. You should not give your notes
10 precedent over your independent recollection of the
11 evidence.

12 If you've chosen not to take notes, you should rely
13 on your own independent recollection of the proceedings
14 and should not be influenced by the notes of other
15 jurors. I emphasize that the notes are not entitled to
16 any greater weight than the recollection or impression of
17 each juror as to what the testimony may have been.

18 Further, these notes are your notes. You may
19 destroy them, keep them, or the court will destroy them
20 for you. I will give a copy of these instructions in
21 written form. During your deliberations you may refer to
22 the instructions to guide your decision making. You must
23 consider the instructions as a whole and not follow some
24 but not others. Madame Forelady, please return the
25 instructions to the court after your verdict has been

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 rendered. The defendant has pled not guilty to these
2 indictments, which places the burden on the State to
3 prove the defendant guilty. A person charged with
4 committing a criminal offense in South Carolina is never
5 required to prove himself innocent.

6 I charge you that it is a vital and important rule
7 of law that the defendant in a criminal trial no matter
8 what the seriousness of the charge must always be
9 presumed to be innocent until his guilt has been proven
10 beyond a reasonable doubt.

11 His presumption of innocence remains with the
12 defendant at all times from the moment he appears in the
13 court throughout the trial until you, the jury reach a
14 verdict of guilt beyond a reasonable doubt based on the
15 testimony and evidence presented.

16 The presumption of innocence is the substantial
17 right to which every defendant is entitled unless and
18 until you reach a verdict of guilty beyond a reasonable
19 doubt. If you, the jury do not find the defendant
20 guilty beyond a reasonable doubt it is your duty to
21 acquit the defendant.

22 Now what is reasonable doubt? A reasonable doubt is
23 the kind of doubt that would cause a reasonable person to
24 hesitate to act. The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt. Some of you

1 may have served as jurors in civil cases where you were
2 told it's only necessary to prove a fact is more likely
3 true than not, such as a greater weight of preponderance
4 of the evidence.

5 In criminal cases the State's proof must be more
6 powerful than that. It must be beyond a reasonable
7 doubt. Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced of the defendant's guilt.

9 There are very few things in this world that we know
10 with absolute certainty. And in criminal cases the law
11 does not require proof that overcomes every possible
12 doubt. If based on your consideration of the evidence
13 you are firmly convinced the defendant is guilty of the
14 crime charged you must find the defendant guilty.

15 On the other hand if you think there is a real
16 possibility the defendant is not guilty you must give the
17 defendant the benefit of the doubt and find the defendant
18 not guilty.

19 There are two types of evidence which is generally
20 presented during trial. Direct testimony is the
21 testimony of a person who claims to have actual knowledge
22 of a fact such as an eyewitness. It is evidence which
23 immediately establishes the main fact to be proved.
24 Circumstantial evidence is proof of a chain of facts and
25 circumstances that indicate the existence of a fact. It

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

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

13 The evidence or lack of evidence on which you are to
14 decide the facts include the following: the sworn
15 testimony of a witness both on direct and cross
16 examination regardless of which side called the witness,
17 the exhibits that have been received into evidence by the
18 court and any facts agreed or stipulated to by the
19 lawyers.

20 The following facts -- excuse me -- the following
21 things are not evidence and you may not consider them in
22 deciding the facts: arguments and statements made by the
23 lawyers are not evidence. The lawyers are not witnesses.
24 Their opening statements, closing arguments and their
25 statements are intended to help you interpret the

1 evidence but are not evidence. If the facts as you
2 remember them differ from the lawyers statement your
3 memory controls. Questions and objections by the lawyers
4 are not evidence.

5 Lawyers have a duty to their clients to make an
6 objection when they believe the question is improper
7 under the rules of evidence. You should not allow any
8 objection, or the court ruling on the objection to
9 influence you. Testimony that has been stricken that
10 you've been instructed to disregard is not evidence and
11 must not be considered.

12 Anything you may have seen on television, read in
13 the newspaper or on the Internet or heard from others
14 when court is not in session is not evidence. You should
15 base your decisions solely on the sworn testimony of
16 witnesses, exhibits received into evidence by the court,
17 and any facts agreed or stipulated to by all the lawyers.

18 The fact that the defendant was arrested, charged,
19 and indicted in this case is not evidence and cannot be
20 considered as evidence of guilt, nor does it create any
21 presumption or reference of guilt.

22 The indictment is simply the formal written
23 instrument which contains the charge made against the
24 defendant. Now under our Constitution and Code of Laws
25 only you the jury can make findings of facts in this

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 case. I'm not permitted to indicate to you how I may
2 feel about the testimony or evidence which has been
3 presented throughout the trial. It's been my intention
4 to be fair and impartial towards each of the parties
5 involved.

6 Necessarily you must determine the creditability of
7 the witnesses who has testified in this case.
8 Creditability simply means believability. It's your duty
9 as jurors to analyze and evaluate the evidence to
10 determine which evidence convinces you of its truth.

11 In deciding whether or not to believe a witness's
12 testimony about a particular matter you may consider the
13 following: the manner and appearance of the witness
14 while on the witness stand. Was he or she straight
15 forward or hesitant in answering?

16 The testimony of a witness; was it consistent or
17 inconsistent? How the witness came to know the facts
18 that he or she testified to? Was the witness present
19 during the incident? Did the witness happen on the scene
20 after the incident occurred?

21 The reason the witness would want to give testimony
22 which would help or hurt one side or the other. Has the
23 witness exhibited to you any interest, bias, prejudice or
24 other motive in the case unless you may consider whether
25 a particular witness may gain some reward, payment,

1 personal advantage, or vindication through his or her
2 testimony, the strength of the witness and the testimony
3 of the witness. Was the testimony of the witness
4 strengthened or weakened by other testimony or evidence.

5 The duration and length of time between the incident
6 and when they were reported. Would the duration or
7 length of time weaken or strengthen the witness's memory
8 of the incident. All prior statements; were prior
9 statements made by the witness consistent or inconsistent
10 with the witness's testimony.

11 In determining the believability of a witness who
12 has testified in this case you may believe one witness
13 over several witnesses or several over one. You may
14 believe a part of the testimony of a witness and reject
15 the remaining part of the testimony of the same witness.
16 You may believe the testimony of a witness in its
17 entirety or reject the testimony of a witness in its
18 entirety.

19 Of course you do not determine the truth by merely
20 counting the number of witnesses presented. Throughout
21 this process you have but one objective; to seek the
22 truth regardless of its source. The rules of evidence
23 ordinarily do not permit witnesses to testify to opinions
24 or conclusions. An exception to this rule exists for
25 witnesses called expert witnesses; witnesses who by

1 education or experience have become an expert in some
2 art, science, or profession are permitted to give their
3 opinion in certain areas if the court qualifies them as
4 expert witnesses.

5 An expert witness may also give the reasons for
6 their opinion. And expert opinion is evidence for you to
7 use in any way you see fit. You should give the evidence
8 the weight and creditability you believe is appropriate.

9 If you decide that an expert witness's opinion is
10 not based on sufficient education or experience or decide
11 that the reasons given in support of the opinion are not
12 sound or that the opinion is outweighed by other evidence
13 you may disregard the opinion entirely.

14 Now the same Constitution and laws which designate
15 to make you the finders of the fact make me the sole
16 instructor of the law. It's my duty to charge you on the
17 law applicable to this case and it's your duty as jurors
18 to accept and apply the law as I now state it to you.

19 The lawyers are not the instructors of the law. You
20 must accept the law and apply the law exactly as I state
21 it to you. You must not base your decision making on
22 your idea of what the law is or what you think the law
23 should be. The defendant is charged with Murder. The
24 State must prove beyond a reasonable doubt that the
25 defendant killed another person with malice aforethought.

1 Malice is hatred, ill will, or hostility towards
2 another person. It is the intentional doing of a
3 wrongful act without just cause or excuse and with the
4 intention to inflict an injury or other under
5 circumstances of the law will infer an evil intent.

6 Malice aforethought does not require that malice
7 exists at any particular time before the act is
8 committed. But malice must exist in the mind of the
9 defendant just before and at the time the act is
10 committed.

11 Therefore there must a combination of the previous
12 evil intent and the act. Malice aforethought may be
13 expressed or inferred. These terms expressed and
14 inferred do not mean different kinds of malice but merely
15 the manner in which malice may be shown to exist. It is
16 either by direct evidence or by inference from the facts
17 and circumstances which are proved.

18 Expressed Malice is shown when a person speaks words
19 which express hate or ill will for another or when a
20 person prepared beforehand to do the act which was later
21 accomplished.

22 For example, lying in wait for a person or any other
23 acts of preparation going to show the deed was within the
24 defendant's mind would be Expressed Malice. Malice may
25 be inferred from conduct showing a total disregard for

1 human life. Inferred Malice may also arise when the deed
2 is done with a deadly weapon. A deadly weapon is any
3 article, instrument, or substance which is likely to
4 cause death or great bodily harm.

5 Whether the instrument has been used as the deadly
6 weapon depends on the facts and circumstances of the
7 case. The following are examples of instruments which
8 may be deadly weapons: a pistol, a shotgun, a rifle, a
9 dirk, a dagger, a knife, a slingshot, metal knuckles, a
10 razor, gasoline, a firebomb, Molotov cocktail, and
11 lighter fluid. A gun may be a deadly weapon even if it
12 is not operating, possession of a weapon during the
13 commission of or attempt to commit a violent crime.

14 The defendant is charged with Possession of a Weapon
15 during the Commission of or Attempt to Commit a Violent
16 Crime. The State must prove beyond a reasonable doubt
17 the defendant was in possession of a firearm or visibly
18 displayed what appeared to be a firearm during the
19 commission of a violent crime.

20 A firearm means any machine gun, automatic rifle,
21 revolver, or pistol. In order to find the defendant
22 guilty of Possession of a Weapon during the Commission of
23 a Violent Crime you must first find the defendant guilty
24 of either committing a violent crime or attempt to commit
25 a violent crime. Assault and Battery with Intent to

1 Kill, Murder, First Degree Burglary, Armed Robbery, and
2 Kidnapping are all defined as violent crimes in the state
3 of South Carolina.

4 An issue in this case is the identification of the
5 defendant as the person who committed the crime charged.
6 The State has the burden of proving identity beyond a
7 reasonable doubt. You must be satisfied beyond a
8 reasonable doubt of the accuracy of the identification of
9 the defendant before you may convict the defendant.

10 Identification testimony is an expression or belief
11 or impression by a witness. You must determine the
12 accuracy of identification of the defendant. You must
13 consider the believability of each identification witness
14 in the same manner as any other witness. You may
15 consider whether the witness had the adequate opportunity
16 to observe the defendant at the time of the offense.

17 This will be affected by things like how long or
18 short a time was available, how far or close the witness
19 was, the lighting conditions, and whether the witness had
20 the chance to see or know the person in the past.

21 Once again I instruct you that the burden of proof
22 on the State extends to every element. The crime charged
23 in this specifically includes the burden of proving
24 beyond a reasonable doubt the identity of the defendant
25 as the person who committed the crime. If after

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 examining the testimony you have a reasonable doubt as to
2 the accuracy of the identification, you must find the
3 defendant not guilty.

4 You've been selected as fair and impartial jurors
5 sworn to impartiality to try and determine the facts of
6 this case. And when you comply with your oath to do so
7 no one will have the right to criticize your verdict and
8 you have fully discharged your duties as jurors.

9 You will decide this case according to testimony
10 that you've heard from the lips of sworn witnesses along
11 with the other evidence introduced. I charge you as
12 jurors you must make your decision in this case without
13 bias, without prejudice to any party. You cannot allow
14 yourself to be governed by sympathy, prejudice, passion,
15 public opinion, or any other arbitrary factor.

16 The State and the defendant have the right to expect
17 that each one of you will carefully and impartially
18 consider all the evidence in this case and to follow the
19 law as I explain it to you.

20 Nothing I may have said or done during the course of
21 this trial has been in any way intended to express or
22 suggest the view of this case or opinion as to the facts,
23 the weight of the evidence, to creditability of the
24 witnesses. If you believe any of my actions or words
25 have indicated otherwise you must disregard such and form

1 your own view of this case or your own opinion as to the
2 facts, the weight of the evidence, and creditability of
3 the witnesses.

4 Madame Forelady, I have prepared two verdict forms.
5 It has the State of South Carolina versus Frederick L.
6 Flowers and has the indictment number. It says as to
7 indictment number 2011-GS-10-04314 we the jury by
8 unanimous consent find the defendant guilty of Murder or
9 not guilty. There is a place for the foreperson to sign
10 and date.

11 Now the second indictment as to the Commission of --
12 excuse me, Possession of a Firearm during the Commission
13 of a Crime, we the jury by unanimous consent find the
14 defendant guilty of Possession of a Firearm during the
15 Commission of a Violent Crime or not guilty and a place
16 to sign.

17 As I said earlier if you find the defendant not
18 guilty of Murder then you cannot find him guilty of
19 Possession of a Firearm during the Commission of a Crime.
20 However you can find the defendant guilty of Murder and
21 not guilty of the Possession of a Firearm during the
22 Commission of a Crime.

23 Now, as I said several times Madame Forelady and
24 members of the jury your verdict has to be unanimous.
25 All 12 of you have to agree. I will tell you it is

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 collective reasoning and collective decision on all 12's
2 part. I would ask you to respect each other's opinions,
3 evaluate the opinions, review the evidence and reach a
4 fair and just verdict.

5 Now Madame Forelady, I'm going to ask you to go to
6 the jury room but I don't want you to begin your
7 deliberations until the Bailiff brings the verdict forms,
8 the charge book, and all the evidence and instruct you to
9 begin your deliberations.

10 I have to take my charge up with the lawyers and
11 bring you back and change something I said or add
12 something to my charge. So I don't want you to actually
13 begin your deliberations until the Bailiff instructs you.
14 You may take your notes with you to the jury room.

15 The two alternates Ms. -- excuse me, Mr. Edward T.
16 Kassinger and Natalya Pais if y'all will just keep your
17 seats while the other 12 jurors go to the jury room. If
18 you'll follow the Bailiff please?

19 MADAME FORELADY: Excuse me, Your Honor?

20 THE COURT: Pardon?

21 MADAME FORELADY: I have a question.

22 THE COURT: Write it down and give it to the
23 Bailiff, okay.

24 [Whereupon, the jury exits the courtroom at 11:22
25 a.m.]

1 THE COURT: All right. The defendant had
2 requested charge number 1, which was previously discussed
3 on the record and I've marked that as Court's exhibit
4 number 1. I'll be glad to -- any exceptions to the
5 charge from the State?

6 MR. DURANT: No, sir.

7 THE COURT: Any exceptions to the charge from the
8 defendant? Give her a chance to mark this request for
9 charge. And the court -- number 2? Okay. Court's
10 exhibit number 2 is your request to charge, which the
11 court did not charge.

