

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

J. C. Buddy Nicholson, Jr., Circuit Court Judge

RECEIVED

JUL 26 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FREDERICK L. FLOWERS,

APPELLANT

APPELLATE CASE NO. 2012-212907

RECORD ON APPEAL

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

JURY TRIAL

VOLUME 1 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 27, 2012, Commencing at 11:30 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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STATE

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COURT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
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1 PROCEEDINGS

2 THE COURT: Have y'all looked at each other's Voir
3 Dire?

4 MR. DURANT: Yes sir, Your Honor.

5 THE COURT: Any objections to the respective
6 requests?

7 MR. DURANT: No, sir.

8 MS. FORD: No, Your Honor.

9 THE COURT: Okay. I assume the State is ready to
10 proceed?

11 MR. DURANT: Yes, Your Honor..

12 THE COURT: And defense, did you take care of the
13 sequestered witnesses?

14 MR. DURANT: I've advised my -- as I understand it
15 the five witnesses, Reggie Wescott, My Wine, Carlos
16 Jones, Cornelius Jenkins, and Michael Quarles are
17 segregated ---

18 THE COURT: --- are those the ones who are going to
19 be sequestered?

20 MR. DURANT: That's correct, Your Honor. Three of
21 them are in jail and the detectives -- I mean the
22 Deputies have been instructed to keep them separate back
23 there. Hopefully that's being done, but I do not have a
24 whole lot of control over that.

25 THE COURT: Can y'all keep them separate in the

1 holding cell?

2 THE DEPUTY: I hope so Judge. It's the ---

3 THE COURT: Pardon?

4 THE DEPUTY: It's the first I heard of it.

5 THE COURT: Can y'all sort of keep them separated
6 in the holding cells if you would?

7 THE DEPUTY: Sure. I need their names again.

8 MR. DURANT: They have been advised, Your Honor, by
9 Mr. Kennedy in my office that they are to be separated
10 and sequestered from the defendant. And it's included in
11 the transportation ---

12 THE COURT: --- he needs their names.

13 MR. DURANT: I'd be more than happy to give him the
14 names, Your Honor.

15 THE COURT: Write them down and give them to him so
16 they'll know. Can you bring the jurors? All these
17 folks in the courtroom are going to have to go somewhere
18 because it's going to be a full house as far as jurors
19 are concerned.

20 Ms. Ford, can I see you and the Solicitor for just a
21 second?

22 MS. FORD: Yes, Your Honor.

23 [Whereupon, an off the record bench conference is
24 held]

25 [Whereupon, the jury panel enters the courtroom at

1 11:50 a.m.]

2 THE COURT: All right. Ladies and gentlemen of
3 the jury panel I'm Judge Nicholson and we're going to be
4 trying General Sessions, which is criminal court this
5 week, and we're getting ready to hopefully start our
6 first trial. Solicitor, if you want to call your case
7 please, sir.

8 MR. DURANT: Thank you, Your Honor. Your Honor,
9 the State would call the State of South Carolina versus
10 Frederick Flowers, defendant. Mr. Flowers is indicted in
11 2011-GS-10-04314 for Murder and 2011-GS-10-04317 for
12 Possession of a Firearm during the Commission of a
13 Violent Crime.

14 THE COURT: Okay. Thank you so very much. All
15 right. Ladies and gentlemen of the jury the Solicitor
16 has referred to an indictment.

17 Now the indictment is not proof, it's not -- it's
18 just the means by which the defendant is brought before
19 the court for trial. It's not evidence and you're not to
20 consider it in any factor whatsoever. Administratively
21 it's the method by which the defendant is brought before
22 the court.

23 Now I'm going to ask you certain questions and if
24 any of the questions apply to you I would ask you to
25 please stand in response to the question. The first

1 thing I am going to do is call out a list of names. I'm
2 going to ask you basically the same question about each
3 name. I'm going to ask you if you know the individual,
4 are you related by blood or marriage or have you had any
5 type of contact with the individual.

6 And when I say marriage I'm talking about past
7 marriages as well as present marriages. If someone is
8 on that list that you are divorced from or if you're
9 planning to marry, we'd like to know about future
10 marriages also.

11 VOIR DIRE

12 THE COURT: The first name is Cornelius Jenkins.
13 Is anybody related or does anybody know Cornelius
14 Jenkins? If so, please stand.

15 Brittany Mack. Is anybody related by blood or
16 marriage or does anybody know Brittany Mack? If so,
17 please stand.

18 Kennedy Smith. Is anybody related by blood or
19 marriage or does anybody know Kennedy Smith?

20 Jennifer Meyers. Does anybody know Jennifer Meyers
21 or are related to Jennifer Meyers. If so, please stand.

22 Next name is Myhesa Wine. Myhesa Wine. Anybody
23 related by blood or marriage or does anybody know Myhesa
24 Wine? If so, please stand.

25 Ken Chapel. Does anybody know Ken Chapel or related

1 to Ken Chapel? If so, please stand. Next name is Nathan
2 Fry. Is anybody related by blood or marriage or does
3 anybody know Nathan Fry?

4 Next name is Christopher Kroger, Charleston City
5 Police Department. Is anybody related by blood or
6 marriage or does anybody know Christopher Kroger?

7 MR. DURANT: I believe his name is Keigler
8 [phonetic], Your Honor.

9 THE COURT: I'm sorry. Christopher Keigler. Is
10 anybody related by blood or marriage to Christopher
11 Keigler or does anybody know Mr. Keigler? If so, please
12 stand.

13 Next name is Caleb Bradish, Charleston City Police
14 Department. Does anybody know Caleb Bradish? If so,
15 please stand.

16 Next name is Officer Franco Pononi [phonetic]. Does
17 anybody know Franco Pononi or is anybody related to Mr.
18 Pononi? If so, please stand.

19 Next name is Jeff Miller. Is anybody related by
20 blood or marriage or does anybody know Jeff Miller? If
21 so, please stand.

22 Next name is David Osborne. Is anybody related by
23 blood or marriage or does anybody know David Osborne? If
24 so, please stand.

25 [Whereupon, an individual stands]

1 THE COURT: Yes ma'am, your name?
2 UNIDENTIFIED SPEAKER: That's Detective Osborne?
3 THE COURT: Pardon?
4 UNIDENTIFIED SPEAKER: That's sitting there
5 [indicates]? Yes, sir.
6 THE COURT: What's your name?
7 MS. MEGGETT: Zaviera Meggett.
8 THE COURT: Do you know your number?
9 MS. MEGGETT: 164.
10 THE COURT: Okay Ms. Meggett, how do you know him?
11 MS. MEGGETT: He's handling a case now in reference
12 to my son.
13 THE COURT: Okay. He's on a case now in reference
14 to your son?
15 MS. MEGGETT: Yes, sir.
16 THE COURT: Do you want to come around up front
17 please ma'am and the lawyers can join me up here.
18 [Whereupon, an off the record bench conference is
19 held with the attorneys and juror number 164]
20 [Whereupon, juror number 164 is excused]
21 THE COURT: All right. The next name is Richard
22 Wiersma, Charleston City Police Department. Anybody
23 related by blood or marriage or does anybody know Richard
24 Wiersma? Is so, please stand.
25 THE COURT: The next name is Craig Kosarko,

1 Charleston Police Department. Is anybody related by
2 blood or marriage to Craig Kosarko? If so, please stand.

3 The next name is Kathleen Butler. Is anybody
4 related by blood or marriage or does anybody know
5 Kathleen Butler? Is so, please stand.

6 The next name is Richard Burckhardt. Is anybody
7 related by blood or marriage or does anybody know Richard
8 Burckhardt? Is so, please stand.

9 [Whereupon, an individual stands]

10 THE COURT: Yes ma'am, your name?

11 MS. ALLEN: Sherry Allen.

12 THE COURT: Do you know your number?

13 MS. ALLEN: 5 I think.

14 THE COURT: Okay. Yes ma'am Ms. Allen, how do you
15 know him?

16 MS. ALLEN: He's a neighbor.

17 THE COURT: He's a neighbor?

18 MS. ALLEN: He's a neighbor and he opened up
19 Carolina's before he was a detective with my husband
20 years ago.

21 THE COURT: Okay. How often do you see him?

22 MS. ALLEN: Not often; maybe once or twice a year.
23 Not often at all. We'll just run into each other ---

24 THE COURT: --- does he live in the same
25 neighborhood or is he next door?

1 MS. ALLEN: No, we're two blocks away.

2 THE COURT: Two blocks away. Do you just sort of
3 see him in passing?

4 MS. ALLEN: We see him in passing or at games or
5 things like that. Nothing -- no real social events;
6 every once in a while the neighbors will have something.