12 [Whereupon, Court's exhibit numbers 1 and 2 are
13 marked by the court reporter]

14 MS. FORD: Thank you, Your Honor.

15 THE COURT: Any other exceptions to the charge?

16 MR. BUTLER: Just those that were previously
17 stated. And for the record in case I have to say these
18 magic words I was also asking to argue against precedent.

19 THE COURT: Okay. Anything else?

20 MR. BUTLER: No, sir.

21 THE COURT: Would the parties come forward and make
22 sure all the exhibits are present? What do you want to
23 do about the phone? Have y'all checked it or you just
24 want to take the batteries out of it?

25 MR. DURANT: It's the only thing that's in that I

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 don't think has actually been checked yet.

2 THE COURT: Do y'all just want to take the
3 batteries out of the phone?

4 MR. DURANT: That's fine.

5 THE COURT: I mean that's the easiest thing to do
6 is take the batteries out of the phone.

7 [Whereupon, counsel review documents]

8 MR. DURANT: Are you satisfied?

9 MS. FORD: Yes.

10 [Whereupon, the evidence goes to the jury at 11:31
11 a.m.]

12 [Whereupon, court is in recess from 11:31 a.m. to
13 2:06 p.m.]

14 THE COURT: Let me see the attorneys.

15 [Whereupon, an off the record bench conference is
16 held]

17 [Whereupon, court is in recess from 2:06 p.m. to
18 2:21 p.m.]

19 THE COURT: Bring us the jury, please?

20 [Whereupon, the jury enters the courtroom at 2:24
21 p.m.]

22 VERDICT

23 THE COURT: Madame Forelady, I understand you've
24 reached a verdict. Is that correct?

25 MADAME FORELADY: Yes, sir.

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 THE COURT: Would you give the verdict forms to the
2 Bailiff, please?

3 [Whereupon, verdict forms are proffered to the
4 court]

5 [Court reviews documents]

6 THE COURT: Madame Forelady, I have filled out on
7 the indictment for your verdict and dated today August
8 31, 2012 and I'm going to give it to the Bailiff and ask
9 you to sign where it says Foreperson, please?

10 MADAME FORELADY: Yes, sir.

11 [Whereupon, Madame Forelady complies]

12 THE COURT: If you'll mark that as Court's exhibit
13 number 3, please? Thank you.

14 [Whereupon, Court's exhibit number 3 is marked by
15 the court reporter]

16 THE COURT: Thank you, very much. Madame Clerk,
17 if you will publish the verdict, please?

18 CLERK OF COURT: Case number 2011-GS-10-4314 State
19 of South Carolina versus Frederick Flowers. As to
20 indictment number 2011-GS-10-4314 we the jury by
21 unanimous consent find the defendant guilty of Murder.
22 Signed Foreperson Lisa K. Schlesinger.

23 As to indictment number 2011-GS-10-4317 we the jury
24 by unanimous consent find the defendant guilty of
25 Possession of a Firearm during the Commission of a

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 Violent Crime. Madame Forelady, ladies and gentlemen of
2 the jury if this is your verdict please raise your right
3 hand.

4 THE COURT: Let the record reflect all 12 jurors
5 raised their right hand. Anything from the State as far
6 as the jury? Do you want the jury polled?

7 MR. DURANT: Yes sir, Your Honor.

8 THE COURT: Does the defense want the jury polled?

9 MS. FORD: Yes, Your Honor, we do.

10 THE COURT: Madame Clerk would you poll the jury
11 and explain to the jury very briefly what you're doing.

12 CLERK OF COURT: I'm going to ask you each two
13 questions please answer both of them. Starting with
14 Forelady, juror number 234 Ms. Schlesinger is this your
15 verdict?

16 MS. SCHLESINGER: Pardon?

17 CLERK OF COURT: Is this your verdict?

18 MS. SCHLESINGER: Yes, ma'am.

19 CLERK OF COURT: Is this still your verdict?

20 MS. SCHLESINGER: Yes, ma'am.

21 CLERK OF COURT: Juror number 7, Bradley Ames. Is
22 this your verdict?

23 MR. AMES: Yes.

24 CLERK OF COURT: Is this still your verdict?

25 MR. AMES: Yes.

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 CLERK OF COURT: Juror number 104 Jeffrey Heatley.
2 Is this your verdict?
3 MR. HEATLEY: Yes.
4 CLERK OF COURT: Is this still your verdict?
5 MR. HEATLEY: Yes.
6 CLERK OF COURT: Juror number 209 Vernon Rhodan.
7 Is this your verdict?
8 MR. RHODAN: Yes.
9 CLERK OF COURT: Is this still your verdict?
10 MR. RHODAN: Yes.
11 CLERK OF COURT: Juror number 42 Margot Campos. Is
12 this your verdict?
13 MS. CAMPOS: Yes.
14 CLERK OF COURT: Is this still your verdict?
15 MS. CAMPOS: Yes.
16 CLERK OF COURT: Juror number 211 Eleanor Richberg.
17 Is this your verdict?
18 MS. RICHBERG: Yes.
19 CLERK OF COURT: Is this still your verdict?
20 MS. RICHBERG: Yes.
21 CLERK OF COURT: Juror number 182 Roger Newman. Is
22 this your verdict?
23 MR. NEWMAN: Yes.
24 CLERK OF COURT: Is this still your verdict?
25 MR. NEWMAN: Yes.

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 CLERK OF COURT: Juror number 154 Allegra Litvin.
2 Is this your verdict?
3 MS. LITVIN: Yes.
4 CLERK OF COURT: Is this still your verdict?
5 MS. LITVIN: Yes.
6 CLERK OF COURT: Juror number 167 Fritz Meyer. Is
7 this your verdict?
8 MR. MEYER: Yes.
9 CLERK OF COURT: Is this still your verdict?
10 MR. MEYER: Yes.
11 CLERK OF COURT: Juror number 125 Kimberly Johnson.
12 Is this your verdict?
13 MS. JOHNSON: Yes.
14 CLERK OF COURT: Is this still your verdict?
15 MS. JOHNSON: Yes.
16 CLERK OF COURT: Juror number 48 Betsy Jane Clary.
17 Is this your verdict?
18 MS. CLARY: Yes.
19 CLERK OF COURT: Is this still your verdict?
20 MS. CLARY: Yes.
21 CLERK OF COURT: Juror number 93 Kevin Hammer. Is
22 this your verdict?
23 MR. HAMMER: Yes.
24 CLERK OF COURT: Is this still your verdict?
25 MR. HAMMER: Yes.

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 THE COURT: Let the record reflect all 12 jurors
2 answered in the affirmative.

3 SENTENCING

4 THE COURT: Do you have a sentencing sheet?

5 Solicitor, I understand he has no prior criminal
6 record but he has some pending charges is that correct?

7 MR. DURANT: That's correct, Your Honor.

8 THE COURT: What are the pending charges?

9 MR. DURANT: He's got charges pending for Armed
10 Robbery. He was released on bond for that. Was
11 rearrested for Possession of a Firearm and Assaulting a
12 Police Officer and released on bond for that and was
13 arrested for Murder.

14 THE COURT: Okay. Ms. Ford do you want -- will
15 you sign these please ma'am if you would?

16 [Whereupon, Ms. Ford complies]

17 THE COURT: All right. Solicitor, I will be glad
18 to hear anything you would like to tell me concerning
19 sentencing.

20 MR. DURANT: Your Honor, as you know I've related
21 his pending charges. He's been spiraling in this
22 direction for a while. I sincerely believe Mr. Flowers
23 would be a threat to this community and I would ask Your
24 Honor to impose a life sentence.

25 THE COURT: I'll be glad to hear from any of the

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 victim's family if they would like to speak.

2 MR. DURANT: I don't believe they want to speak,
3 Your Honor.

4 THE COURT: I'll be glad to hear anything from the
5 defendant, the defendant's attorneys or any of their
6 family if they would like to speak.

7 MS. FORD: Yes, Your Honor. May it please the
8 court?

9 THE COURT: Yes, ma'am.

10 MS. FORD: I've been Freddie's lawyer since 2009
11 and I can say that it has been a pleasure to work with
12 him. I've known Freddie to be a very sweet boy. He's
13 always been a gentleman with me. Whenever he were to
14 curse for example he would apologize. He's never given
15 me any attitude or anything like that. He's never
16 demonstrated himself as anything other than a gentleman.

17 I also think there are some other things that you
18 need to know a little about him. He clearly has a lot of
19 people who love him and they're here today. His father
20 wasn't around.

21 He has a big family, but his Mom is schizophrenic
22 and so that's just a lot for a kid to be raised around.
23 But she clearly -- he is close to his Mom but it's hard.
24 So a lot of times he's been with his Aunt Evette and
25 Uncle Benjamin who are here. Freddie -- he actually has

1 a learning disability and a speech issue. And I raised
2 that because I think that's where a lot of his problems
3 come from and I'll tell you why I think that.

4 What's interesting about a lot of interviews being
5 recorded is that you get to see a lot of what people
6 think of people. And for example there is one person
7 they spoke to, Brittany Mack.

8 She's not a witness to the crime or anything but
9 they were asking her about Freddie. And she went on and
10 on and on about how dumb Freddie is meaning that -- she
11 said Freddie, he can't even spell his own name. I would
12 always just sit there and ask him to spell things like
13 apple and he can't spell it. And we'll just all laugh at
14 him.

15 And -- but she said Freddie did take it -- it's not
16 like he would get mad and lose his temper. She said
17 Freddie would just laugh it off and Freddie -- from what
18 all of these witnesses have said when the police were
19 asking him about Freddie all of them would say Freddie
20 just smokes weed; that's all Freddie does. That is all
21 of their attitudes about Freddie.

22 THE COURT: What was his learning disability?

23 MS. FORD: Reading, Your Honor.

24 THE COURT: Okay.

25 MS. FORD: And you know ---

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 THE COURT: --- was he dyslexic or what?

2 MS. FORD: I know he has Attention Deficit
3 Disorder. And I'm not -- I've gotten his school records
4 and I reviewed them. I didn't bring my file Your Honor.

5 But like -- for example in 2009 I had a letter from
6 his speech pathologist at school and she was just saying
7 they were working with him being able to express himself.
8 She too said it was a joy to work with him.

9 But I only say that because I don't even think
10 Freddie is -- his I.Q. is actually average. But because
11 of his learning disability and actually primarily because
12 of some speech issues and his Mom actually has some
13 speech issues as well. People I think they always just
14 made fun of him.

15 And so if anything what I think happened, and my
16 client maintains his innocence Your Honor, but I think we
17 have a case where we heard from four individuals who
18 basically -- none of them were charged as co-defendants.
19 But they easily could have been charged as co-defendants
20 under the hand of one is the hand of all theory and the
21 felony murder.

22 So basically it would have been very easy for each
23 and every one of them to be charged with Murder as well.
24 I don't know what's going to happen with that Your Honor
25 but I can say that according to some witnesses, and I

1 really do think this is true that if indeed it was
2 Freddie it's because he was encouraged by others. And
3 yes maybe he did a very stupid thing. Maybe he was
4 trying to be cool or something. But there is one
5 individual, Carlos Jones, he's about five years older,
6 contributing to the delinquency of a minor charge hanging
7 out with all these younger boys.

8 One witness said how influential he is. And he said
9 that Carlos was encouraging Freddie to do an armed
10 robbery and so that would make sense. So I'm just saying
11 that I think he was encouraged. It wasn't like he's just
12 like I'm going to do a lick and just cold bloodedly
13 murder someone. There's some talk that it was like an
14 accident; maybe that gun went off that first time and he
15 freaked out. Possibly it was a situation like that, Your
16 Honor.

17 THE COURT: Well, it sure didn't go off
18 accidentally the second time.

19 MS. FORD: No, I understand. He became scared is
20 what I'm saying. And I think that makes sense from the
21 evidence. But I don't know exactly what happened because
22 -- and I don't think anyone would disagree with this; the
23 witnesses all gave a different story. And they all were
24 protecting themselves but I guess the jury felt that they
25 were credible when it came to saying who did the murder.

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 But I just think that's important to note. I don't
2 think Freddie deserves life, Your Honor. As far as his
3 other charges there is a reason. The Armed Robbery
4 charge is when he was 16. There is a reason why it's
5 from 2009 and it has not been tried; it's not a good
6 case.

7 I have a witness for example who knows Freddie.
8 He's an older gentleman, he's not like his friend, and he
9 said I saw the robber leaving. He had talked to police
10 it's just they didn't ask him about Freddie that day, and
11 he says it wasn't Freddie. So we're not here to try
12 that. I'm just saying ---

13 THE COURT: --- I understand ---

14 MS. FORD: --- Your Honor he hasn't been convicted
15 of that. I would just ask you that there was an offer of
16 25 years on the table to voluntary. And of course he
17 exercised his right to go to trial. He did not testify
18 so there would be no issue of perhaps that if he lied on
19 the stand or anything like that.

20 So I just think there is a lot of truth that has yet
21 to be determined in this case Your Honor as far as the
22 other people involved. But I can say that Freddie, he is
23 not mean spirited. He's not cold hearted. He's always
24 again been very complimentary towards me. He cares about
25 his family as they do him. So we would ask if you would

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 consider the minimum. That's 30 years so it's day for
2 day so obviously he has a lot of time, Your Honor. So
3 that's just what we would ask you.

4 THE COURT: Okay. How far did he go in school?

5 MS. FORD: 10th grade, Your Honor.

6 THE COURT: Did he complete the 10th?

7 MS. FORD: No, Your Honor. He went as far as 2009
8 because that's where the records were asked. It sounded
9 like he got frustrated you know working with a speech
10 pathologist and all that, Your Honor.

11 THE COURT: When was -- how long has he been in
12 jail?

13 MS. FORD: Since March 11th of last year.

14 THE COURT: March of 2011?

15 MS. FORD: Yes, Your Honor.

16 THE COURT: March -- you said March the 11th?

17 MS. FORD: Yes, Your Honor.

18 THE COURT: Okay. Do you want me to hear from
19 anyone else? Someone else has stood up back there.

20 MR. FLOWERS: Your Honor, my name is Benjamin
21 Flowers, Jr. I'm Freddie's uncle. I was the one who
22 actually took Freddie the day that we went in to talk
23 with Detective Osborne. That day about 40 times I asked
24 Freddie, I said Freddie did you do this? Did you do
25 this? Freddie swore on my father and his grandmother

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 that he didn't. Now I understand and I respect the
2 jury's decision. I'm really sorry for the loss of
3 family. I just want you to know something about Freddie.

4 I believe that Carlos, just like the testimony said,
5 has played a part in ruining his life. They knew Freddie
6 was going to come into court and not say nothing about
7 what happened out there.

8 Just like the attorney said nothing is known about
9 what happened out there to this jury and to this
10 courtroom. But based on the evidence they had to make a
11 decision. But I would ask the City of Charleston, the
12 detectives and anybody else to pursue the truth ---

13 THE COURT: --- let me say this to you. I'm not
14 here to listen to you dispute what these 12 people said.
15 In this court's opinion he committed the murder, it's
16 been proven. He walked up and killed somebody
17 maliciously okay.

18 If you want to tell me something about him to
19 mitigate the crime I'll be glad to hear it. But don't
20 sit there and argue with the jury about whether he's
21 guilty or not guilty. That's over.

22 MR. FLOWERS: No I'm not, Your Honor.

23 THE COURT: That doesn't impress this court at all.

24 MR. FLOWERS: I understand.

25 THE COURT: Now if you want to tell me something

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 about your nephew I'll be glad to hear it if it's
2 constructive.

3 MR. FLOWERS: Yes, sir.

4 THE COURT: Okay?

5 MR. FLOWERS: Yes, sir.

6 THE COURT: Please proceed.

7 MR. FLOWERS: Yes, sir. I would hope you consider
8 the fact that Freddie just like the attorney has said has
9 some difficulties. And some of his difficulties has
10 given him -- made a victim of other boys in the
11 community, sir without a father; and he's had some
12 problems growing up in life. And I would just hope that
13 you will consider ---

14 THE COURT: --- well, what makes somebody go up to
15 a car and waste them?

16 MR. FLOWERS: You're asking me the question, sir?

17 THE COURT: Yes, sir?

18 MR. FLOWERS: In his community, in his situation if
19 he actually did that it was more than just him at that
20 car. It was more than him at that car. And the people
21 at that car made him the fall guy.

22 So yes, the pressure of his peers that testified
23 against him sir that came in here and cut deals, got out
24 of court and gave it to him could cause something like
25 that when a person that is not thinking on the same level

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 as everybody else, sir.

2 THE COURT: Okay.

3 MR. FLOWERS: Thank you.

4 THE COURT: Thank you so very much. Anybody else?

5 MS. FLOWERS: Hi. My name is Evette Flowers. I'm
6 Freddie's aunt.

7 THE COURT: His aunt? Yes, ma'am?

8 MS. FLOWERS: I just want to tell you about our
9 Freddie.

10 THE COURT: About what?

11 MS. FLOWERS: Freddie is a gentle giant.

12 THE COURT: Okay.

13 MS. FLOWERS: I know that the jury made the
14 decision. I have to respect that. And again, we
15 apologize to the family. But this guy, this young man,
16 he has always been an active part in our family. He's
17 had some challenges, various challenges in his life. We
18 understood that.

19 We tried to be there for him; always tried to be
20 there for him. And he has always tried to be there for
21 us. He has always been the guy that we can depend on to
22 help at the house to do anything we ask him to. He's not
23 that guy. He's a good hearted guy. I don't know what
24 happened. I'm not going to judge that. All I ask is for
25 lenience. Don't take him away from us for the rest of

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 his life. We love this boy. I don't know how I can do
2 without him ---

3 THE COURT: --- well unfortunately ---

4 MS. FLOWERS: --- I know that ---

5 THE COURT: --- unfortunately it's a tragedy on
6 both sides ---

7 MS. FLOWERS: --- I know it's a tragedy ---

8 THE COURT: --- his family as well as the victim's
9 family.

10 MS. FLOWERS: I just want you to just consider your
11 decision; that's all.

12 THE COURT: Okay. I want to thank you so very
13 much for your comments.

14 MS. FLOWERS: My name is Deidra Flowers and I'm his
15 sister. And I just wanted to say that the person that
16 did this -- but is not him. He really is a loving person
17 as everybody else has said in this courtroom.

18 It's been -- time -- my brother done took my own
19 daughter in as his daughter, as his child and has
20 protected her and loved her. He is not a bad person; he
21 really is not. And I'd ask you to please don't take him
22 away from my kids. Please. Please don't take him.
23 Please don't take him.

24 THE COURT: Thank you so very much. Anyone else?

25 MS. FLOWERS: Your Honor, I want to say ---

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 THE COURT: --- what's your name?

2 MR. FLOWERS: Jamal Flowers.

3 THE COURT: Okay Mr. Flowers. I'll be glad to
4 hear you. What's your relation to Mr. Freddie Flowers?

5 MR. FLOWERS: My cousin.

6 THE COURT: A cousin? Okay, I'll be glad to hear
7 you.

8 MR. FLOWERS: Justice is a deep word you know. To
9 what level -- Freddie is being the defendant I don't feel
10 like we looked at the situation from a wide screen you
11 know. Your Honor, I played in those streets you know.
12 And I know don't really apply to law but I'm going to
13 give you the other side of the book.

14 You've got a crew. These young kids today they go
15 out and they listen to this music and watch these images
16 that is portrayed on T.V. And when things go down they
17 are not prepared for the consequences that come from that
18 you know.

19 And I honestly believe, I'm not just saying it
20 because this is my cousin, that there is more to the
21 story and we just rest on that. The only story we had
22 was from a group of criminals themselves you know. So I
23 just don't see how it can be the only creditability to
24 get this young man's life behind bars on hearsay. We sat
25 -- I sat here all week and the only thing that has been

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 proven to me is that the statements have changed. And
2 one started at this direction and went this direction.
3 Freddie is the only one who gave the same story from the
4 time it happened. And I just don't see a fair defense
5 for him.

6 The only picture that has been painted from this
7 court from everybody in here is what came from
8 individuals out there and they walked scott free you
9 know.

10 THE COURT: Well, I don't know if they are going to
11 walk scott free or not. That's not for -- to decide
12 today. Anything else? Anything else Mr. Flowers?

13 MR. FLOWERS: No, sir.

14 THE COURT: All right. Thank you so very much.
15 Yes ma'am, your name?

16 MS. FLOWERS: My name is Tanya Flowers.

17 THE COURT: Speak up so I can hear you.

18 MS. FLOWERS: My name is Tanya Flowers.

19 THE COURT: And what's your relation to Mr. Freddie
20 Flowers?

21 MS. FLOWERS: I'm his mother.

22 THE COURT: Pardon?

23 MS. FLOWERS: I'm his mother.

24 THE COURT: Okay. I'll be glad to hear you, Ms.
25 Flowers.

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 MS. FLOWERS: I know my son didn't do that. I've
2 known it from the day they said he did do it. I know he
3 didn't do it.

4 THE COURT: Anything else?

5 MS. FLOWERS: There is things about this case that
6 hasn't really come out okay that's stating that he didn't
7 do it okay. And we were urging and urging for those
8 things to come out.

9 Freddie might have been around there at the time and
10 he might have heard the shots. But he was at -- and if
11 you look at the call logs it shows that he has been
12 calling his family all day to try to come get him. His
13 mindset wasn't on doing anything like that. His mindset
14 was trying to leave.

15 He called me a couple of times. I called back that
16 number because the fact that that's the only number I had
17 for him, okay. Then I called my sister to ask what
18 number he called me from or what was his -- the other
19 cell phone number. And you know it's just he did not do
20 it. He did not do it.

21 THE COURT: Okay. Thank you so very much. Mr.
22 Flowers, Mr. Freddie Flowers is there anything you'd like
23 to say ---

24 MR. DURANT: --- I don't want to interrupt but Mr.
25 Kennedy Smith has indicated that he would like to ---

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 THE COURT: --- All right. Just tell him to have
2 a seat right now. Mr. Freddie Flowers, is there anything
3 else you would like to tell -- say to the court?

4 MR. FLOWERS: [Inaudible]

5 THE COURT: Pardon? I want you to understand this
6 is the last opportunity you'll have to tell the court --
7 if you want to say something I'll be glad to hear it.

8 MR. FLOWERS: Other than being innocent I --

9 THE COURT: Pardon?

10 MS. FORD: He maintains his innocence, Your Honor.

11 THE COURT: Okay. That's fine. Anything else,
12 Ms. Ford?

13 MS. FORD: No, Your Honor.

14 THE COURT: You wanted to say something?

15 MR. SMITH: Yes, sir.

16 THE COURT: State your name, please?

17 MR. SMITH: Kennedy Smith.

18 THE COURT: All right. Mr. Smith I will be glad
19 to hear you.

20 MR. SMITH: To the court, to the jury, the police
21 department I would like to thank you for allowing the
22 system to work. I deeply appreciate it. I haven't fully
23 mourned my son's death and I feel bad. Now I can
24 completely finish mourning my son's death and put it in
25 the past. You know these are some big words but from a

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 religious standpoint I forgive Flowers for a religious
2 basis so that I can move on spiritually also. And it
3 took some counseling and some help to be able to try to
4 get to that state.

5 Yet also I'd like to say that I think the true
6 message is truly sent even though there are messages that
7 have been sent before I think we should send a message
8 that it is time for violence to truly stop. And I must
9 say in my community ---

10 THE COURT: --- well Mr. Smith if you can figure
11 out a way for me to do that I would love to do it because
12 I sit here day after day and look at it, okay.

13 MR. SMITH: Yes, sir.

14 THE COURT: But go ahead.

15 MR. SMITH: And one way to send a message is to send
16 a message with the sentence and the time.

17 THE COURT: Okay. Anything else?

18 MR. SMITH: No, sir.

19 THE COURT: Thank you so very much, Mr. Smith.
20 Solicitor, anything else from the State?

21 MR. DURANT: No sir, Your Honor.

22 THE COURT: Anything else from the defense?

23 MS. FORD: No, Your Honor.

24 THE COURT: All right. Thank you very much.

25 All right Mr. Flowers, indictment number 41 114

State v. Frederick Flowers (2011-GS-10-4314)
Volume 5 (of 5) - August 31, 2012

1 [phonetic] Murder. You are sentenced to the State
2 Department of Corrections for a period of 40 years. I'll
3 give you credit from June -- March 11, 2011.

4 Indictment number 4317 Possession of a Firearm
5 during the Commission of a Crime; I sentence you to the
6 State Department of Corrections for a period of 5 years.
7 Run that concurrent. Give you credit since March the
8 11th, 2011. Thank you very much.

9 Do y'all want -- I didn't ask you do y'all want your
10 10 days?

11 MS. FORD: I'm sorry?

12 THE COURT: Your motions?

13 MS. FORD: Oh. No, Your Honor.

14 THE COURT: Do you want to make them today?

15 MS. FORD: No, Your Honor.

16 THE COURT: Pardon?

17 MS. FORD: No, Your Honor.

18 THE COURT: Okay. Madame Forelady and ladies and
19 gentlemen of the jury y'all may go to the jury room to
20 collect your belongings.

21 Anything else?

22 MR. DURANT: Nothing from the State, Your Honor.

23 THE COURT: All right. Thank you very much.

24 MR. DURANT: Thank you.

25 [Whereupon, the jury trial concludes at 2:53 p.m.]

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Family Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Susan Mia Perron in the Court of General Sessions for Charleston County, South Carolina on the 31st day of August, 2012.

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

December 12, 2012



Joyce C. Rueger, CVR-M

Court Reporter

DBD20110301436

WITNESSES

David Osborne
Charleston City Police Department

AGENCY CASE NUMBER

1103225

ARREST WARRANT NUMBER

M640046

DATE OF ARREST

March 12, 2011

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

JUL 12 2011

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS1004314

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July 2011 Term

THE STATE

vs.

FREDERICK L. FLOWERS

DOB: [REDACTED]
B/M

Indictment for

MURDER

INDICT.DOT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on July 11, 2011, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about March 1, 2011, with malice aforethought, **FREDERICK L. FLOWERS** did kill and murder Javon Smith by means of shooting him, and that Javon Smith did die in Charleston County as a proximate result thereof on March 1, 2011; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

718

DBD20110301436

WITNESSES

David Osborne

Charleston City Police Department

AGENCY CASE NUMBER

1103225

ARREST WARRANT NUMBER

M640047

DATE OF ARREST

March 12, 2011

ACTION OF GRAND JURY

TRUE BILL

Date:

JUL 12 2011

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2011GS1004317

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July 2011 Term

THE STATE

vs.

FREDERICK L. FLOWERS

DOB: [REDACTED]

B/M

Indictment for

POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on July 11, 2011, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about March 1, 2011, the Defendant, **FREDERICK L. FLOWERS**, did possess a firearm or visibly display what appeared to be a firearm during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Frederick L. Flowers

AKA:

Race: BLACK Sex: M Age: 19DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: C01900869*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1004314A/W#: M640046Date of Offense: 3/1/2011S.C. Code §: 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

DuRant, D. Bruce1801
SC Bar#

Defendant

May 3rd
Attorney for Defendant13716
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 40 days/months/years ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. SINCE 3/1/11☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47:9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Ma Ben

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 3/1/12Sentence Date: 5/31/12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
Frederick L. Flowers

AKA:

Race: BLACK Sex: M Age: 19DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: SC01900869*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Possession of a Firearm or Knife During Commission of a Violent Crime

INDICTMENT/CASE#: 2011GS1004317A/W#: M640047Date of Offense: 3/1/2011S.C. Code §: 16-230490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

DuRant, D. BruceSC Bar# 1801

Defendant

MonteSC Bar# 13176WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: W/ 4.314☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 5406 3/11/11☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Whitney FosterCourt Reporter: Mica

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 3117Sentence Date: 3/31/11

AW 9

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonFrederick Flowers #352145
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2014-CP-10-5219
IN THE COURT OF COMMON PLEASFILED
AUG 26 PM 2:30
CLERK OF COURT
ARMSTRONG

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Corr Inst. 940 Wiscacky Hwy Bishopville, SC 29915
2. Name and location of Court which imposed sentence Charleston County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011651004314; Murder; 40 years
 - (b) 2011651004317; Possession of a firearm During commission of a Violent Crime; 5 years
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 31, 2012; 40 years 85%
 - (b) August 31, 2012; 5 years 85%

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Courts of appealed _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismiss back to lower courts _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAY 7, 2014 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA _____
- ii. NA _____
- iii. NA _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA _____
- (b) NA _____
- (c) NA _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial Counsel
 (b) Constitution Violation
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) petitioner will amend to question 10 c&d
 (b) later on to expound on the allegation
 (c) asserted in question

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. NA
 ii. NA
 iii. NA
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. NA
 ii. NA
 iii. NA
 iv. NA
 (c) the disposition thereof:
 i. NA
 ii. NA
 iii. NA

iv. May 7, 2014

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. None

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

None

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. NA

ii. NA

iii. NA

(b) the proceedings in which each ground was raised:

i. NA

ii. NA

iii. NA

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) None

(b) NA

(c) NA

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? X _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Mary A. Ford & Beattie T. Butler
- ii. both attorney from Charleston County
- iii. Public Defender Office, 101 Meeting Street,
- (b) the proceedings at which each such attorney represented you:
- i. Mary A. Ford represented me at trial
- ii. Beattie T. Butler represented me at trial
- iii. _____
19. State clearly the relief you seek in filing this application:
New trial Vacate Sentence
20. Are you now under sentence from any other court that you have not challenged?
None

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

EDR

SWORN to and subscribed before me this 21
day of Aug, 2014.