7 THE COURT: Assuming he testifies in this case will
8 that cause you any difficulty in sitting on this jury?

9 MS. ALLEN: No, sir.

10 THE COURT: Can you be fair and impartial to both
11 the State and the defendant?

12 MS. ALLEN: I do believe I can.

13 THE COURT: Can you base your decision on the
14 testimony you hear in the courtroom?

15 MS. ALLEN: I'm sorry?

16 THE COURT: Can you base your decision on the
17 testimony you hear in the courtroom?

18 MS. ALLEN: Yes.

19 THE COURT: And you don't think the fact that he
20 lives two blocks away would cause you any problems in
21 sitting on this jury?

22 MS. ALLEN: I don't think so.

23 THE COURT: All right. Thank you very much. The
24 next name is Kenneth H. Whitler. Anybody related by
25 blood or marriage or does anybody know Kenneth H.

1 Whitler? If so, please stand.

2 The next name is Cathleen Woodward. Is anybody
3 related by blood or marriage or does anybody know
4 Cathleen Woodward? Is so, please stand.

5 The next name is Ellen Reimer, the Medical
6 Examiner's office. Is anybody related by blood or
7 marriage or does anybody know Ellen Reimer, Doctor Ellen
8 Reimer? Is so, please stand.

9 The next name is Matt Case. Anybody related by
10 blood or marriage or does anybody know Matt Case?

11 MR. BUTLER: Judge, its Casey; my apologies.

12 THE COURT: Pardon? Is it Case or Casey?

13 MR. DURANT: It's Case, Your Honor.

14 THE COURT: Case?

15 MS. FORD: Those are two different --

16 THE COURT: Pardon?

17 MS. FORD: There's also a Matt Casey who ---

18 THE COURT: All right. Gary Still [phonetic].

19 Anybody related by blood or marriage to Gary Still or
20 does anybody know Gary Still? Is so, please stand.

21 Mary Phillips. Anybody know Mary Phillips or
22 anybody related to Mary Phillips? If so, please stand.

23 Amy Stevens. Anybody related by blood or marriage
24 or does anybody know Amy Stevens? Is so, please stand.

25 Selena Kinard. Anybody related by blood or marriage

1 to Selena Kinard or does anybody know Selena Kinard? If
2 so, please stand.

3 Michael Quarles. Anybody related by blood or
4 marriage or does anybody know Michael Quarles?

5 Carlos Jones. Anybody related by blood or marriage
6 or does anybody know Carlos Jones?

7 Mary Ann Boehm. Anybody related to Mary Ann Boehm
8 or does anybody know Mary Ann Boehm, South Carolina Law
9 Enforcement; SLED?

10 Jerome Fleming. Does anybody know Jerome Fleming or
11 anybody related by blood or marriage to Jerome Fleming?
12 If so, please stand.

13 Rodney VanHorn. Anybody know Rodney VanHorn or is
14 anybody related to Rodney VanHorn? If so, please stand.

15 Patricia Crooks [phonetic]. Anybody related by
16 blood or marriage or does anybody know Patricia Crooks?
17 If so, please stand.

18 Lisa Wannaman [phonetic]. Anybody related by blood
19 or marriage or does anybody know Lisa Wannaman? If so,
20 please stand.

21 The next name is Nicky Perry Hughes. Is anybody
22 related by blood or marriage to Nicky Perry Hughes or
23 does anybody know Nicky Hughes? If so, please stand.

24 Doris Yarborough. Anybody related by blood or
25 marriage or does anybody know Doris Yarborough? If so,

1 please stand. Reginald Wescott. Is anybody related by
2 blood or marriage or does anybody know Reginald Wescott?
3 If so, please stand.

4 Jennifer Wooley [phonetic]. Is anybody related by
5 blood or marriage or does anybody know Jennifer Wooley?
6 If so, please stand.

7 The next name is Jerome Fleming. Anybody related by
8 blood or marriage or does anybody know Jerome Fleming?
9 If so, please stand.

10 THE COURT: Knobeloch [phonetic]. What's his first
11 name?

12 MR. DURANT: Michael, Your Honor.

13 THE COURT: Michael Knobeloch. Anybody related by
14 blood or marriage to Michael Knobeloch? If so, please
15 stand.

16 THE COURT: What's Sherman's first name?

17 MR. DURANT: Mike, Your Honor.

18 THE COURT: Mike Sherman. Anybody related by blood
19 or marriage or does anybody know Mike Sherman? If so,
20 please stand.

21 C. Smith -- what's the C for Ms. Ford?

22 MS. FORD: We...

23 MR. DURANT: I don't know him, Your Honor, but I
24 think its Charles Smith.

25 MS. FORD: He's an officer with the C-P-D, Your

1 Honor.

2 THE COURT: Officer Charles Smith, Charleston City
3 Police officer. Anybody related by blood or marriage or
4 does anybody know Charles Smith?

5 Ms. Ford, why don't you give me the rest of these
6 first names? Juskin [phonetic] what is his first name?

7 MS. FORD: I apologize, Your Honor. I do not know;
8 they are not included on the report.

9 THE COURT: How about Ferguson?

10 MS. FORD: I do not know, Your Honor.

11 THE COURT: Kosarko we covered earlier didn't we?

12 MS. FORD: Kosarko?

13 THE COURT: Wasn't he on the other list, Craig?

14 MS. FORD: Craig Kosarko.

15 THE COURT: With Pononi. How about Guild
16 [phonetic]?

17 MS. FORD: Kalesha Guild.

18 THE COURT: Right. Solicitor, do you know M.
19 Juskin [phonetic] name?

20 MR. DURANT: I'm not familiar with him, Your Honor.

21 THE COURT: How about the police officer there does
22 he know him?

23 POLICE OFFICER: No sir, I don't.

24 THE COURT: How about T. Ferguson?

25 POLICE OFFICER: No sir, I don't.

1 THE COURT: It's sort of hard to ask somebody
2 unless you know the first name. Does anybody know a
3 Juskin with a first initial of M? It's J-U-S-K-I-N. If
4 you know him or are related to him please stand.

5 The next name is Ferguson. The first name starts
6 with a T. Does anybody know T. Ferguson? Anybody
7 related by blood or marriage? If so, please stand.

8 The next name is Kalesha Guild [phonetic]. Anybody
9 related by blood or marriage to Kalesha Guild or does
10 anybody know Kalesha Guild? If so, please stand.

11 Davetta Davenport [phonetic]. Anybody related by
12 blood or marriage to Davetta Davenport? If so, please
13 stand.

14 The next name is Evette Flowers. Anybody related by
15 blood or marriage or does anybody know Evette Flowers.

16 Benjamin Flowers. Anybody related by blood or
17 marriage or does anybody know Benjamin Flowers?

18 Tonya Flowers. Anybody related by blood or marriage
19 or does anybody know Tonya Flowers?

20 Matt Casey. That's C-A-S-E-Y. Matt Casey. Anybody
21 related by blood or marriage to Matt Casey? If so,
22 please stand.

23 Jennifer Meyers. Anybody related by blood or
24 marriage to Jennifer Meyers or does anybody know Jennifer
25 Meyers? I've already called her out one time before.

1 Captain Tiece [phonetic], Charleston County
2 Detention Center. Anybody related by blood or marriage
3 to Captain Tiece or does anybody know Captain Tiece with
4 the Detention Center.

5 Lieutenant Haley, Charleston County Detention
6 Center. Anybody know Lieutenant Haley or related by
7 blood or marriage to Lieutenant Haley?

8 The next name is Keith Novac. Anybody related by
9 blood or marriage or does anybody know Keith Novac?

10 Does any member of the jury panel or are any members
11 of your immediate family close friends or employed by law
12 enforcement? If so, please stand.

13 Anybody on the jury has a family member that works
14 for law enforcement? If so please stand.

15 [Whereupon, an individual stands]

16 MR. LIVRERI: Sir, my brother is an immigration
17 agent ---

18 THE COURT: --- what's your name?

19 MR. LIVRERI: I'm sorry, Salvatore Livreri.

20 THE COURT: And your number?

21 MR. LIVRERI: 155.

22 THE COURT: Yes sir, Mr. Livreri?

23 MR. LIVRERI: My brother is an immigration officer
24 for ICE up in Columbia.

25 THE COURT: Okay. Would that cause you any

1 difficulty in sitting on a jury, Mr. Livreri?
2 MR. LIVRERI: No, sir.
3 THE COURT: Can you be fair and impartial to both
4 the State and the defendant?
5 MR. LIVRERI: Yes, sir.
6 THE COURT: Can you base your decision on testimony
7 here in the courtroom?
8 MR. LIVRERI: Yes, sir.
9 THE COURT: Thank you very much. Anybody else
10 close friends or family members?
11 [Whereupon, an individual stands]
12 THE COURT: Yes, sir?
13 UNIDENTIFIED SPEAKER: My niece was working at the
14 jail. I think she's working for a judge now but I don't
15 know which one, but it's my brother's daughter.
16 THE COURT: What's her name?
17 UNIDENTIFIED SPEAKER: Amanda Benjamin. She just
18 got married.
19 THE COURT: Pardon?
20 UNIDENTIFIED SPEAKER: She just got married. Her
21 husband now he used to work with her at the jail but both
22 of them are gone from there.
23 THE COURT: All right. What's your name?
24 MR. BENJAMIN: Kevin Benjamin.
25 THE COURT: Do you know your number?