Debra Sims

(L.S.)

Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

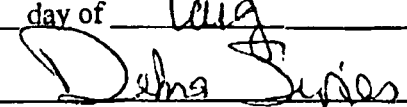
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

21 day of Aug, 2014.


Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-5219
	)	
Frederick Flowers, #352185,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 26, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the July 2011 term of the Charleston County Grand Jury for murder (2011-GS-10-4314) and possession of a weapon during the commission of a violent crime (2011-GS-10-4317). The Applicant was represented by Mary Ford, Esquire, and Beattie Butler, Esquire.

On August 31, 2014, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable J.C. Nicholson to confinement for a period of forty years for murder and five years for possession of a weapon. The Applicant's convictions are be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Benjamin Tripp, Esquire, of the Office of Appellate Defense. The Applicant's by the Court of Appeals

pursuant to Anders. State v. Flowers, No. 2014-UP-185 (S.C. Ct. App. May 5, 2014). The Remittitur was issued on June 20, 2014.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Constitutional violations.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent construes the Applicant's remaining claim as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 14, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-5219
	)	
FREDERICK FLOWERS, #352185,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
Bush Law Group, P.C.
3 Broad Street, Suite 450
Charleston, South Carolina 29401

DATED this the 14th day of April, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2014-CP-10-5219
4 FREDERICK FLOWERS,)
5 Applicant,)
6 vs.) Transcript of Record
7 THE STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: December 17, 2015
9 _____)

10 B E F O R E:

11 The Honorable Deadra L. Jefferson

13 A P P E A R A N C E:

14 James Kristian Falk
15 Attorney for the Applicant

16 James Rutledge Johnson
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter

INDEX

EXAMINATION

Witness Name	Page
MARY FORD	
Direct By Mr. Falk	4
Cross By Mr. Johnson.....	15
Re-Direct By Mr. Falk.....	16
Re-Cross By By Mr. Johnson.....	16
TANYA FLOWERS	
Direct By Mr. Falk	18
Cross By Mr. Johnson.....	24
Re-Direct By Mr. Falk.....	26
YEVETTE FLOWERS	
Direct By Mr. Falk	28
DAVETTA DAVENPORT	
Direct By Mr. Falk	30
Cross By Mr. Johnson.....	35
FREDERICK FLOWERS	
Direct By Mr. Falk	36
Cross By Mr. Johnson.....	42

(No exhibits marked.)

1 THE COURT: That takes us to Frederick Flowers. The
2 State ready to proceed?

3 MR. JOHNSON: We are, Your Honor.

4 THE COURT: Applicant ready to proceed?

5 MR. JOHNSON: We are.

6 THE COURT: This is Frederick Flowers vs. The State
7 of South Carolina, Case No. 2014-CP-10-5219. It's before the
8 Court on an application for post-conviction relief, which was
9 filed on August 26th of 2014. The State filed its return on
10 April 15th of 2015.

11 He was indicted on the offense of murder,
12 2011-GS-10-4314; possession of weapon during the commission
13 of a violent crime, 2011-GS-10-4317. He was represented
14 first chair by Mary Ford, Esquire, of the Public Defender's
15 Office, and Beatty Butler sat second charge. Proceeded to
16 trial on August 21st of 2014.

17 He was found guilty. He was sentenced by Judge
18 Nicholson to a period of confinement 40 years for murder and
19 5 years for the weapon to be served concurrently. Filed a
20 timely notice of appeal. He was represented and perfected in
21 that appeal by Benjamin Tripp of the Office of the Appellate
22 Defense. And that was affirmed in an unpublished opinion
23 2014-185 and dismissed on an Anders brief.

24 He has alleged ineffective assistance of counsel and
25 constitutional violations. And that was in the Court of

1 Appeals.

2 Is the State ready to proceed?

3 MR. JOHNSON: Yes, Your Honor.

4 THE COURT: Is the applicant ready to proceed,
5 Mr. Falk?

6 MR. FALK: We are, Your Honor.

7 THE COURT: You may call your first witness.

8 MR. FALK: We call Mary Ford to the stand.

9 MARY FORD,

10 having been duly sworn, testifies as follows:

11 THE CLERK: State your name and spell your last
12 name.

13 THE WITNESS: Mary Ford, F-o-r-d.

14 THE COURT: You may proceed, Mr. Falk.

15 DIRECT EXAMINATION

16 BY MR. FALK:

17 Q. Ms. Ford, you said that you were first chair in this
18 case?

19 A. Yes.

20 Q. What does that mean?

21 A. Just means that I was the attorney assigned to
22 Mr. Flowers. I'm the one who always dealt with him. We
23 typically will have someone else from the office sit second
24 chair with us. Sometimes they play a more active role,
25 sometimes not. But Mr. Butler was my second chair and

1 assisted me if I needed any help.

2 Q. Were you responsible for all the decisions made
3 during this case?

4 A. Yes.

5 Q. Witnesses to call?

6 A. Yes.

7 Q. Trial strategies?

8 A. Yes.

9 Q. I just want to make sure we have the right person
10 here today. Why don't -- could you please sort of
11 characterize just briefly what this case was about?

12 A. Mr. Flowers was accused of killing someone or
13 shooting someone. Basically, the victim, his dad, had taken
14 him to a house in the West Ashley area. And when they got
15 there, there were a bunch of guys out in the yard. And,
16 supposedly, Freddie came up to the car and shot him while he
17 was sitting in the car. The father took off. They went to a
18 fire station and called the police. And he was dead at that
19 time.

20 Freddie's phone was actually found in the car with
21 the deceased. And so that's how police got Freddie's name.
22 The police talked to a lot of people. A lot of people
23 weren't really cooperating or would say different things.
24 Ultimately, about a week or so later after the shooting, the
25 father, Kennedy Smith, of the victim, he identified Freddie

1 from a photo lineup, and Freddie was arrested.

2 Q. Mr. Kennedy's identification, did you have any
3 concerns about the validity of that?

4 MR. JOHNSON: Objection, Your Honor. That was the
5 subject of the Anders brief. That was already dealt with in
6 the Court of Appeals and should not be subject of this
7 post-conviction relief hearing.

8 MR. FALK: I'm not raising that. I just wanted to
9 draw the point that it's my impression that -- if I can just
10 finish my question. It's my point that this was a case that
11 was kind of a close-call, because there was considerable
12 doubt as to the validity of these confessions because people
13 were changing their testimony.

14 THE COURT: I guess I'm trying to figure out what
15 it's relevant to.

16 MR. FALK: Because I think there's witnesses that
17 could have been called, that might have tipped the scale and
18 said this was a close case.

19 THE COURT: Why not ask that question? Be direct.

20 MR. FALK: Thank you, Your Honor.

21 THE COURT: Shortest way between A and B. You may
22 proceed.

23 BY MR. FALK:

24 Q. Did you feel that this was a close case?

25 A. To an extent. There were other witnesses ultimately

1 that the State called, supposed friends of Freddie's. And
2 they testified at trial identifying Freddie. So it wasn't
3 just Mr. Smith's identification. However, those witnesses
4 had serious credibility issues. Most of them actually did
5 not come up with the statements pointing to Freddie until a
6 week or two before the trial.

7 The State really -- they weren't really able to have
8 those -- talk to those people, or they wouldn't say -- they
9 basically didn't point to Freddie the way they did until
10 right before the trial. So I think everybody, including
11 Mr. Smith, they all had serious credibility issues, each and
12 every one of them.

13 Q. And who did you call to testify?

14 A. No one.

15 Q. During the course of your investigation, did anybody
16 speak with Tanya Flowers?

17 A. Yes, I spoke to her. I spoke to the family a lot
18 throughout my representation. So I know I spoke to her on
19 the phone. I don't believe my investigator ever spoke to her
20 as a witness, but I know I spoke to her multiple times.

21 Q. And as part of that conversation, did she have --
22 did she tell you anything -- I see Mr. Johnson getting ready
23 to jump up. Did she tell you anything that you thought would
24 be useful in her -- did she tell you anything that you
25 thought may have been useful in your defense of Mr. Flowers?

1 A. No.

2 Q. You had spoken earlier that there was a telephone
3 found in the car.

4 A. Yes.

5 Q. The issue of the telephone was -- in this case, was
6 it not -- weren't there several telephones?

7 A. Yes. Well, there were several telephones tied to
8 Freddie. And, I mean, the phone records show that they were
9 calling each other at some points during that day. And so
10 one point I tried to make was that even though the phone and
11 the car was tied to Freddie, he couldn't have been in
12 possession of both phones. And it would have been very easy
13 for one of the other guys to have the phone. And I tried to
14 argue that that didn't directly tie Freddie to the shooting
15 because of that.

16 Q. If you had a witness who would have said, "I was on
17 the phone with Freddie at the time of the shooting," would
18 that have been something you thought was relevant to
19 Mr. Flower's defense?

20 A. Yes, depending on what they said, what the
21 conversation was.

22 Q. Did you ever talk to Mrs. Flowers about
23 conversations she had with Freddie the day of the shooting?

24 A. I don't recall her ever mentioning anything of that
25 nature. I think when she talked to police, she just

1 indicated that the phone had been stolen. That was what the
2 family was saying when the police first spoke to them. They
3 said that the phone that was found in the car had been stolen
4 before this date.

5 Q. Did Mr. Flowers ever talk to you about him being on
6 the telephone with his mother at the time of the shooting?

7 A. No, I do not recall that.

8 Q. What was your decision, not to call any witnesses?

9 A. I did not feel that we had any witness who would be
10 helpful enough. You know, I think we attacked each and every
11 person, their credibility. And so that was our defense,
12 attacking that. And, you know, I had the case and
13 everything. I didn't feel like -- we had talked to multiple
14 family members, and I didn't feel like any of them were solid
15 enough to clear Freddie, so to speak. And, obviously, since
16 they were family members, there was some bias. And Freddie
17 wasn't going to testify. So we just made the decision to not
18 put up a case, to preserve final argument.

19 Q. Did you ever have an opportunity to talk to Yvette
20 Flowers?

21 A. Yes, I talked to her more than the mother.

22 Q. And what is her relationship to my client,
23 Mr. Flowers?

24 A. She's the aunt.

25 Q. Were any of your conversations with Yvette Flowers

1 concerning some of the multiple telephones in this case?

2 A. I can't recall specifically if we talked about the
3 telephones or not.

4 Q. Did she ever give you any -- did she ever provide
5 any information as to who owned some of these phones?

6 A. I can't recall that.

7 Q. You did speak with -- you did speak to Yvette
8 Flowers; is that correct?

9 A. Yes.

10 Q. And your opinion -- why did you not call her to
11 testify?

12 A. Well, she, as far as my understanding, she didn't
13 have anything to offer as far as the case. She wasn't around
14 or anything like that. I think the issue with the phones as
15 well, even though the family had indicated it had been
16 stolen, there were calls around the time of the incident to
17 and from family members. And so that's one of the things
18 that the police were relying on.

19 Q. Would it have been helpful to explain who was on the
20 phone, if you knew the owners of the phones?

21 A. I don't -- I mean, I don't know if that would have
22 been helpful or not.

23 Q. Did you ever have an opportunity to talk to Davetta
24 Davenport?

25 A. My investigator did, yes.

1 THE COURT: Can you repeat that name, please?

2 MR. FALK: I don't have --

3 THE COURT: What's the first name?

4 MR. FALK: I just have D-a-v-e-t-t-a.

5 THE COURT: I just needed to make sure I heard you
6 correctly. You may continue.

7 BY MR. FALK:

8 Q. You said your investigator did?

9 A. Yes.

10 Q. Did she provide any information that you felt would
11 have been helpful for Freddie's defense, Mr. Flowers's
12 defense?

13 A. No. It was my understanding from the beginning
14 Freddie had indicated to the police that his uncle lived down
15 the street from where the shooting occurred. And he told the
16 police that he was outside during the time at his uncle's
17 house and heard the shooting. And then afterwards, his
18 cousin, Davetta, picked him up and took him to North
19 Charleston. So it was just my understanding at the time that
20 she picked him up after the fact and wasn't a direct witness
21 to anything involving the shooting or his whereabouts during
22 the shooting.

23 Q. Do you recall what time of day the shooting was?

24 A. She indicated to my investigator -- he got a
25 statement from her. It was actually just a few weeks before

1 the trial. And she indicated it was about -- she said it was
2 4:30 when she picked him up.

3 Q. Do you recall about the time that the shooting
4 actually occurred?

5 A. My understanding, I think the shooting happened
6 sometime around 4:30, maybe afterwards.

7 MR. FALK: Okay. Your Honor, if I can direct you,
8 let me show you page 127 of the record of appeal. It's 127,
9 Volume 105. The pagination in this transcript is a little
10 problematic.

11 BY MR. FALK:

12 Q. After reading that page, could you just skip through
13 that page?

14 A. Yes. It indicates that the police were called. So
15 I assume that is once the father got to the fire station, so
16 that would have been a few minutes after the shooting. And
17 that was at 4:48 in the afternoon.

18 Q. Thank you. So had Davetta picked him up at 4:30,
19 that would have been prior to the shooting?

20 A. Yes.

21 Q. Did you -- did you ever -- did they ever put the
22 State on notice that they intend to call alibi witnesses in
23 this case?

24 A. No. Even though Davetta mentioned 4:30, it was
25 never my understanding that she picked him up before the

1 shooting. And when we got that statement, it was more than a
2 year later. So I can't even remember if I considered that to
3 be an issue or not. I don't know over a year later if she
4 would have known the exact time. But, yes, if she had been
5 100 percent sure, then, yes, that would have been important.

6 Q. But prior to going to trial, you had never advised
7 the solicitor of the potential alibi witnesses?

8 A. Correct.

9 Q. I believe you also spoke to a Carlos; or is there a
10 Cornelius in this case?

11 A. Cornelius Jenkins, yes.

12 Q. And what was his relationship with this case?

13 A. He was one of the -- supposedly, he was one of the
14 numerous people outside at the time. The police -- early on,
15 he was charged with obstruction of justice for supposedly
16 lying about just certain things early in the investigation.

17 Q. Did you ever have a conversation -- excuse me. Did
18 the investigator ever find out whether or not Cornelius had a
19 conversation with one of the witnesses, a telephone
20 conversation with one of the State's witnesses?

21 A. I believe, yes. I remember that coming up at some
22 point.

23 Q. That he had actually called Freddie's phone; isn't
24 that correct? Cornelius had called Freddie's phone?

25 A. No, I'm not sure -- at what point? I'm not sure

1 about that.

2 Q. So did Tanya Flowers ever tell you she was on the
3 phone with Mr. Flowers at the time of the shooting?

4 A. I do not recall her ever telling me that.

5 Q. If -- would that have been important testimony in
6 this case?

7 MR. JOHNSON: Objection. This has been asked and
8 answered, Your Honor.

9 THE COURT: Please restate the question.

10 MR. FALK: I will withdraw the question.

11 BY MR. FALK:

12 Q. Who was responsible for reviewing the jury charges
13 in this case?

14 A. I was the primary attorney, of course. So,
15 ultimately, it was my responsibility. But in the trial,
16 Mr. Butler actually was handling most legal issues like that.
17 So I think I relied on him primarily for that.

18 Q. Do you recall whether or not there was a jury
19 instruction in this case about malice presumed for use of the
20 gun?

21 A. I do not recall.

22 Q. So you didn't object to that charge?

23 A. No.

24 MR. FALK: I have no more questions at this time.

25 THE COURT: You may proceed.

1 MR. JOHNSON: May it please the Court, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q. Ms. Ford, I will go in reverse order. Concerning
5 the malice charge, was there ever a self-defense claim in
6 this case?

7 A. No. We were arguing that it wasn't Freddie at all.

8 Q. And so then there wouldn't have been any sufficient
9 legal provocation to get a voluntary manslaughter charge in
10 the case if you are arguing it wasn't him at all? There was
11 no reason to ask for that charge?

12 A. Correct.

13 Q. And would you agree with me that in the transcript,
14 Mr. Smith testifies that the shooting happened in-between
15 four o'clock and 4:30?

16 A. I don't know. I don't recall that part.

17 MR. JOHNSON: Your Honor, I am pointing you to page
18 76 of the first part of the transcript, line 20.

19 BY MR. JOHNSON:

20 Q. And so my follow-up question would be, if it was
21 around 4:15, that would destroy Ms. Davenport's alibi
22 testimony, would it not, that she picked him up at 4:30?

23 A. I just know that she said she picked him up at 4:30
24 when my investigator spoke to her.

25 Q. Okay. And would you agree with me that no less than

1 five witnesses put Mr. Flowers at the scene approaching the
2 car and shooting the gun?

3 A. Yes, I believe that's the case.

4 Q. Specifically, Carlos Jones?

5 A. Yes.

6 Q. And he testified that he saw Mr. Flowers walk up
7 with a gun behind his back, approaches the car, and then he
8 sees him fire four or five different times?

9 A. Yes, I believe that was his testimony.

10 MR. JOHNSON: Okay. That's all the questions I
11 have. Thank you, Ms. Ford.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. FALK:

15 Q. The five witnesses that testified, did most of
16 them -- were their stories ever changing?

17 A. Each and every one of them changed their stories at
18 some point, including the victim's father, Mr. Smith.

19 MR. FALK: Thank you. No further questions.

20 MR. JOHNSON: One follow-up, Your Honor, if you
21 would.

22 THE COURT: You may proceed.

23 RECROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q. Did you cross-examine each and every witness?

1 A. Yes.

2 THE COURT: Thank you.

3 Anything further, Mr. Falk?

4 MR. JOHNSON: We have no more questions for this
5 witness.

6 THE COURT: Any objection to the witness being
7 excused, from the applicant?

8 MR. FALK: No, Your Honor.

9 THE COURT: From the State?

10 MR. JOHNSON: No, Your Honor.

11 THE COURT: Ms. Ford, you are excused.

12 (Whereupon the witness is excused.)

13 THE COURT: You may proceed.

14 Who is your next witness?

15 MR. FALK: We are calling Tanya Flowers to the
16 stand.

17 TANYA FLOWERS,

18 having been duly sworn, testifies as follows:

19 THE CLERK: If you could state your first and last
20 name and spell your last name, please.

21 MS. FLOWERS: My first name is Tanya. My last name
22 is Flowers. My first name is spelled T-a-n-y-a. My last
23 name is spelled F-l-o-w-e-r-s.

24 THE COURT: Thank you, ma'am. If you can come
25 closer to the microphone.

1 And, Mr. Falk, you may proceed when you are ready.

2 DIRECT EXAMINATION

3 BY MR. FALK:

4 Q. Ms. Flowers, can you tell me your relationship to my
5 client?

6 A. That's my son.

7 Q. Okay. Did you ever speak with any investigators
8 from the Solicitor's Office before your son's trial?

9 A. From the --

10 Q. From the Prosecutor's Office before trial?

11 A. No.

12 Q. Did you ever speak with any investigators from the
13 Public Defender's Office?

14 A. Yes.

15 Q. You did speak with them; is that correct?

16 A. The -- I spoke to the public defender.

17 Q. Okay. Did you tell her any information about some
18 of the telephones that were at issue in this case?

19 A. Well, I spoke to her and I told her about my phone
20 line.

21 Q. Did you tell her anything about any of Freddie's
22 phones, Mr. Flowers's phones?

23 A. The phones that my sister gave him?

24 Q. Yes.

25 A. Yes.

1 Q. Did you tell her about what happened to one of
2 his -- did you know that his telephone was found in the car?

3 A. Okay. The phone that was found in the car at the
4 time of this murder situation back then was stolen. Freddie
5 had got jumped.

6 MR. JOHNSON: Objection, Your Honor, personal
7 knowledge.

8 THE COURT: Would you like to respond to the
9 objection?

10 MR. FALK: No, Your Honor.

11 THE COURT: The objection is sustained. It's
12 hearsay. It's speculative. And there's no foundation for
13 the testimony unless you can establish a foundation of her
14 own personal knowledge of the event.

15 BY MR. FALK:

16 Q. Had you spoken to Freddie on his telephone before?

17 A. The one that my sister gave him.

18 Q. And had you ever spoken with him on the one that was
19 found in the car?

20 A. It was awhile ago, yes.

21 Q. And why did you stop speaking with him on that
22 phone?

23 A. Because that phone was --

24 Q. Did you have -- did he ever tell you what happened
25 to that phone?

1 A. Yes, he did.

2 Q. And what did he tell you?

3 MR. JOHNSON: Objection. That's self-serving
4 hearsay, Your Honor.

5 THE COURT: Sustained. Hearsay. It's not a quick
6 statement offered for its truth.

7 BY MR. FALK:

8 THE COURT: Could I interrupt you one second,
9 Mr. Falk? Ma'am, if you could accommodate us. We have an
10 inmate that we have to have testify by telephone and the
11 Department of Corrections is really accommodating Mr. Falk's
12 request with another applicant. So I need to recess your
13 testimony for a moment so that we can take care of that. And
14 then we are going to resume your testimony. We appreciate
15 your time. We don't take your time for granted, but I
16 appreciate you accommodating us. I remind you, you are still
17 under oath. Please don't discuss your testimony with anyone
18 while we take this very brief break. Should only be about
19 five or ten minutes.

20 If you want, you can remain in the gallery while we
21 take care of that. If you would step down for me.

22 (Whereupon, a recess takes place.)

23 THE COURT: Are we ready to resume with Ms. Flowers?
24 Ma'am, if you will retake the stand.

25 BY MR. FALK:

1 Q. I asked you some questions earlier about a telephone
2 that you said that my client had, telephone number, that you
3 quit calling him on that number.

4 A. Uh-huh.

5 Q. And without knowing -- without you saying what
6 happened to the phone, why did you quit -- why did you start
7 calling him on another number? Did you think if you called
8 him on that other number, he would answer the phone?

9 A. If I called him on the one, on the number --

10 Q. On the first phone, yeah.

11 A. He wouldn't answer the phone.

12 Q. Okay. Did you think it was no longer in his
13 possession?

14 A. Yes.

15 Q. Thank you. Do you recall being on the phone with
16 him late in the day on -- the day of the shooting, in the
17 afternoon?

18 A. I think he did call me and let me know that Dee Dee
19 had picked him up.

20 MR. JOHNSON: Objection to hearsay, Your Honor.

21 THE COURT: Sustained. Hearsay.

22 Ma'am, you can't tell us what anybody else told you.
23 You can only say what you did as a result of the
24 conversation.

25 THE WITNESS: Okay. I'm trying to comprehend.

1 THE COURT: You may proceed with your next question,
2 Mr. Falk.

3 BY MR. FALK:

4 Q. Did you have any conversations with your son about
5 the -- a gunshot that he heard?

6 A. Yes, I did.

7 MR. FALK: I think, Your Honor, I can ask this
8 question because it's an excited utterance.

9 THE COURT: It's not an excited utterance unless you
10 can establish that.

11 BY MR. FALK:

12 Q. When he talked to you about the gunshot, what was
13 his -- he talked to you about hearing a gunshot; is that
14 correct?

15 A. Yes, he did.

16 Q. And what was his mood at the time?

17 A. Shock.

18 Q. And when he talked to you about the gunshot, was he
19 using -- was he talking faster than normal?

20 A. No.

21 Q. But he sounded like he was shocked?

22 A. He was like --

23 THE COURT: You can't say what he said, ma'am.

24 THE WITNESS: Can you repeat the question?

25 BY MR. FALK:

1 Q. You said he sounded like he was in shock? Did he
2 sound surprised that he heard a gunshot?

3 A. It was surprise, yeah.

4 Q. Did he sound excited or agitated?

5 A. He's -- he wanted to get out of there all day.

6 Q. Okay.

7 MR. FALK: Your Honor, I think I've established he
8 sounded excited.

9 THE COURT: No, you haven't. You have to establish
10 that she was in close proximity of what happened. Describing
11 his mood in and of itself is not enough. Hearing a gunshot
12 in and of itself is not an excitable situation. Depends what
13 neighborhood you are in. She can't say that he was excited
14 because of a gunshot. She's not qualified to speculate on
15 her part. She can describe his tone of voice. She can
16 describe what she perceived his mood to be, because that's
17 her child. But she can't say it's because of a gunshot
18 because it's speculative. He's the only person that can say
19 what he was excited about, if, in fact, he was excited.

20 Because in some neighborhoods, hearing gunshots is
21 not something you become excited about, especially Melrose.
22 I'm trying to think of all my neighborhoods I hear murder
23 cases in. In fact, witnesses testify that gunshots are
24 regular, routine, and they don't pay attention to them. And
25 it's not something that excites them.

1 So you would have to establish that it is an excited
2 event which caused his statement to be inherently reliable to
3 fit within the excited utterance exception. And I haven't
4 heard anything up to this point that qualifies as that. But
5 she can describe, based on her rational perception, what she
6 perceived his tone of voice to be and otherwise.

7 But with that exception, your objection is
8 sustained. It's speculative unless you can establish
9 appropriate foundation for the questions, that it is based on
10 her personal knowledge and her rational perception.

11 MR. FALK: I have no further questions.

12 THE COURT: Any questions for the witness,
13 Mr. Johnson?

14 MR. JOHNSON: Just briefly, Your Honor.

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q. You are the defendant's mother?

19 A. Yes, I am.

20 Q. And you were not at the incident location when the
21 gunshots were shot, were you?

22 A. No. I was on the phone.

23 Q. And you were not with your son when the gunshots
24 were fired, correct?

25 A. No, I was on the phone with him.

1 Q. But you were not physically with your son?

2 A. No, sir.

3 Q. And so your statement is that on the phone, he
4 sounded excited or he sounded shocked, concerned, surprised,
5 correct?

6 A. Well --

7 Q. That was your testimony, that he sounded surprised?

8 A. Yes. I mean, yes. I may not have used quite the
9 right word. It was like, you know -- I mean, he said -- I'm
10 trying not to say what he said.

11 Q. But he sounded surprised, is what your testimony
12 was?

13 A. Yeah, yeah.

14 Q. And that was on March 2nd, 2011?

15 A. Uh-huh.

16 Q. Ma'am, what did you have for breakfast on Sunday?
17 What did you have for breakfast on Sunday?

18 A. On Sunday? Cereal.

19 Q. And what did you have the day before?

20 A. Nothing.

21 Q. And then what did you have Friday night for dinner?

22 A. Friday night? Oysters.

23 Q. What did you have November 2nd for lunch? You don't
24 remember? But you remember almost five years ago a phone
25 conversation with your son, right?

1 A. Yes, sir.

2 MR. JOHNSON: No further questions, Your Honor.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MR. FALK:

6 Q. What did you have for breakfast the day your child
7 was born?

8 A. That child?

9 Q. Yes.

10 What hospital did you go to?

11 MR. JOHNSON: The witness should answer the
12 question, Your Honor.

13 THE COURT: Is there an objection?

14 MR. JOHNSON: Yes, there's an objection. Please let
15 the witness finish the question.

16 THE COURT: If you can answer the question yes or no
17 or I don't remember.

18 MR. FALK: I will withdraw the question.

19 THE COURT: Question is withdrawn. You may ask your
20 next question.

21 BY MR. FALK:

22 Q. Do you recall the day that your son got arrested?

23 A. Yes, sir.

24 Q. Was that an eventful day in your life?

25 A. Yes, sir.

1 Q. Are you married?

2 A. No, sir.

3 Q. Do you remember events on special days in your life?

4 Can you remember special days in your life?

5 A. Most of them.

6 Q. Do you remember the day your child was born?

7 A. Yes, sir.

8 Q. Do you remember where you were when you heard about
9 the shootings at the church?

10 A. Yes, sir. I think I was at work.

11 MR. FALK: No further questions.

12 THE COURT: Any objection to the witness being
13 excused, from the applicant?

14 MR. FALK: No, Your Honor.

15 THE COURT: From the State?

16 MR. JOHNSON: No, Your Honor.

17 THE COURT: Ma'am, you are excused.

18 You may proceed, Mr. Falk.

19 MR. FALK: We would like to call Yvette Flowers.

20 YVETTE FLOWERS,

21 having been duly sworn, testifies as follows:

22 THE CLERK: If you could state your first and last
23 name and spell out your last name, please.

24 THE WITNESS: Yvette Teresa Flowers, F-l-o-w-e-r-s.

25 THE COURT: You may proceed.

1 MR. FALK: For the record, I wanted to note that my
2 witnesses have been sequestered.

3 DIRECT EXAMINATION

4 BY MR. FALK:

5 Q. How do I spell your first name?

6 A. First name is Y-v-e-t-t-e, Yvette.

7 Q. Did the public defender ever talk to you about this
8 case?

9 A. Yes, she did.

10 Q. And did you also talk to their investigator?

11 A. Yes, I did.

12 Q. Did you have any information for her about some of
13 the telephones that were at issue in this case?

14 A. Yes, I did.

15 Q. What was that information?

16 A. That information was that the phone that Freddie had
17 that day, it was a phone that I gave him. And the phone
18 that they found --

19 Q. I don't want you to speculate what happened to
20 Freddie's first phone, but go on.

21 A. He had a phone that I gave him.

22 Q. And did he already have a phone at the time? Why
23 did you give him a phone?

24 A. Because he lost his other phone.

25 Q. Okay. Or he was no longer in possession of it?

1 A. He was no longer in possession of it.

2 Q. You don't know what happened to his phone?

3 A. No, I don't.

4 Q. And you pay the bills on his phone?

5 A. Yes, I did.

6 Q. And did you have any -- is your bill -- does it show
7 who was on the telephone? Does it show who the calls are
8 from and who the calls are to?