1 MR. BENJAMIN: 20.

2 THE COURT: 20? Okay. Would that cause you any
3 problems Mr. Benjamin sitting on the jury?

4 MR. BENJAMIN: No, sir.

5 THE COURT: Can you be fair and impartial to both
6 the State and the defendant?

7 MR. BENJAMIN: Yes, sir.

8 THE COURT: Can you base your decision on the
9 testimony you hear in the courtroom?

10 MR. BENJAMIN: Yes, sir.

11 THE COURT: Thank you, Mr. Benjamin. Anybody else?
12 Y'all are a real solemn looking group. Y'all look like
13 death warmed over. Why doesn't somebody smile? What are
14 y'all so sad about?

15 UNIDENTIFIED SPEAKER: We've been sitting here all
16 morning, Judge.

17 THE COURT: Huh?

18 UNIDENTIFIED SPEAKER: We've been sitting all
19 morning.

20 THE COURT: Well, you're probably going to be here
21 all day and the following day; no since in being so sad.

22 [Whereupon, an individual stands]

23 THE COURT: What's your name?

24 MS. PICARDCOHEN: I'm juror number 197. Denise
25 Picardcohen. My brother is an N-C-I-S agent down in

1 Georgia.

2 THE COURT: Where about?

3 MS. PICARDCOHEN: Kings Bay, Georgia and St. Mary's
4 Georgia.

5 THE COURT: Would that cause you any problems
6 sitting on this jury?

7 MS. PICARDCOHEN: No.

8 THE COURT: Can you be fair and impartial?

9 MS. PICARDCOHEN: Absolutely.

10 THE COURT: Can you base your decision on testimony
11 heard in the courtroom?

12 MS. PICARDCOHEN: Yes.

13 THE COURT: All right. Some other people stood.
14 Are y'all embarrassed to stand? Stand up and stay
15 standing up. Stretch your legs; you've been here all
16 morning. Yes sir, your name?

17 MR. FIELDING: Bernard Fielding, juror 71.

18 THE COURT: 71?

19 MR. FIELDING: Yes, sir.

20 THE COURT: All right, Mr. Fielding?

21 MR. FIELDING: My brother-in-law is a detective with
22 the City Police Department, Tony Persons.

23 THE COURT: Okay. How long has he worked there do
24 you know?

25 MR. FIELDING: Approximately eight years now.

1 THE COURT: How often do you see him?
2 MR. FIELDING: Once every two weeks or so.
3 THE COURT: Do you get along with your brother-in-
4 law?
5 MR. FIELDING: Yes, sir.
6 THE COURT: Y'all good friends?
7 MR. FIELDING: Yes, sir.
8 THE COURT: Would that cause you any difficulty
9 sitting on this jury?
10 MR. FIELDING: No sir, Your Honor.
11 THE COURT: Can you be fair and impartial to both
12 sides?
13 MR. FIELDING: Yes, Your Honor.
14 THE COURT: Can you base your decision on testimony
15 you hear in the courtroom?
16 MR. FIELDING: Certainly, Your Honor.
17 THE COURT: All right. Thank you, Mr. Fielding.
18 Anybody else? Yes ma'am, your name?
19 MS. BAILEY: Angelique Bailey, number 12.
20 THE COURT: Number 12. Yes ma'am, Ms. Bailey?
21 MS. BAILEY: A very good friend of mine works for
22 the Charleston County Sheriff's Department.
23 THE COURT: Who?
24 MS. BAILEY: Rob Grimley.
25 THE COURT: What does he do?

1 MS. BAILEY: He drives a motorcycle.
2 THE COURT: He what?
3 MS. BAILEY: He drives a motorcycle. That's all I
4 know.
5 THE COURT: Does he ride a bicycle too? You don't
6 know?
7 MS. BAILEY: He does traffic. I know that.
8 THE COURT: How often do you see him?
9 MS. BAILEY: Probably at least once a week.
10 THE COURT: Okay. Would that cause you any
11 difficulty sitting on this jury?
12 MS. BAILEY: No sir, not at all.
13 THE COURT: Can you be fair and impartial?
14 MS. BAILEY: Yes, sir.
15 THE COURT: Can you base your decision on testimony
16 you hear in the courtroom?
17 MS. BAILEY: Yes, I can.
18 THE COURT: Thank you, Ms. Bailey. Anybody else?
19 Does any member -- well, Solicitor if you'll stand and
20 introduce yourself, please?
21 MR. DURANT: Yes, sir. My name is Bruce DuRant.
22 I'm the Deputy Solicitor for Charleston and Berkeley
23 counties. Seated at the table who you've already met is
24 David Osborne. He's the case agent for this case. You
25 also recall Matt Casey. He's not in here now. He's my

1 investigator and you'll see him coming into the courtroom
2 as well.

3 THE COURT: All right. Is any member of the jury
4 panel close friends with the Solicitor or anyone in her
5 office or Mr. DuRant who is in the courtroom today?

6 Does anybody have any close friends in the
7 Solicitor's office either here in Charleston County or
8 Berkeley County? If so, please stand. Ms. Ford if
9 you'll stand and introduce yourself please ma'am?

10 MR. BUTLER: Judge, you want the defendant to stand
11 as well?

12 THE COURT: I'll get him next as soon as y'all
13 introduce yourselves.

14 MS. FORD: Hi, my name is Mary Ford and I'm an
15 attorney with the Charleston County Public Defender's
16 office. And joining me is Beattie Butler who is another
17 attorney in my office.

18 THE COURT: All right. Does any member of the jury
19 panel have any close friends in the Public Defender's
20 office either here or in Berkeley County? Is so, please
21 stand.

22 Mr. Flowers, would you please stand and face the
23 jury?

24 [Whereupon, the defendant complies]

25 MS. FORD: This is my client Frederick Flowers;

1 Freddie.

2 THE COURT: Thank y'all very much. Is any member
3 of the jury panel related by blood or marriage or does
4 anybody know Frederick Lamar Flowers? If so, please
5 stand.

6 Is any member of the jury panel close friends or
7 relatives in the family that has been a victim of a
8 crime? If so, please stand. I'm not talking about
9 traffic tickets. Anybody been a victim of a crime please
10 stand. Nobody?

11 UNIDENTIFIED SPEAKER: Would that include business?

12 THE COURT: Yes, ma'am. Why are y'all so bashful
13 about standing? I've never seen a group that doesn't
14 want to stand up. Yes ma'am, your name?

15 MS. LORENZ: Christine Lorenz.

16 THE COURT: Do you know your number?

17 MS. LORENZ: 157.

18 THE COURT: 157. Yes ma'am, Ms. Lorenz?

19 MS. LORENZ: Our restaurant was robbed a couple of
20 times.

21 THE COURT: How long ago?

22 MS. LORENZ: Two years ago.

23 THE COURT: Are you a manager of the restaurant?

24 MS. LORENZ: I'm one of the owners.

25 THE COURT: Do you have any bias or prejudice

1 against defendants in general as a result of that?

2 MS. LORENZ: Could you repeat that?

3 THE COURT: Pardon?

4 MS. LORENZ: Could you repeat that?

5 THE COURT: Do you have any bias or prejudice
6 toward defendants in general as a result of those
7 robberies?

8 MS. LORENZ: No, sir.

9 THE COURT: Was anybody arrested?

10 MS. LORENZ: Yes, sir.

11 THE COURT: Were they prosecuted?

12 MS. LORENZ: Yes, sir.

13 THE COURT: Do you have any bias or prejudice
14 towards the police officer or the Solicitor's office in
15 the manner in which they handled those cases?

16 MS. LORENZ: No, sir.

17 THE COURT: Can you be fair and impartial to both
18 the State and the defendant?

19 MS. LORENZ: Yes, sir.

20 THE COURT: Can you base your decision on testimony
21 you hear in the courtroom, Ms. Lorenz?

22 MS. LORENZ: Yes, sir

23 THE COURT: Thank you very much. Yes sir, your
24 name?

25 MR. SHELBOURNE: My name is Matthew Shelbourne,

1 juror number 240.

2 THE COURT: Yes sir, Mr. Shelbourne?

3 MR. SHELBOURNE: We had a lady who embezzled about
4 30,000 dollars from one of our companies.

5 THE COURT: How long ago was it?

6 MR. SHELBOURNE: This summer; the beginning of the
7 summer.

8 THE COURT: Pardon?

9 MR. SHELBOURNE: Beginning of this summer.

10 THE COURT: Was anybody arrested or charged?

11 MR. SHELBOURNE: Yes.

12 THE COURT: Was she prosecuted?

13 MR. SHELBOURNE: It's pending.

14 THE COURT: It's pending? Do you have bias or
15 prejudice toward the Solicitor's office or the police
16 department or whoever investigated as a result of the way
17 the case was handled?

18 MR. SHELBOURNE: No.

19 THE COURT: Do you have any bias or prejudice
20 towards defendants in general as a result of that
21 embezzlement?

22 MR. SHELBOURNE: No.

23 THE COURT: Can you be fair and impartial to both
24 the State and the defendant?

25 MR. SHELBOURNE: Yes.

1 THE COURT: Can you base your decision on testimony
2 you hear in the courtroom?

3 MR. SHELBOURNE: Yes.

4 THE COURT: Thank you, Mr. Shelbourne. Yes,
5 ma'am?

6 MS. GRAY: Glenda Gray, juror number 86. My
7 daughter is ---

8 THE COURT: --- hold on just a second. Let me find
9 you on this list. Go ahead.

10 MS. GRAY: My daughter is a victim of domestic
11 violence.

12 THE COURT: Okay. Presently or -- is it going on
13 now?

14 MS. GRAY: It's going on now.

15 THE COURT: Has -- are charges pending against
16 someone else?

17 MS. GRAY: Yes, sir.

18 THE COURT: How would that affect you sitting on
19 this jury?

20 MS. GRAY: It wouldn't.

21 THE COURT: You can be fair and impartial?

22 MS. GRAY: Yes, sir.

23 THE COURT: You don't have any bias or prejudice
24 towards the police officer or the Solicitor's office?

25 MS. GRAY: No, sir.

1 THE COURT: Any bias or prejudice against
2 defendants in general?

3 MS. GRAY: No, sir.

4 THE COURT: All right. Thank you, Ms. Gray. Is
5 there any member of the jury panel have particular
6 opinions or feelings about the crime of Murder,
7 Possession of a Firearm that would affect your ability to
8 be fair and impartial jurors to the defendant or the
9 State? If you feel that way or have those thoughts
10 please stand.

11 All right. This occurred on or about March the 1st,
12 2011. Does anybody remember reading anything in the
13 paper about it or hear anything on television or radio
14 about this particular case? If so, please stand.

15 Has anybody heard anything or anyone talking about
16 the case today in the courthouse or anywhere else today
17 other than what I've told you in the courtroom? If so,
18 please stand.

19 Has any member of the jury panel ever served on a
20 jury before? If so, please stand. Yes sir, your name
21 and number?

22 MR. AMES: Brad Ames, number 7.

23 THE COURT: Y'all tell me when did you serve and
24 where?

25 MR. AMES: Well, I've been here before and I went

1 down to Beaufort one time for a bigger trial down there.

2 THE COURT: Was it criminal or civil?

3 MR. AMES: I think it was civil.

4 THE COURT: Civil? So you've been called twice?

5 MR. AMES: Several more times also.

6 THE COURT: Okay. How many times have you been
7 drawn in the last ten years?

8 MR. AMES: Probably four or five.

9 THE COURT: Four or five?

10 MR. AMES: Yes, but it's a great time though.

11 THE COURT: You might ought to get a lottery ticket
12 if your name comes up that often.

13 MR. AMES: I know and I don't know what the deal is.

14 THE COURT: Okay. Would your experience as a
15 juror cause you any difficulty sitting on this jury?

16 MR. AMES: No, not at all.

17 THE COURT: Can you be fair to both parties?

18 MR. AMES: Uh huh.

19 THE COURT: Thank you so very much. Yes ma'am,
20 name and number?

21 MS. BAILEY: Angélique Bailey, number 12. I served
22 on a criminal jury several years ago. It was dismissed
23 though. We had one day and then they settled.

24 THE COURT: So that's -- you didn't reach a
25 verdict?

1 MS. BAILEY: No, sir.
2 THE COURT: Got it settled before hand?
3 MS. BAILEY: Yes, sir.
4 THE COURT: That cause you any difficulty sitting
5 on this jury?
6 MS. BAILEY: No, sir.
7 THE COURT: Can you be fair?
8 MS. BAILEY: Yes, sir.
9 THE COURT: Thank you very much. Yes sir, the
10 gentleman with the glasses and the white shirt.
11 MR. HEATH: Gregory Heath, juror 104. In 2004 I
12 served on a jury in Columbia, South Carolina.
13 THE COURT: Okay. Thank you very much. Yes, sir?
14 MR. KIRBY: Charles Kirby, 141. I served a couple
15 of months ago in the Magistrate's Court on an accident
16 case.
17 THE COURT: Okay. Thank you, very much. Yes sir?
18 The lady in the black dress.
19 MS. GRAY: Glenda Gray, juror number 86. In 2009 I
20 served on a jury in Ravenel.
21 THE COURT: Was it criminal or civil?
22 MS. GRAY: Civil.
23 THE COURT: Civil? Okay, thank you very much.
24 Yes, ma'am?
25 MS. RITTER: My name is Ashley Ritter, juror number

1 217. I used to live in New York City and I served on a
2 criminal -- I was an alternate juror on a criminal trial.

3 THE COURT: Okay. How did you like being an
4 alternate?

5 MS. RITTER: It was better than having to make the
6 decision.

7 THE COURT: It was?

8 MS. RITTER: Yes, sir.

9 THE COURT: Okay. Thank you very much. Yes,
10 ma'am?

11 MS. SWANSON: I'm Margaret Swanson, 269.

12 THE COURT: 269?

13 MS. SWANSON: Uh huh.

14 THE COURT: Yes ma'am Ms. Swanson?

15 MS. SWANSON: The most recent was probably in the
16 last ten years and it was a Federal Grand Jury here.

17 THE COURT: Was it civil or criminal?

18 MS. SWANSON: This was the one when you do the
19 indictments?

20 THE COURT: It's a Grand Jury?

21 MS. SWANSON: Grand Jury.

22 THE COURT: In Federal Court?

23 MS. SWANSON: Yes.

24 THE COURT: You ever been on State Court?

25 MS. SWANSON: Yes, but it's been a long time. One

1 was in Charlotte and I think one was in Charleston.

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

4 MR. CODY: Roland Cody, juror 51. I was on a civil
5 jury but I'm not sure how long ago it was.

6 THE COURT: A long time ago?

7 MR. CODY: I'm guessing around ten years ago.

8 THE COURT: Was it here or out at North Charleston?

9 MR. CODY: It was in North Charleston.

10 THE COURT: Thank you, very much. Yes, ma'am?

11 MS. LITVIN: Allegra Litvin, juror 154. I was on a
12 jury in Phoenix, Arizona in the 1990's and it was
13 criminal.

14 THE COURT: Thank you very much.

15 MS. MITCHELL: Excuse me, Your Honor? I didn't hear
16 your question correctly in the beginning. My name is
17 Deborah Mitchell, I'm juror number 171. It was back in
18 2004 I did serve as a juror in a civil case but it was in
19 the Lonnie Hamilton building.

20 THE COURT: Okay. Thank you very much. Is any
21 member of the jury panel or your immediate family members
22 of victim's rights or law enforcement organizations such
23 as Citizens Against Violent Crime, CAV, People Against
24 Rape, PAR, Mothers Against Drunk Driving, MADD, Person's
25 Empowered to Save Teens, PEST, or any other community

1 watch program or any like organization? If so, please
2 stand.

3 Does any member of the jury panel have a family
4 member or close friend who is or was formerly
5 incarcerated at a State or Federal penitentiary? If so
6 please stand. Yes ma'am, name and number?

7 MS. MITCHELL: Deborah Mitchell, 171. I do have a
8 nephew that is in prison right now.

9 THE COURT: Whereabouts?

10 MS. MITCHELL: He's at McDougall.

11 THE COURT: McDougall, okay. How much time did he
12 catch?

13 MS. MITCHELL: I think he's just serving six years
14 but I think his sentence was for 20.

15 THE COURT: All right. Will that cause you any
16 difficulty in sitting on this jury?

17 MS. MITCHELL: No, sir.

18 THE COURT: Can you be fair and impartial to both
19 sides?

20 MS. MITCHELL: Yes, sir.

21 THE COURT: Okay. Thank you very much.

22 UNIDENTIFIED SPEAKER: Your Honor?

23 THE COURT: Yes ma'am, your name?

24 MS. GUNTERTHOMPSON: I'm Mary Gunterthompson and my
25 juror number is number 90. And I have a nephew that ---

1 THE COURT: --- hold on; let me find you on here.
2 What now?

3 MS. GUNTERTHOMPSON: I have a nephew that served in
4 Federal prison. He's been out two years and he was in
5 for approximately three years.

6 THE COURT: Okay. Thank you, very much. Would
7 that cause you any problem sitting on this jury?

8 MS. GUNTERTHOMPSON: No, sir.

9 THE COURT: Can you be fair to both parties?

10 MS. GUNTERTHOMPSON: Yes, sir.

11 THE COURT: All right. Thank you so very much.
12 Does any member of the jury panel or a member of their
13 family or close friends who has been prosecuted presently
14 or in the past by the 9th Circuit Solicitor's office,
15 which is Charleston and Berkeley counties? If so, please
16 stand.