9 A. Yes.

10 Q. Did you ever look at that bill?

11 A. Yes, I did.

12 Q. Did you ever look at that bill regarding the day of
13 the shooting?

14 A. Yes, I did.

15 Q. And did you ever provide that phone bill to the
16 Pubic Defender's Office?

17 A. I did.

18 Q. Do you recall whether or not there were any
19 conversations on that phone? I mean, do you recall if there
20 were any conversations between the phone that you thought he
21 was no longer in possession of and with the new phone that
22 you provided him?

23 A. Well, she said that --

24 MR. JOHNSON: Objection to hearsay.

25 THE COURT: Sustained. Hearsay. And she

1 wouldn't -- only person that could testify to that would be a
2 phone company representative with a certified copy of the
3 bill.

4 MR. FALK: No further questions.

5 MR. JOHNSON: No questions from the State, Your
6 Honor.

7 THE COURT: Any objection to the witness being
8 excused from the applicant?

9 MR. FALK: None, Your Honor.

10 THE COURT: From the State?

11 MR. JOHNSON: No, Your Honor.

12 THE COURT: Ma'am, you are excused.

13 (Whereupon the witness is excused.)

14 THE COURT: You may call your next witness.

15 MR. FALK: I call Davetta Davenport.

16 DAVETTA DAVENPORT,

17 having been duly sworn, testifies as follows:

18 THE CLERK: If you could state your first and last
19 name and spell out your last name, please.

20 THE WITNESS: Davetta Davenport,
21 D-a-v-e-n-p-o-r-t.

22 THE COURT: And please spell your first name.

23 THE WITNESS: D-a-v-e-t-t-a.

24 THE COURT: You may proceed, Mr. Falk.

25 DIRECT EXAMINATION

1 BY MR. FALK:

2 Q. Ms. Davenport, are you related to my client?

3 A. Yes, sir.

4 Q. And how are you related?

5 A. That's my cousin.

6 Q. Thank you. Did you ever speak with --

7 (Whereupon, a cell phone goes off in the courtroom.)

8 THE COURT: If there are any cell phones on, they
9 need to be turned off, not vibrate, off. If I hear
10 vibrations, the deputy will take it and it will not be
11 returned to you.

12 You may proceed.

13 BY MR. FALK:

14 Q. Did you have any conversations with the Pubic
15 Defender's Office?

16 A. Did I have a conversation with them?

17 Q. Did anybody from the Pubic Defender's Office talk to
18 you about Mr. Flowers's case?

19 A. A little bit. She was supposedly to get back with
20 me so I could actually tell her my side of what happened and
21 what I wanted to say.

22 Q. Have you ever spoken with Mary Ford before?

23 A. No, ma'am -- no, sir.

24 Q. Have you ever spoken with this lady here?

25 A. Yeah.

1 MR. FALK: Okay. And I guess the record will
2 reflect that I was pointing to Mrs. Ford.

3 BY MR. FALK:

4 Q. What kind of conversations did you have with her?

5 A. She was asking me -- because Freddie told them that
6 I was the one that picked him up that day from [REDACTED] [REDACTED]
7 Drive.

8 Q. So you had information for her about where Freddie
9 was?

10 A. Yes, sir.

11 Q. And you had information as to -- did you say you
12 picked him up?

13 A. Yes, sir.

14 Q. And where did you pick him up from?

15 A. [REDACTED] Drive.

16 Q. And do you recall where the shooting took place in
17 this case?

18 A. No, sir.

19 Q. Was it -- do you know if it was at 1254 Wimbee
20 Drive?

21 A. I knew that.

22 Q. The shooting was at -- was the shooting at the same
23 location you picked him up from?

24 A. No, sir.

25 Q. Do you know how far away it was?

1 A. No, sir.

2 Q. And you recall what time you picked him up?

3 A. I would leave -- I picked him up before, like,
4 before 5, 5:30. I don't remember what actual time, but it
5 was before 5, 5:30.

6 Q. So might have been before 5?

7 A. Right.

8 Q. And had you had any other conversations with him
9 that day?

10 A. Yes, earlier. He was calling my phone earlier that
11 day asking if he could --

12 MR. JOHNSON: Objection to hearsay.

13 THE COURT: Sustained. Hearsay. Ma'am, you cannot
14 say what anyone said to you. You can only say what you did
15 as a result of the conversation.

16 BY MR. FALK:

17 Q. Have you had conversations with him earlier?

18 A. Yes.

19 Q. Why did you wait until five o'clock to pick him up,
20 or 4:30 to pick him up?

21 A. Because that day, I was supposed to be at work, but
22 I was sick. So I've been -- I was pushing it off all day
23 that day because I wasn't feeling well.

24 Q. Okay. And why do you think it was -- when do you
25 think you picked him up? You said -- you testified earlier

1 you said it was before 5 or 5:30; is that correct?

2 A. Yes.

3 Q. Why do you think that?

4 A. Because by the time we got back to Ashley Phosphate
5 where I was living at, we turned on the news, and it was
6 breaking news that someone got shot in West Ashley.

7 Q. And how far away is your house? I'm sorry. You
8 said you drove to West Ashley?

9 A. I drove West Ashley, back to Ashley Phosphate.

10 Q. Where is [REDACTED] Drive?

11 A. West Ashley.

12 Q. And where do you live?

13 A. At that time I was living off of Ashley Phosphate.

14 Q. Okay. And that's where you drove to; is that
15 correct?

16 A. Yes, sir.

17 Q. And that's where you saw the news?

18 A. Yes.

19 Q. How far a drive is that, about?

20 A. That's like maybe 25-, 30-minute drive.

21 Q. Okay. Have you ever picked him up before?

22 A. From 1250?

23 Q. Yes.

24 A. Yes, sir.

25 Q. And without telling me what he said, were there

1 several calls between you and him that day?

2 A. Yes?

3 MR. FALK: No further questions.

4 THE COURT: Mr. Johnson, any questions for the
5 witness?

6 MR. JOHNSON: Briefly, Your Honor.

7 THE COURT: You may proceed.

8 CROSS-EXAMINATION

9 BY MR. JOHNSON:

10 Q. You are saying that you picked Mr. Flowers up 5 to
11 5:30, and drove back to your house in North Charleston,
12 correct?

13 A. No. What I said was, I believed I picked him up
14 before 5 or 5:30, because by the time he got to my house on
15 Ashley Phosphate, it was breaking news 5 to 5:30 about a
16 shooting in West Ashley.

17 Q. Okay. And the news comes on at 6 o'clock, right?

18 A. Yes.

19 MR. FALK: Objection.

20 A. 6 -- 4:30, 5, 5:30 and 6.

21 THE COURT: Withdraw the objection?

22 MR. FALK: Withdraw the objection.

23 MR. JOHNSON: No further questions, Your Honor.

24 Thank you.

25 THE COURT: Any redirect?

1 MR. FALK: No, Your Honor.

2 THE COURT: Any objection to the witness being
3 excused, from the State?

4 MR. JOHNSON: No, Your Honor.

5 THE COURT: From the applicant?

6 MR. FALK: No, Your Honor.

7 THE COURT: Ma'am, you are excused. And we need to
8 take a break in the testimony because Mr. Pennington is done
9 talking with the other witness. So if y'all could take
10 Mr. Flowers and bring back Mr. Brown.

11 (Whereupon, a recess takes place.)

12 THE COURT: All right. Ready?

13 MR. FALK: Yes. Your Honor, at this time, I would
14 call my client to testify.

15 THE COURT: Sir, stand at counsel table and raise
16 your right hand to be sworn.

17 FREDERICK FLOWERS,
18 having been duly sworn, testifies as follows:.

19 THE COURT: Sir, state your name for the record.

20 THE WITNESS: Frederick Flowers.

21 THE COURT: Okay. You may proceed, Mr. Falk.

22 DIRECT EXAMINATION

23 BY MR. FALK:

24 Q. Mr. Flowers, were you represented by Mary Ford in
25 this case?

1 A. Yes, sir.

2 Q. And in your discussions with Ms. Ford, did you ever
3 tell her to speak with your mother?

4 A. Yes, sir.

5 THE COURT: Sir, I need to you speak up, please,
6 sir.

7 THE WITNESS: Yes, sir.

8 BY MR. FALK:

9 Q. And why did you want her to speak with your mother?

10 A. I spoke to her about coming to get me from West
11 Ashley. And we call my aunt and my cousin, everybody come
12 get me. I didn't feel like being around early in the day, so
13 I went to my uncle's house on Wimbee Drive. Told them I
14 would be there.

15 Q. Okay. Did you tell her anything about -- were you
16 on the phone with her?

17 A. Yes, sir.

18 Q. Were you on the phone with her when --

19 A. I was.

20 Q. -- at the time of the shooting?

21 A. I'm not sure that was the time of the shooting,
22 because they had been doing construction work and might have
23 been a nail gun that I heard. So I'm not sure if it was the
24 shots or not. I told her it was shots. It sounded to me,
25 but later on, I found out they had been doing work on --

1 could have been a nail gun being shot. So that's what it
2 might have been.

3 Q. But you asked her to talk to your mother about that
4 conversation?

5 A. Yes, sir.

6 Q. And that possibly you were on the phone with her
7 when the gunshots went off?

8 A. Yes, sir.

9 Q. Did you ever ask her to speak with Yvette Brown --
10 Yvette Flowers?

11 A. Yes, sir.

12 Q. And she is?

13 A. My aunt.

14 Q. And there was some testimony about a telephone?

15 A. Yes, sir.

16 Q. You had a telephone that was found in the car; is
17 that correct?

18 A. Yes, sir.

19 Q. And did you ever lose possession of that telephone?

20 A. Yes. It got robbed.

21 Q. Okay. So you lost that phone?

22 A. Yes, sir.

23 Q. And did you get another phone?

24 A. Yes, sir. My aunt replaced the phone.

25 Q. Okay. So you were talking on your aunt's phone?

1 A. Yes, sir..

2 Q. Did you ever know who had -- you said you got
3 robbed. Do you know who had that phone?

4 A. No. I had speculation who robbed me, but I never
5 found out who exactly did it. So I was never sure because
6 that type of stuff happens. When you on the street, that
7 type of stuff happens. So I took it as a loss. And that
8 really is my life, just trying. Kept doing to me, to be
9 honest with you.

10 Q. And are you related to Davetta Davenport?

11 A. Yes.

12 Q. Did you ever ask your public defender to talk to
13 her?

14 A. Yes, sir.

15 Q. And why did you want her to talk to -- why did you
16 want your public defender to talk to Ms. Davenport?

17 A. Because she can assure that I wasn't nowhere in West
18 Ashley at the time of this crime, the crimes. Got to her
19 house five o'clock, watched the news. I called her earlier
20 that day. She kept putting it off. So can't get me
21 between -- 4:30, we got to her house. There's traffic coming
22 up Ashley Phosphate, traffic around that time. So five
23 o'clock, 5:10, we got to her house. I turn the news on.
24 That's first time I saw the news. So that was around that
25 time.

1 Q. And you got picked up at [REDACTED] Drive?

2 A. Yes, sir.

3 Q. And where was the shooting?

4 A. St. Clair Drive.

5 Q. How far away was that?

6 A. Two streets, like two streets, three streets above.

7 Q. Did Ms. Ford ever tell you why she didn't call those
8 people to testify?

9 A. No, sir.

10 Q. Did you want her to testify?

11 A. Yes, sir.

12 Q. Did you have a record prior to this?

13 A. Not really.

14 Q. And so why did you not testify on your own behalf in
15 this case?

16 A. Really, I don't know why I didn't testify. I should
17 have testified. I thought I was going to go same night,
18 because I don't know nothing. I don't know nothing. I don't
19 see something. If I don't know something, I'm not going to
20 say something I don't know about. That's how I feel, because
21 I had nothing to do with this crime. And I don't know
22 nothing what happened. I'm sorry for the loss, but I don't
23 know what happened.

24 Q. Had you testified, you could have said that?

25 A. Yes, sir.

1 MR. JOHNSON: Objection. Counsel is testifying
2 here.

3 THE COURT: Sustained. Leading. Rephrase.

4 BY MR. FALK:

5 Q. Prior to -- the judge advised you of your rights to
6 testify, right?

7 A. Yes.

8 Q. And your counsel talked to you about that?

9 A. I feel I didn't tell her --

10 MR. JOHNSON: Objection. This is nonresponsive.

11 THE COURT: I really can't understand what he's
12 saying. Sir, I need you to repeat your answer, please.

13 A. The reason I didn't testify --

14 Q. I just want to confirm. The judge went through and
15 asked you a bunch of questions about testifying.

16 A. Yes, sir.

17 Q. And you answered all those questions?

18 A. Yes, sir.

19 Q. And your lawyer advised you about testifying?

20 A. Yes, sir.

21 Q. And you didn't testify?

22 A. Yes, sir.

23 MR. FALK: No further questions.

24 THE COURT: Any questions for the witness?

25 MR. JOHNSON: Yes, ma'am.

1 May it please the Court, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q. Mr. Flowers, you remember that the judge asked you
5 about your right to remain silent or testify in this case?

6 A. Yes, sir.

7 Q. And you decided not to testify, right?

8 A. Yes, sir.

9 Q. And that was your decision, correct?

10 A. Yes, sir.

11 Q. Okay. So your testimony is that you were at your
12 uncle's house and then your cousin came and picked you and
13 take you from West Ashley to North Charleston, correct?

14 A. Yes, sir.

15 Q. And your testimony is that you were never at the
16 shooting incident scene, correct?

17 A. Yes, sir.

18 Q. So you convinced yourself that you were not at the
19 scene that day, right?

20 MR. FALK: I object. Argumentative. Object to the
21 form of the question. He said you convinced yourself.

22 THE COURT: I heard what he said. I'm thinking
23 about whether it's argumentative or not. I think under the
24 circumstances, this is an appropriate question. And he may
25 answer to the best of his knowledge. Watch the way you

1 phrase your questions, Mr. Johnson.