17 Does any member of the jury panel have any religious
18 or personal beliefs that would interfere with you sitting
19 in judgment of others in a criminal case? If so, please
20 stand. Yes ma'am, you want to come around?

21 MS. BENNETT: --22, Thomasine Bennett.

22 THE COURT: Yes ma'am, Ms. Bennett?

23 [Whereupon, the court, counsel, and Ms. Bennett
24 confer]

25 [Whereupon, Ms. Bennett returns to her seat]

1 [Whereupon, the court and counsel confer]

2 THE COURT: Ms. Bennett, would you come up here for
3 a second please, ma'am?

4 [Whereupon, the court, Ms. Bennett, and counsel
5 confer]

6 [Whereupon, Ms. Bennett returns to her seat]

7 THE COURT: Is any member of the jury panel or a
8 member of their immediate family had a bad experience
9 with a police officer, which would affect your ability to
10 act as fair and impartial jurors? If so, please stand.

11 Is any member of the jury panel aware of any bias or
12 prejudice towards either the State or the defendant in
13 this case? If so, please stand.

14 Has any member of the jury panel formed or expressed
15 an opinion about any issue or matter involved in this
16 case? If so, please stand.

17 Does any member of the jury panel know of any reason
18 personal or otherwise as to why they cannot serve on this
19 jury? If so, please stand.

20 Any further questions from the State?

21 MR. DURANT: No sir, Your Honor.

22 THE COURT: Any from the defendant?

23 MS. FORD: No, Your Honor.

24 THE COURT: All right. Any motions on any jurors
25 other than the ones we've already made at the bench?

1 MR. DURANT: None from the State, Your Honor.

2 THE COURT: Any from the defendant?

3 MS. FORD: No, Your Honor.

4 THE COURT: Mr. Butler, do you have any?

5 MR. BUTLER: No, sir.

6 THE COURT: Okay. Thank you very much. All
7 right Madame Clerk, if you could give us the strike
8 sheet. Let me see the attorneys up here for just a
9 second, please?

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

12 THE COURT: How long do y'all want to take a look
13 at the sheet before you're ready to strike?

14 MR. DURANT: How long do you need, Mary?

15 MS. FORD: Just a couple of minutes, Your Honor.

16 THE COURT: Okay.

17 MR. DURANT: About five minutes perhaps, Your
18 Honor.

19 THE COURT: All right. We'll get two alternates.
20 Y'all plan on two alternates.

21 [Off the record momentarily]

22 - - -

23 - - -

24 - - -

25 - - -

1 STRIKING OF THE JURY
2 MR. DURANT: Okay, Your Honor.
3 THE COURT: Ms. Ford, are you ready?
4 MS. FORD: Yes, Your Honor.
5 THE COURT: All right, Madame Clerk, if you'll give
6 us a jury?
7 CLERK OF COURT: Ladies and gentlemen, when I call
8 your name and juror number please come forward with your
9 belongings and stand and face the audience. Juror number
10 5, Sherry Allen.
11 [Whereupon, Ms. Allen comes forward]
12 CLERK OF COURT: What say you from the State?
13 MS. ALLEN: I'm Sherry Allen.
14 MR. DURANT: Please present Ms. Allen.
15 CLERK OF COURT: What sayeth the defendant?
16 MS. FORD: Please excuse this juror.
17 CLERK OF COURT: Ms. Allen, please have a seat back
18 in the audience.
19 [Whereupon, Ms. Allen returns to the audience]
20 CLERK OF COURT: Juror number 7, Bradley Ames.
21 [Whereupon, Mr. Ames comes forward]
22 CLERK OF COURT: What say you for the State?
23 MR. DURANT: Please present Mr. Ames.
24 CLERK OF COURT: What say you for the defendant?
25 MS. FORD: Please seat the juror.

1 CLERK OF COURT: Mr. Ames, please have a seat in
2 the jury box.

3 [Whereupon, Mr. Ames is seated in the jury box as a
4 juror]

5 CLERK OF COURT: Juror number 104, Jeffrey Heatley.

6 [Whereupon, Mr. Heatley comes forward]

7 CLERK OF COURT: What say you for the State?

8 MR. DURANT: Please present the juror.

9 CLERK OF COURT: What say you for the defendant?

10 MS. FORD: Please seat the juror.

11 CLERK OF COURT: Mr. Heatley, please have a seat in
12 the jury box.

13 [Whereupon, Mr. Heatley is seated in the jury box as
14 a juror]

15 CLERK OF COURT: Juror number 209, Vernon Rhodan.

16 [Whereupon, Mr. Rhodan comes forward]

17 CLERK OF COURT: What say you for the State?

18 MR. DURANT: Please present the juror.

19 CLERK OF COURT: What say you for the defendant?

20 MS. FORD: Please seat the juror.

21 CLERK OF COURT: Mr. Rhodan, have a seat in the
22 jury box.

23 [Whereupon, Mr. Rhodan is seated in the jury box as
24 a juror]

25 CLERK OF COURT: Juror number 42, Margot Campos.

1 [Whereupon, Ms. Campos comes forward]

2 CLERK OF COURT: What say you for the State?

3 MR. DURANT: Please present Ms. Campos.

4 CLERK OF COURT: What say you for the defendant?

5 MS. FORD: Please seat the juror.

6 CLERK OF COURT: Ms. Campos, please have a seat in
7 the jury box.

8 [Whereupon, Ms. Campos is seated in the jury box as
9 a juror]

10 CLERK OF COURT: Juror number 211, Eleanor
11 Richberg.

12 [Whereupon, Ms. Richberg comes forward]

13 CLERK OF COURT: What say you for the State?

14 MR. DURANT: Please present Ms. Richberg.

15 CLERK OF COURT: What say you for the defendant?

16 MS. FORD: Please seat the juror.

17 CLERK OF COURT: Ms. Richberg, please have a seat
18 in the jury box.

19 [Whereupon, Ms. Richberg is seated in the jury box
20 as a juror]

21 CLERK OF COURT: Juror number 14, Jeffrey Barr.

22 [Whereupon, Mr. Barr comes forward]

23 CLERK OF COURT: What say you for the State?

24 MR. DURANT: Please present Mr. Barr.

25 CLERK OF COURT: What say you for the defendant?

1 MS. FORD: Please excuse this juror.
2 CLERK OF COURT: Mr. Barr, please have a seat back
3 in the audience.
4 [Whereupon, Mr. Barr returns to the audience]
5 CLERK OF COURT: Juror number 182, Roger Newman.
6 [Whereupon, Mr. Newman comes forward]
7 CLERK OF COURT: What say you for the State?
8 MR. DURANT: Please present Doctor Newman.
9 CLERK OF COURT: What say you for the defendant?
10 MS. FORD: Please seat the juror.
11 CLERK OF COURT: Please have a seat in the jury
12 box.
13 [Whereupon, Mr. Newman is seated in the jury box as
14 a juror]
15 CLERK OF COURT: Juror number 154, Allegra Litvin.
16 [Whereupon, Ms. Litvin comes forward]
17 CLERK OF COURT: What say you for the State?
18 MR. DURANT: Please present Ms. Litvin.
19 CLERK OF COURT: What say you for the defendant?
20 MS. FORD: Please seat the juror.
21 CLERK OF COURT: Ms. Litvin, have a seat in the
22 jury box.
23 [Whereupon, Ms. Litvin is seated in the jury box as
24 a juror]
25 CLERK OF COURT: Juror number 167, Fritz Meyer.

1 [Whereupon, Mr. Meyer comes forward]
2 CLERK OF COURT: What say you for the State?
3 MR. DURANT: Please present Mr. Meyer.
4 CLERK OF COURT: What say you for the defendant?
5 MS. FORD: Please seat the juror.
6 CLERK OF COURT: Mr. Meyer, please have a seat in
7 the jury box.
8 [Whereupon, Mr. Meyer is seated in the jury box as a
9 juror]
10 CLERK OF COURT: Juror number 125, Kimberly
11 Johnson.
12 [Whereupon, Ms. Johnson comes forward]
13 CLERK OF COURT: What say you for the State?
14 MR. DURANT: Please present the juror.
15 CLERK OF COURT: What say you for the defendant?
16 MS. FORD: Please seat the juror.
17 CLERK OF COURT: Ms. Johnson, please have a seat in
18 the jury box.
19 [Whereupon, Ms. Johnson is seated in the jury box as
20 a juror]
21 CLERK OF COURT: Juror number 157, Christine
22 Lorenz.
23 [Whereupon, Ms. Lorenz comes forward]
24 CLERK OF COURT: What say you for the State?
25 MR. DURANT: Please present Ms. Lorenz.