2 MR. JOHNSON: Yes, Your Honor.

3 THE COURT: Sir, you may answer the question.

4 THE WITNESS: How do you mean I convinced myself
5 that? How do you mean?

6 BY MR. JOHNSON:

7 Q. Yes or no? You believe that you were not at that
8 scene that day?

9 A. I know I wasn't at the scene that day.

10 Q. Will you agree with me that during your trial, five
11 witnesses testified they see you walk up to the car?

12 A. How can you say that? Officers said prior, before.

13 Q. Yes or no?

14 A. Yeah, they say that.

15 Q. You also have Mr. Smith, who was the victim's
16 father, identifies you as walking up to their car, correct?

17 A. He says --

18 Q. Yes or no, correct?

19 A. He stated --

20 THE COURT: Sir, you need to answer the questions.
21 Sir, you need to answer the questions yes or no, and then you
22 may explain your answer.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: But you have to answer yes or no, then
25 you may explain. But I need to you listen carefully to the

1 question that's being asked and only answer the question
2 that's being asked. Don't try to anticipate what he's trying
3 to get at, because you can't be in his mind and you don't
4 know. Don't be defensive. The whole purpose of this is for
5 you to have your say.

6 Mr. Falk, I need you to be seated.

7 Mr. Johnson, I need you to ask your question again.

8 Sir, I need you to listen carefully and answer yes
9 or no, and then you may explain.

10 THE WITNESS: Yes, Your Honor.

11 BY MR. JOHNSON:

12 Q. Mr. Smith, who was the victim's father, he
13 identified you as the man who walked up to their vehicle and
14 shot his son; is that not correct?

15 A. Yes, sir.

16 Q. And then you also have people who were out at the
17 scene that day who testified against you; is that not
18 correct?

19 A. Yes, sir.

20 Q. And including a Mr. Wescott, correct?

21 A. No, sir.

22 Q. Reggie Wescott did not testify that --

23 A. No --

24 Q. Let me finish my question, Mr. Flowers.

25 A. Go ahead, sir.

1 Q. Will you agree with me Mr. Wescott testified that
2 you were the only person who walked up to the car; in the
3 trial transcript?

4 A. Yes, sir.

5 Q. And that Michael Quarles (ph) also stated that you
6 walked up to the car and he heard two gunshots go off?

7 A. Yes, sir.

8 Q. And a Myesha Wyatt (ph) testified that you walked up
9 to the car and there was a conversation that you said you
10 called the victim to rob him, and that you fired the gun; is
11 that not in the trial testimony?

12 A. That's what he said, but --

13 Q. That was the testimony at trial?

14 A. That's what Myesha said. That's what he said.

15 Q. Correct. And that he saw the gun aimed at the
16 victim's -- the gun that was aimed at the victim was in your
17 hand, correct?

18 A. That's what he said.

19 Q. Yes? That is correct?

20 A. That ain't.

21 Q. Yes or no?

22 A. That is what he said.

23 Q. And Carlos Jones testifies that he sees you with a
24 gun behind your back as you approach the car and saw you
25 shoot the victim several times.

1 A. That's what he said.

2 Q. And that you were looking for your phone and could
3 not find your phone, correct?

4 A. I don't know about that.

5 Q. Is that not the testimony? Yes or no?

6 A. That be the testimony, but how can you say I'm
7 looking for something I did not have.

8 Q. I said that's what his testimony is.

9 A. That's the testimony.

10 THE COURT: Sir, I need you to answer the question
11 yes or no, and then you may explain your answer.

12 THE WITNESS: I said, yes, ma'am, that was his
13 testimony.

14 THE COURT: And you may explain your answer if you
15 want to.

16 THE WITNESS: He said -- you can say he said that.
17 He said a lot of things in the beginning. Kennedy said a lot
18 of things in the beginning. Everybody say a lot of things in
19 the beginning. But in the days, just know that how can --
20 they kept harassing them, harassing them, telling them. I
21 can't say. They kept harassing them until they get what they
22 want. They say something that's not true, but -- I don't
23 know.

24 Q. Your testimony is that everybody was saying one
25 thing in the beginning, correct?

1 A. Yeah.

2 Q. Actually, Mr. Jones didn't come with the statement
3 until about a year after the crime, correct?

4 A. Correct. He wasn't even at the scene.

5 Q. Well, he testified that he was at the scene that
6 day, did he not?

7 A. Yeah.

8 Q. Back to my original question. There were five
9 witnesses that put you at the crime scene, you with a gun in
10 the hand, and you murdering the victim. Is that not correct
11 in the trial transcript?

12 A. That's what it said.

13 MR. JOHNSON: No further questions.

14 THE COURT: Any further questions for the witness?

15 MR. FALK: No redirect.

16 THE COURT: Okay. Any further witnesses, Mr. Falk?

17 MR. FALK: No, Your Honor.

18 THE COURT: Any witnesses from the State?

19 MR. JOHNSON: None, Your Honor.

20 THE COURT: Is there any necessity for closing
21 argument?

22 MR. JOHNSON: I just want to make one point.

23 MR. FALK: I would like to close, Your Honor.

24 THE COURT: You may proceed.

25 MR. FALK: Your Honor, I think we've heard testimony

1 here today, and certainly the transcript is part of the
2 record, and looking at the transcript, you could see that the
3 people, although there were several people who testified
4 against Mr. Flowers, I think examining the cross-examination
5 of those witnesses, you could see that there might have been
6 some doubt as to the veracity of their testimony. Certainly,
7 the jury could have had doubts regarding the veracity of
8 Mr. Kennedy's testimony in that he changed and admitted to
9 lying to the police at one time.

10 And we've heard testimony today that there were
11 people who possibly could have testified on his behalf that
12 may have exculpated him. The prosecution could have
13 developed testimony, probably better than I was trying to do,
14 that he was on the phone with her when he heard gunshots and
15 that there could have been some explanation for the telephone
16 being in the car, the one that was at the crime scene. And
17 there could have been an explanation for the conversations
18 between the telephones.

19 We could have had Davetta Davenport testify to the
20 fact that she picked him up prior to the shooting. So we had
21 a potential alibi witness. And it's certainly difficult to
22 second guess a lawyer's trial strategy, but I think under
23 these facts, this is a defendant who at the time had no
24 record. Possibly they could -- he could have taken the stand
25 to testify. And they could have put on a defense, having

1 witnesses who could have established some doubt as to
2 third-party guilt. So I think we've shown that.

3 THE COURT: What evidence is there in this record
4 that she could have established a third-party guilt?

5 MR. FALK: Because he wasn't there at the time of
6 the shooting.

7 THE COURT: That's not third-party guilt. That's
8 just, I'm not guilty or not guilty.

9 MR. FALK: Alibi.

10 THE COURT: Third-party guilt means you have some
11 evidence inconsistent with the State's theory of your client
12 that somebody else did it.

13 MR. FALK: I'm sorry, Your Honor.

14 THE COURT: I didn't read anything in the record or
15 hear anything today that would establish that. I just needed
16 you to clarify that point for me.

17 And, yes, sir. You may continue.

18 MR. FALK: That's it.

19 THE COURT: Anything further?

20 MR. FALK: No, Your Honor.

21 THE COURT: Mr. Johnson.

22 MR. JOHNSON: Briefly, Your Honor. May it please
23 the Court. First point of contention would be a potential
24 alibi witness. First of all, Ms. Ford credibly testified
25 that she talked with some of these people and made a decision

1 not to call them because they would not offer anything and
2 they would not be able to provide Mr. Flowers an alibi.

3 Second is that Ms. Flowers was not at the scene, at
4 the location; may have been talking on the phone. That still
5 does not negate the fact that he could have been there.

6 Ms. Yvette Flowers, you know, had phone calls. And
7 then Ms. Davenport says she picks him up before 5 or 5:30.
8 The shooting happens -- it's in the testimony -- anywhere
9 between 4 and 4:45. And then they get home and the news --
10 and I asked her, was it the news that came on at six o'clock.
11 She said yes. That's plenty of time to drive from West
12 Ashley up to North Charleston.

13 Second, as to defendant's decision not to testify,
14 the Court thoroughly went over that fact. It's his decision
15 not to testify. I don't think he can raise that as grounds
16 of an ineffective assistance of counsel.

17 Third, even if there is ineffective assistance,
18 there's overwhelming evidence in this record. There's five
19 different witnesses that put him at the scene with a gun in
20 his hand murdering the victim.

21 Your Honor, once you review this transcript, you
22 will realize that nobody but Mr. Flowers was the one who
23 pulled the trigger in this case. And there's overwhelming
24 evidence of his guilt. And for that, you must deny this
25 application.

1 MR. FALK: Your Honor, if I could. I think he may
2 have mischaracterized Ms. Davenport's testimony. She said
3 she watched the news. He said what time does the news come
4 on? 6, 5, 5:30. I'm not sure she said it was six o'clock
5 news she was watching.

6 MR. JOHNSON: I specifically asked her about the six
7 o'clock news. That was my cross-examination.

8 THE COURT: I find the applicant has failed to meet
9 his burden of proof. I listened very intently to the grounds
10 that he argued regarding the ineffective counsel claim
11 regarding Ms. Ford. And I've read the record in this case
12 prior to us beginning these proceedings. And the standard is
13 not just that counsel is ineffective. It has to be such that
14 it would have prejudiced the defendant and fallen below an
15 objective standard of reasonableness, such that the Court's
16 confidence in the jury's verdict is undermined. In other
17 words, that the process did not work as it should have, that
18 the defendant was not availed of his right to a fair and
19 impartial trial. And that is simply not borne out in this
20 case.

21 Ms. Ford very quickly articulated -- and I find her
22 testimony credible -- regarding the defense's theory in this
23 case, that being that he wasn't there. And that -- and y'all
24 really didn't address -- somewhere in there, superfluously,
25 there was request for an instruction. There would have been

1 no basis for a request for a lesser-included instruction when
2 your defense is that "I was not there", because in order to
3 have asked for that lesser-included instruction, he would
4 have had to acknowledge that he was there and committed the
5 crime.

6 I find credible Ms. Ford's testimony. And it is
7 reasonable in light of an objective standard. You only call
8 an alibi witness when you can be definitive, and in this
9 instance, you could not be, if anything -- but that could
10 have cut both ways. Because after listening to the witness's
11 testimony and having reviewed the record, it would more
12 likely have established flight, not an alibi, because it puts
13 him in too close proximity to the event. It looks like he
14 was fleeing the area and establishes -- more particularly
15 would have established flight. And I think would have been
16 significantly prejudicial to him.

17 And I agree with Ms. Ford's assessment that it would
18 not have benefited him. And you only call an alibi witness,
19 again, when you are 100 percent sure in terms of time frames
20 and otherwise, or you give the State an incredible
21 opportunity to impeach your witness's credibility.

22 And you already have a problem to begin with when
23 it's a relative that's testifying on behalf of a party.
24 Because, inherently, the jury doesn't give that testimony any
25 credibility. They assume it's self-serving and that it

1 lacks, inherently, veracity; in other words, that a person is
2 going to like their family so much that they are going to
3 testify for them and they are going to testify in their best
4 interest or what they believe to be in their best interest.

5 And it doesn't mean that family members are
6 dishonest, just means that they are always going to see
7 things in light most favorable to their relatives. So
8 generally, juries sort of cancel that out. And while they
9 give some nod of service to it, they don't give it much
10 assistance. If anything, in my estimation, with the totality
11 of the record, it would have been more prejudicial to him
12 because it would have established flight under the
13 circumstances.

14 Now, going again probably in some reverse order
15 regarding his right to testify, the Court very thoroughly
16 covered that. Well, he really admitted himself in his
17 testimony that it was his decision not to testify. So I
18 really think it becomes a nullity or moot issue at this
19 point. He very clearly, from page 623 of the transcript,
20 623, 624, 625, 626 and 627, and then going over to page 628,
21 as well as 629, the court very thoroughly goes over his right
22 to testify and, in fact, adjourns to give him additional time
23 to speak with his lawyer about whether he wished to testify.
24 And that adjournment was over the evening, because he advised
25 him of his right to testify August 30th of 2012, by those

1 particular pages of the transcript that I referenced. And
2 then they adjourned until 9:30 in the morning and took up the
3 charge conference. And then the matter resumes on August
4 31st.

5 Bear with me one moment. I thought I had the page
6 marked in the transcript. The court then resumes that
7 questioning. He indicates that does he not wish to testify.
8 And the court goes over with him, as we do, whether you have
9 a record the State would use to impeach you. At that time he
10 didn't have any record. So, certainly, the record bears
11 out -- and that is the most objective evidence, because it is
12 a contemporaneous record what took place at the time -- that
13 he did not wish to testify. So I do not find any merit in
14 that argument.

15 In addition, there was absolutely no basis for a
16 Belcher instruction, meaning that a malice instruction was
17 improper. A malice instruction or burden-shifting malice
18 instruction is only inappropriate where self-defense is a
19 defense. Otherwise, it is completely appropriate to instruct
20 malice. And there would have been no basis for Ms. Ford to
21 request it or make any objection regarding a malice
22 instruction. Because, again, their strategy was that he was
23 not there. So, certainly, there was never any assertion of
24 self-defense.

25 We then migrate to the issues regarding the

1 telephones. And while probably to the average individual,
2 that makes a difference. Under the circumstances, there's
3 several layers of this. One, his relatives may have been
4 able to testify that he had a different telephone, at least
5 based on their rational perception. They would not have been
6 able to testify that his phone was stolen, because they
7 weren't there. They wouldn't testify to any cell phone
8 activity because they are not cell phone representatives and
9 it would be hearsay. So that all becomes moot as well.

10 And in this day of technology, people carry several
11 cell phones all the time. I have several friends that carry
12 three cell phones, got one for work, got one for personal,
13 got one for something else. I don't know how they keep up
14 with it, frankly, but you have people that carry multiple
15 devices. So that's really not unusual, especially young
16 people. I see teenagers with two cell phones. So that's not
17 unusual. It's not unusual for cell phones to be in other
18 folks' names for credit purposes or otherwise. People can't
19 qualify to get cell phones, or sometimes you just have a
20 family plan, under one person's name and you've got 20 cell
21 phones, especially when you have teenagers. So I don't know
22 that it really would have amounted to much.

23 When you come down to the real ultimate evidence in
24 this case, which was the eyewitnesses -- and Ms. Ford did her
25 job. She effectively cross-examined their credibility. They

1 all had given different and varying versions of events. And
2 she more than adequately and zealously, vigorously
3 cross-examined them regarding their credibility. And it came
4 down to what the jury believed.

5 And, ultimately, what the applicant is asking me to
6 do is substitute my judgment for 12 folk that heard
7 eyewitnesses and judge their credibility. That's not the
8 purpose of Post-Conviction Relief Act. It's whether counsel
9 was deficient and whether she didn't do her job. And she did
10 her job in this case. And she did what she perceived was in
11 her client's best interest. And the only defense really that
12 was available to her, based on what he presented to her, was
13 "I wasn't there and I didn't do this."