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1 CLERK OF COURT: What say you for the defendant?
2 MS. FORD: Please excuse this juror.
3 CLERK OF COURT: Ms. Lorenz, please have a seat
4 back in the audience.
5 [Whereupon, Ms. Lorenz returns to the audience]
6 CLERK OF COURT: Juror number 48, Betsy Jane Clary.
7 [Whereupon, Ms. Clary comes forward]
8 CLERK OF COURT: What say you for the State?
9 MR. DURANT: Please present Ms. Clary.
10 CLERK OF COURT: What say you for the defendant?
11 MS. FORD: Please seat the juror.
12 CLERK OF COURT: Ms. Clary, please have a seat in
13 the jury box.
14 [Whereupon, Ms. Clary is seated in the jury box as a
15 juror]
16 CLERK OF COURT: Juror number 234, Lisa
17 Schlesinger.
18 [Whereupon, Ms. Schlesinger comes forward]
19 CLERK OF COURT: What say you for the State?
20 MR. DURANT: Please present Ms. Schlesinger.
21 CLERK OF COURT: What say you for the defendant?
22 MS. FORD: Please seat the juror.
23 CLERK OF COURT: Ms. Schlesinger, please have a
24 seat in the jury box.
25 [Whereupon, Ms. Schlesinger is seated in the jury

1 box as a juror]
2 CLERK OF COURT: Juror number 93, Kevin Hammer.
3 [Whereupon, Mr. Hammer comes forward]
4 CLERK OF COURT: What say you for the State?
5 MR. DURANT: Please present Mr. Hammer.
6 CLERK OF COURT: What say you for the defendant?
7 MS. FORD: Please seat the juror.
8 CLERK OF COURT: Mr. Hammer, please have a seat in
9 the jury box.
10 [Whereupon, Mr. Hammer is seated in the jury box as
11 a juror]
12 CLERK OF COURT: Now striking for the first
13 alternate. Juror number 126, Wardina Johnson.
14 [Whereupon, Ms. Johnson comes forward]
15 CLERK OF COURT: What say you for the State?
16 MR. DURANT: Please excuse Ms. Johnson.
17 CLERK OF COURT: Ms. Johnson, please have a seat
18 back in the audience.
19 [Whereupon, Ms. Johnson returns to the audience]
20 CLERK OF COURT: Juror number 136, Edward
21 Kassinger.
22 [Whereupon, Mr. Kassinger comes forward]
23 CLERK OF COURT: Any challenge from the State?
24 MR. DURANT: No, ma'am.
25 CLERK OF COURT: What say you for the defendant?

1 MS. FORD: Please seat the juror.

2 CLERK OF COURT: Mr. Kassinger, please have a seat
3 in the jury box. You've been selected as an alternate.

4 [Whereupon, Mr. Kassinger is seated in the jury box
5 as an alternate]

6 CLERK OF COURT: Now striking for the second
7 alternate. Juror number 192, Natalya Pais.

8 [Whereupon, Ms. Pais comes forward]

9 CLERK OF COURT: What say you for the State?

10 MR. DURANT: Please present Ms. Pais.

11 CLERK OF COURT: What say you for the defendant?

12 MS. FORD: Please seat the juror.

13 CLERK OF COURT: Ms. Pais, please have a seat in
14 the jury box.

15 [Whereupon, Ms. Pais is seated in the jury box as an
16 alternate]

17 THE COURT: All right members of the jury panel.

18 I'm going to ask you to go to the jury room. The Bailiff

19 will show you the jury room. Please don't discuss the
20 case amongst yourselves. And I'll get you back very
21 shortly if you'll follow the Bailiff.

22 [Whereupon, the jury exits the courtroom at 12:54
23 p.m.]

24 THE COURT: Any motions from the State on drawing
25 the jury other than the motions already previously been

1 made at the bench?

2 MR. DURANT: No, sir.

3 THE COURT: Any from the defendant?

4 MS. FORD: No, Your Honor.

5 THE COURT: All right. The other members of the
6 jury panel if you'll go on downstairs. Go back
7 downstairs where you came from and I hope you have a good
8 day.

9 [Whereupon, the jury panel exits the courtroom at
10 12:55 p.m.]

11 THE COURT: Can I see the attorneys up here while
12 they are filing out real quick?

13 [Whereupon, an off the record bench conference is
14 held]

15 THE COURT: Bring us the jury please.

16 [Whereupon, the jury enters the courtroom at 12:56
17 p.m.]

18 THE BAILIFF: All jurors present, Your Honor.

19 THE COURT: Thank you very much. Ladies and
20 gentlemen of the jury panel we're going to take a break
21 at this time for lunch. Your schedule generally will run
22 from either 9 or 9:30 every day until approximately
23 around 1, and we'll take a lunch break at 1 and we'll run
24 to 5 to 5:30 every day. I'm not sure how long the trial
25 is going to last. But we're not going to start -- I've

1 got to hear some motions, so I want you to be back in the
2 jury room at 3 o'clock. When you come to the courthouse
3 come straight to the jury room. Don't discuss the case
4 amongst yourselves and I don't want you getting on any
5 electronic devices; computer, iPad, phone, or whatever
6 and researching this case.

7 I want you to make a decision based on what you hear
8 in the courtroom; not what somebody has read in a paper,
9 what somebody has put on the Internet, or what somebody
10 has put in some blog if you can find it. No electronic
11 research, no electronics will go in the jury room with
12 you.

13 Base your decision on what you hear in the
14 courtroom; not what someone outside the courtroom has
15 said about this case. See you at 3 o'clock. Have a good
16 afternoon; what's left of it.

17 [Whereupon, the jury exits the courtroom at 1:00
18 p.m.]

19 THE COURT: All right. We'll adjourn until 2:30?

20 MR. DURANT: Yes, Your Honor.

21 THE COURT: All right. See you at 2:30.

22 MR. DURANT: Thank you.

23 [Whereupon, court is in recess from 1:00 p.m. until
24 2:30 p.m.]

25 THE COURT: I guess Ms. Ford it's your motion is

1 that correct?

2 MS. FORD: Yes. We are asking for a Neil v Biggers
3 hearing, Your Honor.

4 THE COURT: Okay. That's what I'm saying it's
5 your request, right?

6 MS. FORD: Yes, it's my request. But the State
7 still calls the witness, Your Honor.

8 THE COURT: Tell me if you would very briefly the
9 issues in the Biggers if you would please?

10 MR. DURANT: Me or her?

11 THE COURT: It doesn't matter; whoever wants to
12 talk.

13 MR. DURANT: Obviously Your Honor the basis of the
14 Neil v Biggers is regarding the suggestibility of any
15 identification procedure we used by the police department
16 to ---

17 THE COURT: --- I mean was it a photo lineup or eye
18 witness or a lineup in person? I'm just trying to find
19 out the facts that was ---

20 MR. DURANT: --- a photo lineup, Your Honor, shown
21 by Detective Osborne eight days I believe after the
22 shooting. And I intend to put up Detective Osborne in
23 the absence of any finding by the court that the lineup
24 was presented in a suggestive manner or was it suggestive
25 in and of itself. I will have nothing else to put up in

1 the Neil v Biggers hearing.

2 THE COURT: Okay. I see we have the defendant
3 here, Mr. Flowers, so I guess we can proceed.

4 MR. DURANT: Thank you, Your Honor. May I go ahead
5 and call the witness?

6 THE COURT: Yes, sir. Please do.

7 NEIL vs. BIGGERS HEARING

8 MR. DURANT: The State would call Detective David
9 Osborne.

10 [Whereupon, Detective Osborne comes forward]

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

15 DETECTIVE OSBORNE: I do.

16 CLERK OF COURT: State your full name and spell
17 your last name.

18 DETECTIVE OSBORNE: David Osborne O-S-B-O-R-N-E.

19 [Whereupon, the witness takes the witness stand]

20 - - - - -

21 DAVID OSBORNE,

22 Having been first duly sworn,

23 Was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. DURANT:

1 Q. Detective Osborne could you tell Judge Nicholson
2 where you work?

3 A. I work for the Charleston Police Department.

4 Q. And what do you do at the Charleston Police
5 Department?

6 A. My current assignment is I am the Sergeant in charge
7 of the Violent Crimes Unit.

8 Q. And what is your relationship regarding this
9 particular case? What did you do on this case?

10 A. In this case I was the case agent.

11 Q. And in that regard did you have an occasion to meet
12 with a witness to this case named Kennedy Smith?

13 A. I did.

14 Q. On a number of occasions is that correct?

15 A. That's correct.

16 Q. I believe the first one was on March the 2nd is -- of
17 2011?

18 A. Briefly on the 1st but more in depth on the 2nd;
19 that's correct.

20 Q. Okay. When you met with him on March the 2nd did
21 you attempt any identification procedures with him on
22 that occasion; showing him photo lineups or anything like
23 that?

24 A. No, sir.

25 Q. What was his position at the time regarding being

1 able to identify anybody?

2 A. If I remember correctly at that time he was stating
3 that he was feeling dizzy and didn't want to look at the
4 lineup at that point.

5 Q. Okay. And so you didn't show him anything on March
6 the 2nd is that correct?

7 A. That's correct.

8 Q. Do you recall what description he was giving of the
9 shooter at that time with regard to the hair style?

10 A. He said the shooter had twists.

11 Q. Twists in his hair?

12 A. Yes, sir.

13 Q. Okay. Now moving ahead a week to March the 9th of
14 2011 did you have occasion to meet with Mr. Kennedy Smith
15 again?

16 A. I did.

17 Q. And where was that?

18 A. That was at the police station.

19 Q. And how did you get in touch with Mr. Smith? Was he
20 still in jail at that time?

21 A. He was still in jail. I picked him up from the
22 Detention Center and brought him to the station then.

23 Q. Okay. And for what purpose did you bring him to
24 the station?

25 A. I had been in contact with Investigator Levi Miles.

1 Levi Miles is attorney David Aylor's investigator.

2 Q. Okay. And why did you want to meet with Mr. Smith
3 that day?

4 A. I wanted to meet with him because I knew we still
5 had unresolved matters and it was my belief that he still
6 had not given us a truthful statement.

7 Q. Okay. You didn't actually take a statement from
8 him did you that day?

9 A. I didn't take any audio or written recorded
10 statement. The primary purpose at that point was to show
11 a lineup to see if he could identify the shooter.

12 Q. Okay. And did you have a couple of lineups with
13 you that day?

14 A. I did.

15 Q. And did one of those lineups contain the defendant
16 Frederick Flowers?

17 A. Yes.

18 Q. And why was Mr. Flowers a suspect at that point?

19 A. His name had come up during the investigation in a
20 couple of different reasons.

21 First the victim's girlfriend had told us that there
22 was a disagreement the day before the murder between
23 Freddie and the victim over some marijuana.

24 And secondly basically third hand information was
25 that there was a witness to the murder who said they had

1 observed Freddie shoot the victim.

2 Q. Okay. So that's the reason he was a suspect at the
3 time you met with Mr. Smith is that correct?

4 A. Yes.

5 Q. And how did you go about showing him the lineup?
6 Did you use a particular paperwork or anything of that
7 nature?

8 A. Yes. The first thing we do -- or I did was read the
9 Charleston Police Department lineup admonition form to
10 Mr. Smith and ask him if he understood, and he said he
11 did.

12 Q. Okay. And I hand you what's previously been marked
13 as State's exhibit number 42 for identification and ask
14 if you recognize that document?

15 [Whereupon, the witness is shown exhibit]

16 A. Yes. This is the admonition form that I read to
17 Kennedy.

18 Q. And how do you know that?

19 A. It's got my signature on it and his signature and
20 the date and time.

21 Q. Okay. Did you go over that admonition form with
22 Mr. Kennedy prior to showing him any photographs?

23 A. Yes, sir.

24 Q. Did he appear to understand the instructions?

25 A. He did.

1 Q. Did he indicate that he understood the instructions?

2 A. Yes.

3 Q. Was there anything concerning his mental state at
4 that time that gave you any concern that he didn't
5 understand what was going on?

6 A. No.

7 Q. Okay. And he in fact signed indicating that he did
8 understand?

9 A. That's correct.

10 Q. After you went over that admonition with him what
11 did you do?

12 A. The admonition form would have been stapled to the
13 lineup. I would put them both down in front of him.
14 Then he picked it up and he flipped it over and he looked
15 at the lineup.

16 Q. Okay. And what happened when -- I'll hand you
17 what's previously been marked as State's exhibit number
18 43 for identification and ask if you recognize that
19 document?

20 [Whereupon, the witness is shown exhibit]

21 A. This is the lineup.

22 Q. When Freddie Flowers -- how do you know that?

23 A. Well it's got Kennedy's -- where Kennedy circled
24 Frederick's picture and then signed inside the circle.

25 Q. Okay. And that is picture number 5 that he circled

1 and signed is that correct?

2 A. That's correct.

3 Q. Could you tell us what basically happened when you
4 showed him that group of photographs; what did he do?

5 A. When I showed it to him like I said he flipped it
6 over, he looked at the lineup and I was trying to keep
7 track on how long -- I try to keep track of how long it
8 takes them to identify if they are able to make that
9 identification. And this one after about five seconds he
10 identified Frederick Flowers.

11 Q. Okay. And do you recall when he identified Mr.
12 Flowers?

13 A. Something to the effect of this is the guy who
14 resembles the individual who shot my son; something to
15 that effect.

16 Q. Okay. Did he indicate to you that he was making a
17 positive identification?

18 A. Yes.

19 Q. And that form you use basically has an alternative
20 for him to say he can't make an identification or he is
21 making a positive identification is that correct?

22 A. Right. That's the next thing I do is I read both to
23 him and he chose -- he made a positive identification and
24 put down number five and signed it.

25 Q. That's the one he signed?

1 A. Yes.

2 Q. And what did he write down there in the comment
3 section if you can read it?

4 A. In the comments he wrote down this looked the
5 closest to the person who shot my son. Neck and side of
6 face and complexion is what I saw.

7 Q. Okay. At any time during this procedure did you
8 tell him that the shooter would be in that group of
9 photographs?

10 A. No.

11 Q. At any time did you suggest to him by words which
12 photograph he should pick out?

13 A. No.

14 Q. Did you suggest to him by contact which photograph
15 he should pick out?

16 A. No.

17 Q. So it would be your testimony that he picked out
18 number five of his own volition?

19 A. That's correct.

20 Q. And that was on March the 9th is that correct?

21 A. That's correct.

22 Q. And at what time?

23 A. 3:10 p.m.

24 Q. Okay. And the murder in this case took place on
25 March the 1st?

1 A. That's correct.
2 Q. About what time?
3 A. 16:48.
4 Q. Okay, at around quarter till 5?
5 A. 5 p.m., yes sir.
6 Q. I believe you also said you showed him a second
7 lineup that day?
8 A. I did.
9 Q. Do you recall who was in that lineup?
10 A. Cornelius Jenkins.
11 Q. And who is Cornelius Jenkins?
12 A. Cornelius Jenkins is a friend of Freddie.
13 Q. Okay. And was he able to pick anybody out of that
14 lineup?
15 A. He was not.
16 MR. DURANT: Your Honor, that's all I have of this
17 witness.
18 THE COURT: Cross-examination?
19 CROSS-EXAMINATION
20 BY MS. FORD:
21 Q. Hello Detective.
22 A. Hi.
23 Q. You told us that you met with Mr. Smith several
24 times?
25 A. Yes.

1 Q. And initially you got a description from him?

2 A. That's correct.

3 Q. And that description you told us that the guy had
4 twists in his hair?

5 A. That's right.

6 Q. And he gave a height of between 5'9 and 6 feet
7 correct?

8 A. I believe that's correct.

9 Q. And he had a slim build.

10 A. Yes.

11 Q. And dark complexion.

12 A. I believe so.

13 Q. He also told you that he thought he would have a
14 hard time picking someone out because he didn't get a
15 very good look right?

16 A. He did say that the first time. His story did
17 waiver a bit on whether he was going to I.D. or not.

18 Q. And he indicated he wasn't paying that close of
19 attention right because he didn't think anything was
20 going to go down.

21 A. He may have. I don't recall the exact words.

22 Q. Okay. And just that the car -- he was in a low car
23 correct; a Celica right?

24 A. Right.

25 Q. It was a car low to the ground correct?

- 1 A. That's correct.
- 2 Q. And he was in the driver's seat correct?
- 3 A. That's correct.
- 4 Q. And so the shooter was by the passenger correct?
- 5 A. That's right.
- 6 Q. So the victim would have been partially blocking his
7 view right?
- 8 A. Again, I would have to try to recreate that to see
9 if he were -- I mean he may have been able to see him as
10 he walked up to the car; it's hard for me to say.
- 11 Q. Okay. Well he indicated that his view was blocked
12 didn't he -- Mr. Smith?
- 13 A. I think if I remember correctly there was a point
14 where he said that he wasn't able to get a full head on
15 view of the guy.
- 16 Q. Okay. So then when you talked to him later he
17 actually changed his description right?
- 18 A. That's correct.
- 19 Q. Let's step back for a second. You showed him a
20 lineup not involving Freddie Flowers correct? Or he was
21 shown a lineup?
- 22 A. He was shown the night of the incident several
23 lineups.
- 24 Q. And with guys with twists in their hair?
- 25 A. I would have to go back and look. I wasn't the

1 detective that did that. I'm sure there would have been.

2 Q. Well Freddie didn't have twists in his hair at that
3 time.

4 A. No, he did not.

5 Q. He picked out a filler picture didn't he?

6 A. Again, I don't think that -- the way it was
7 described to me, and again I wasn't present when that was
8 being done.

9 But the way it was described to me was that he was
10 picking out people saying well that looks like the guy in
11 the yard. That looks like the guy that I rode -- I mean
12 there was never any positive identification on any of
13 those lineups.

14 Q. So when you met with him and talked to him in more
15 detail he did give a different description of the shooter
16 at that point?

17 A. Well the one thing that changed from those initial
18 interviews to the interview that we were talking about
19 with the lineup was the hair style.