14 So any issues of witness veracity were fully
15 explored by counsel. I haven't heard any testimony that
16 would have risen to the level of exculpating him, nor any
17 compelling reason for her to have called any of those
18 witnesses strategically to lose ground in the case
19 procedurally.

20 And I've already covered what would have amounted to
21 hearsay statements from his relatives as well as any
22 potential alibi and the fact that there's overwhelming
23 evidence in the record from which a jury could have
24 reasonably deduced that he committed this crime.

25 So based on what has been presented to the Court,

1 the application for post-conviction relief is denied. The
2 Attorney General will provide the Court with a proposed order
3 within 20 days. That will be provided to Mr. Falk as well.

4 Mr. Falk, if you have anything you want to add to
5 the order or otherwise, please make the Court aware of it at
6 the time you receive it.

7 MR. JOHNSON: Thank you, Your Honor.

8 THE COURT: Thank you very much.

9 Oh, actually, bear with me. Where the Court resumed
10 his questioning of him right here, it's page 638, 639, and
11 says: Yesterday we talked about your right to testify and
12 your right to remain silent. And then it goes on to page
13 639. And the Court says: You want to remain silent? Yes,
14 sir. Do you want to testify -- you do not want to testify?
15 Yes, sir. And the Court asked if he had any questions and he
16 said, no, sir. So I needed to make the record clear as to
17 when the court resumed questioning him regarding his right to
18 testify. Thank you.

19 MR. FLOWERS: I have a question.

20 THE COURT: Sure.

21 MR. FLOWERS: What's my next step after PCR?

22 THE COURT: You can appeal the PCR ones the Court
23 does the final order.

24 MR. FLOWERS: When that be?

25 THE COURT: When I issue an order. You will get a

1 copy of it.

2 MR. FLOWERS: I have another question. I can be
3 notified when I come to Court, right?

4 THE COURT: No, they never notify you because of
5 security. They don't have to tell you when they are bringing
6 you out. And as a matter of fact, they generally don't.

7 (Whereupon, proceedings are adjourned.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 15th day of June, 2016, at Charleston, Charleston
County, South Carolina.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Frederick Flowers, #352185,

2014-CP-10-5219

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2016 MAY 18 PM 2:27
JULIE J. ANDERSON
CLERK OF COURT

Presiding Judge:

Hon. Deadra L. Jefferson

Applicant's Attorney:

James K. Falk, Esquire

Respondent's Attorney:

J. Rutledge Johnson, Esquire

Trial Counsel:

Beattie I. Butler, Esquire

Mary A. Ford, Esquire

Date of Hearing:

December 17, 2015

Court Reporter:

Karen Anderson

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 26, 2014. The Respondent made its Return on April 14, 2015 and filed on April 15, 2015. An evidentiary hearing into the matter was convened on December 17, 2015, at the Charleston County Courthouse. James K. Falk, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his behalf. Tanya Flowers, Yvette Flowers, Davetta Davenport and Mary Ford, Esquire, also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the Applicant's PCR application, the State's Return, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the July 2011 term of the Charleston County Grand Jury for Murder¹ (2011-GS-10-4314) and Possession of a Weapon During the Commission of a Violent Crime² (2011-GS-10-4317). The Applicant was represented by Mary Ford, Esquire, sitting as primary counsel and Beattie Butler, Esquire assisting.

On August 31, 2014, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable J.C. Nicholson to confinement for a period of forty (40) years for Murder and five (5) years for Possession of a Weapon. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Benjamin Tripp, Esquire, of the South Carolina Office of Appellate Defense. The Court of Appeals dismissed Applicant's appeal pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Flowers, No. 2014-UP-185 (S.C. Ct. App. May 5, 2014). The Remittitur was issued on June 20, 2014.

¹ Murder is a violent, most serious felony punishable by death, imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. §§ 16-3-10, -20 (2003), 16-1-60 (2003), 17-25-45 (2003). Life imprisonment means until death of the offender without the possibility of parole. See S.C. CODE ANN. § 16-3-20 (2003).

² "If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five [(5)] years, in addition to the punishment provided for the principal crime. This five-year [(5)] sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime." Further, "[s]ervice of the five-year [(5)] sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year [(5)] sentence to run consecutively or concurrently." S.C. CODE ANN. § 16-23-490 (2010).

2012
SPG

ALLEGATIONS

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Constitutional violations.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Counsel testified she sat first chair and was responsible for decisions, strategy and examination of witnesses. Counsel stated the witnesses were not cooperative and that Victim's father had identified Applicant in a photo lineup. Counsel also stated the other witnesses that had identified Applicant had credibility issues changing their stories "constantly" and her strategy was to attack their credibility. She further stated that she did not call anyone to testify on Applicant's behalf. Counsel testified she spoke with Tanya Flowers multiple times, but Ms. Flowers did not provide any information useful to the Applicant's defense. Counsel further testified that Applicant left his cellphone in the Victim's car where it was ultimately found by law enforcement. As a result law enforcement discovered the Applicant's name and he was developed as a suspect. Subsequently, there were phone records which showed Applicant and Victim calling each other on the day of the incident. Counsel argued against the fact that the phone tied Applicant to the shooting, and did not recall Ms. Flowers saying anything concerning the cell phone. She further testified Applicant never told her he was on the phone with his mother at the time of the shooting.

Counsel testified she did not call any witnesses provided by the applicant because they did not have any helpful information. Counsel also testified she attacked the credibility of each witness

30/12
[Signature]

and stated that any family members would have presented as biased in favor of the Applicant. She further testified none of the witnesses provided by the Applicant were "solid" enough to clear him. By not calling any witnesses, it was Counsel's strategy to preserve final argument. Specifically, Counsel spoke with Applicant's aunt, Yvette Flowers, but his aunt did not have anything to offer in Applicant's defense because she was not present at the time of the incident. Counsel then testified Davetta Davenport, the Applicant's cousin spoke with her investigator, who explained that she picked up Applicant and took him to North Charleston around 4:30 PM on the afternoon of the shooting. She further testified that Ms. Davenport was uncertain and vague regarding the time frame estimating it to be around 4:30 PM or sometime afterwards. Counsel stated Applicant claimed he was at his uncle's house down the street when he heard the shooting. Counsel stated she did not put the State on notice of alibi witnesses because Ms. Davenport did not inform Counsel that she picked Applicant up at 4:30 PM on the day of the incident until over one (1) year after Applicant's trial.

Counsel stated she reviewed the jury charges with Mr. Butler, because Mr. Butler handled most of the legal issues. Counsel stated she did not object to the malice jury charge. She further testified that it was the defense's trial theory that it "wasn't the Defendant at all" so such a request would have been contrary to this strategy. She further testified in any event there was no factual basis for the request to instruct lesser included offenses or a redaction of the malice instruction.

On cross-examination, Counsel testified there was no basis for a self-defense claim in this case, nor was there a case for voluntary manslaughter. Counsel also admitted that there were five (5) witnesses who testified against Applicant, including Carlos Jones, who identified Applicant and testified that he saw Applicant with a gun, firing into the Victim's car. Counsel also admitted that

the Victim's father testified at trial that the shooting happened around 4:00 PM, essentially destroying Applicant's potential for any alibi defense.

Lastly, counsel testified the facts in this case were particularly damaging and hard to overcome as the testimony at trial reflected that the Victim's father took him to a residence in West Ashley where the Applicant walked up to the Victim's car and shot the victim point blank without provocation. She further stated that the testimony reflected that the Victim's father then fled to a nearby fire station for assistance but the Victim died before he could get assistance.

Tanya Flowers testified she was Applicant's mother and did not speak to the assistant solicitor in the case, but had spoken to Counsel. She testified that she told Counsel about the phone her sister had given Applicant and had spoken to Applicant on the phone found in the Victim's car. She claimed that she called a different phone because the first phone given to the Applicant was no longer in his possession. Ms. Flowers stated she had a conversation about a gunshot with Applicant and that Applicant's mood was one of shock. She testified that Applicant was not talking faster than normal in his conversation, but acted surprised. Ms. Flowers then testified Applicant wanted to get out of the area all of that day.

On cross-examination, Ms. Flowers testified that she was not at the scene when the gun was fired, nor was she present with her son when the gun was fired. She stated she remembered that Applicant sounded surprised in her phone conversation with him which occurred on March 2, 2011, but could not remember what she had for lunch on November 2, 2015.³

³ This Court recognizes that Ms. Tanya Flowers may recall events differently with the benefit of hindsight which would have the effect of favoring her son.

5/12
[Signature]

On redirect examination, Ms. Flowers testified she remembered her son's arrest, remembers most special days in her life, and remembers she was at work when she heard about the Charleston 9 shooting.

Yvette Flowers testified that she spoke with Counsel and Counsel's investigator, and she gave Applicant a cell phone because he lost his other phone. Ms. Flowers stated she pays the bills on Applicant's cell phone and received a receipt which shows received and transmitted calls; she claims she provided this information to Counsel.

Davetta Davenport testified she spoke with Counsel and informed Counsel that she picked Applicant up from his uncle's house on Wimbee Drive in West Ashley. Ms. Davenport did not know where the shooting occurred and stated she picked Applicant up before 5:30 PM. She states she waited until between 5-5:30 PM because she was not feeling well and had to drive from North Charleston to West Ashley. She testified that when she got back to North Charleston off Ashley Phosphate from picking up the Applicant, she saw the "breaking news" of the shooting on the television.

On cross-examination, Ms. Davenport admitted that the news she was watching came on at 6:00 PM.

Applicant testified he was represented by Mary Ford and instructed Counsel to speak with his mother, his aunt, and his cousin because he claims he was at his uncle's house on the phone with his mother during the shooting. He stated he asked Counsel to speak with Ms. Davenport because as he claims, Ms. Davenport could prove that Applicant was not at the incident location during the shooting. Applicant stated he was two (2) streets away from the incident location. Applicant also testified he was not sure why Counsel did not call him to testify in his trial because he only had a

60912
[Signature]

juvenile record which could not be used for impeachment. Applicant denies any knowledge of the events of the crime. Applicant then stated he should have testified, and that both the trial judge and Counsel advised him not to testify.

On cross-examination, Applicant admitted it was his decision not to testify and that the trial court advised him concerning his right to remain silent or to testify on his own behalf. While Applicant claimed he was not at the scene during the incident, he admitted that five (5) witnesses testified against him, all of which identified him at the scene. Applicant also admitted the Victim's father identified him. He admitted that there were witnesses who put him at the scene with a gun murdering the victim. He lastly admitted the trial testimony of Myesha Wine, an eye witness, who testified that he lured the victim to the location to rob him; however, he denies any knowledge of this fact.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court has also read the trial transcript and the appellate records, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the

adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court also has read the trial transcript and appellate records, all of which assists the Court in judging the witnesses' credibility. This Court finds the Applicant's, Yvette Flowers', Tanya Flowers' and Davetta Davenport's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is persuasive and very credible.

This Court finds Counsel's representation of Applicant in this case well above the professional norms. Counsel fully investigated this case and thoroughly assisted Applicant in his defense. Counsel fully advised Applicant concerning his right to testify or remain silent. This Court

8/12
JEG

also finds the trial court fully explained Applicant's rights, including his right to testify (Tr. 623-628; 638: 23-25; 639 1-9). Counsel did not threaten or coerce Applicant into not testifying (Tr. 2-10). It was Applicant's decision and his alone, not to testify in this case (Tr. 627: 11-25; 628: 1-2).

Additionally, neither Applicant nor Davetta Davenport informed Counsel that Ms. Davenport picked up Applicant from his uncle's house on the day of the shooting at 4:30 PM as to establish a viable alibi defense. See Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066 (1984) ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant."). "To establish an alibi defense and thus be entitled to an instruction of alibi, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime." State v. Diamond, 280 S.C. 296, 297, 312 S.E.2d 550 (1984), quoting State v. Robbins, 275 S.C. 273, 271 S.E.2d 319 (1980). "A simple denial of one's presence at the scene does not constitute an alibi." Id.

At the PCR hearing, Ms. Davenport testified that she picked Applicant up between 5-5:30 PM. and was in North Charleston in time to see the 6 o'clock news. However, at the trial, Victim's father testified the shooting happened between 4-4:30 PM (Tr. 76: 19-20). While Applicant claims he was not present during the incident, five (5) independent witnesses testified otherwise. This Court finds the five (5) witnesses and the Victim's father's testimony more credible than Ms. Davenport's or Applicant's testimony, especially considering Ms. Davenport did not come forward with this information until over a year after Applicant's trial. As such, Applicant has failed to sufficiently

9 of 12
JAG

establish a viable alibi defense which Counsel could have argued at the trial. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland at 689-90, 104 S. Ct. at 2065-66. Counsel cannot be held to be clairvoyant of information not presented to her by Applicant. Moreover, it is more likely that Ms. Davenport would have established Applicant's flight from the crime scene as evidence of Applicant's guilt. It would have been a strategic choice by Counsel not to call Ms. Davenport even if she had this information, as not to establish flight by the Applicant. Also, by not calling any witnesses, Counsel was able to preserve final argument which she articulated was a part of the trial strategy. See Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) ("[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.")

Further, Applicant was not entitled to an exclusion of a malice charge pursuant to State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) (Jury instruction concerning inferred malice from the use of a deadly weapon not proper where there is evidence of self-defense or evidence mitigating, reducing, excusing or justifying a homicide). Applicant failed to present any evidence of self-defense or of voluntary manslaughter. Applicant's shooting of Victim was unprovoked and not supported by any sufficient legal provocation. As such, Counsel cannot be held ineffective for not requesting a charge under Belcher. Thus, the prejudice prong under Strickland need not be discussed.

This Court finds Counsel's actions reasonable under the circumstances and based on the information provided by Applicant. Accordingly, this allegation is denied.

10/12
[Signature]

Moreover, this Court finds there is overwhelming evidence of Applicant's guilt in this case. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the Applicant's guilt in Ford was overwhelming and the Court held that the Applicant failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the deficient representation.

In this case, five (5) witnesses testified that Applicant was the instigator of the shooting as Victim never exited his vehicle, that Applicant approached Victim with a gun behind his back, that Applicant pointed the gun at Victim and shot Victim multiple times, killing the Victim. There existed no fight between the Victim and the Applicant, nor did there exist any credible alibi testimony. Therefore, this Court finds overwhelming evidence of Applicant's guilt in this case.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395

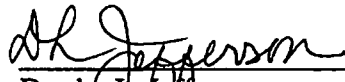
11/26/12
[Signature]

(1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!


Deadra L. Jefferson
Presiding Circuit Court Judge
Ninth Judicial Circuit

May 12, 2016
Charleston, South Carolina

12 of 12