20 Q. So this time he said the hairstyle was low cut
21 correct?

22 A. That's correct.

23 Q. And he said that he was mistaken maybe like the
24 light got in his way or something and that's why he had
25 said twists earlier?

1 A. To be quite honest I can't remember what reasoning
2 he gave for saying twists but I'm not sure.

3 Q. Okay. But this time originally he said twists
4 correct?

5 A. Right.

6 Q. And now he said a low hair cut?

7 A. Right.

8 Q. But he still said that the shooter was between 5'9
9 and 6 feet?

10 A. That's correct.

11 Q. And he said maybe medium complexion this time.

12 A. Right.

13 Q. No facial hair?

14 A. That's correct.

15 Q. Between 25 and 32 years old?

16 A. Correct.

17 Q. Okay. So you composed a lineup including Frederick
18 Flowers or you had that -- someone did that?

19 A. Right.

20 Q. Now Frederick Flowers he had a low haircut correct?

21 A. That's correct.

22 Q. And complexion is objective correct?

23 A. Correct.

24 Q. But he's not the darkest African American is he?

25 A. I wouldn't describe him as dark complexion, no.

1 Q. Okay. And -- but Freddie he is -- of course you
2 can't see this in the photos but Freddie is a lot taller
3 than 5'8 to 6 feet correct?
4 A. If I remember correctly Freddie is maybe 6'2 or 6'3.
5 Q. Would you like him to stand up? Would that help
6 you?
7 A. Okay.
8 [Whereupon, the defendant stands]
9 Q. Does he look about 6'5?
10 A. I don't know I'd have to go stand next to him.
11 Q. If I'm 5'8 and in flats?
12 A. [No response]
13 Q. Well, he is very tall.
14 A. I wouldn't say that he is not 6'5, I mean that's
15 possible.
16 Q. He's a tall guy, correct?
17 A. He is tall.
18 Q. Okay. And 5'8 to 6 feet that's more like average.
19 Wouldn't you say that's fair?
20 A. Sure. I guess 5'8 is probably average.
21 Q. 5'8 to be on the shorter side?
22 A. I mean if you're asking my opinion I would say 5'8
23 is an average size for a man.
24 Q. How tall are you?
25 A. 6'2.

1 Q. So would you consider yourself tall?

2 A. Taller than the average man.

3 Q. And Freddie is taller than you?

4 A. Yes.

5 Q. So at this point he picks Freddie out of a lineup
6 correct?

7 A. Yes.

8 Q. But he's still -- he just says he most resembles the
9 shooter.

10 A. That's right.

11 Q. The Solicitor he asked you if -- you showed him a
12 lineup including Cornelius Jenkins?

13 A. Right.

14 Q. You didn't show him a lineup including some of the
15 other guys mentioned like Carlos Jones though, right?

16 A. No.

17 Q. So just -- was the one -- including Freddie was that
18 before or after the one including C.J.?

19 A. I showed the lineup with Freddie first, then the
20 lineup with C.J.

21 Q. Okay.

22 THE COURT: Which one did you show first, the one
23 with the defendant first?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay.

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

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

3 Q. [Ms. Ford] So in general when a photo lineup is
4 being done do you take photos -- are photos picked to
5 match the description given by a witness or by the person
6 you're looking to see if you can identify?

7 A. Well, I guess it all depends. I mean generally
8 speaking the way a lineup is prepared is you'll have a
9 suspect.

10 In this case it was Freddie Flowers, and you try to
11 pick fill in photographs -- you don't want anything that
12 would draw the witness's attention specifically to
13 Freddie for any other reason than the fact that Freddie
14 had done the crime.

15 In other words you want to make sure the backgrounds
16 are similar. You want to make sure the clothing is
17 similar and the looks and hair styles are similar. In
18 other words you wouldn't want to put Freddie in a lineup
19 with five other white guys.

20 Q. In this case you had Freddie in mind correct?

21 A. Freddie was a suspect, yes.

22 Q. And so you put him in the lineup and you were
23 finding others to match his description; what you knew to
24 be Freddie's description?

25 A. Well, no. I mean when you -- well, sort of. The

1 age yes, the build yes; the height no.
2 Q. And these guys are actually a variety of complexions
3 correct; wouldn't you say that's fair?
4 A. Yes, and that's why we try to cover that in the
5 admonition form, try to tell the witness to keep in mind
6 that the photograph may change the complexion of an
7 individual if the flash is set too bright, too low; they
8 may appear slightly different and that's why we have the
9 admonition form.
10 Q. No further questions.
11 THE COURT: Redirect?
12 MR. DURANT: No, sir.
13 THE COURT: You may step down. Thank you very
14 much.
15 [Whereupon, the witness is excused and exits the
16 witness stand]
17 THE COURT: Do you have any additional witnesses?
18 MR. DURANT: Your Honor, in the absence of a ruling
19 by the court that that lineup is suggestive or presented
20 in a suggestive manner ---
21 THE COURT: --- I know, but do you have any further
22 witnesses you want to offer?
23 MR. DURANT: It depends on the court. It's always
24 been my understanding in Neil v Biggers that it's only if
25 the court finds the procedure was suggestive or

1 administered in a suggestive manner that we go through
2 another witness. I would argue to the court ---

3 THE COURT: --- well, it's two prong whether it was
4 unduly suggestive and whether it was substantial -- I.D.
5 error.

6 MR. DURANT: I understand ---

7 THE COURT: --- and those are the two prongs. Are
8 you talking about the first one unduly suggestive? Let
9 me see the pictures. When I looked at them very briefly
10 I did not see anything that appeared to be unduly
11 suggestive in the pictures themselves.

12 [Whereupon, Mr. Durant proffers photos to the court
13 for review]

14 THE COURT: Ms. Ford, anything you want to comment
15 on the pictures being suggestive? Four of them have
16 black t-shirts and two of them have white. Anything as
17 far as the photos themselves being unduly suggestive?

18 MR. BUTLER: Judge, will you hear from me on that?

19 THE COURT: Pardon?

20 MR. BUTLER: Would you hear from me?

21 THE COURT: Yes, I'll be glad to hear from you.

22 MR. BUTLER: The main issue for us with respect to
23 suggestibility is that the fillers; those five were not
24 the suspect. Those features according to the
25 Detective's testimony are chosen to match the suspect as

1 opposed to the description given by the witness. And so
2 for that reason we would suggest that it is suggestive.

3 THE COURT: Well, but the statement he signs very
4 clearly says-- I scanned it real quickly but let me find
5 it. It says the photographs may or may not contain a
6 photo of the person who committed the crime they are
7 investigating. That's in the statement.

8 MR. BUTLER: That's a different issue. That's
9 letting him know he may not even be in here; don't feel
10 like you need to make a choice.

11 But the FBI guidelines based on all the research has
12 now shown that the fillers need to match the description
13 given by the witness; not necessarily match the physical
14 features of the suspect.

15 Detective Osborne's testimony was that they choose
16 at least -- they now can't do build and height and weight
17 in a photo array, but that the other features are to
18 match the person that they think is a suspect; and in
19 this case Freddie Flowers, as opposed to a description of
20 the gunman as given by the witness.

21 And as to the second point although you have to make
22 a finding suggesting ability before we get to reliability
23 suggestibility is not determined solely by what the
24 officer says. It could be determined by what the witness
25 says too.

1 THE COURT: I understand that, but the only witness
2 I've heard from is the officer and I've got to base my
3 decision making as to what he said as to this issue.

4 MR. BUTLER: Well, our position is that
5 suggestibility doesn't come only from the officer; it
6 could come from the witness as well. And the State's
7 position is they don't have to call the eye witness
8 unless Your Honor makes the finding that by virtue of the
9 Detective's testimony the procedure was suggestive. And
10 we're saying no, that although the officer -- the
11 detective doesn't think it was suggestive ---

12 THE COURT: --- so your position is that the police
13 officer or whoever prepared the lineup, I think the
14 Detective said he didn't do it but whoever prepared it
15 has to go by the description of the suspects.

16 MR. BUTLER: From the witness, yes sir, as opposed
17 to the physical features of the suspect that they have in
18 mind.

19 THE COURT: Okay. What's the State's position on
20 that particular issue?

21 MR. DURANT: I think that has nothing to do with
22 the suggestibility of the lineup Your Honor. They either
23 -- there is either something about that lineup that
24 points to this defendant or there isn't. And if you look
25 at those six pictures they are not six pictures of people

1 who look more similar than those six photographs right
2 there. There is nothing about any of those photographs
3 that stand out; certainly not anything about photograph
4 number five that stands out.

5 And what would stand out is if you put five people
6 in there with twists in their head and one person in
7 there that didn't have twists in their hair. And besides
8 before he even showed him that ---

9 THE COURT: --- his position is that you should
10 have six with twists in their hair. Is that right Mr.
11 Beattie?

12 MR. DURANT: I understand ---

13 MR. BUTLER: --- if the ---

14 THE COURT: --- if that's the description. But I
15 think you said later he changed the description.

16 MR. DURANT: He did. He changed the description
17 with a short haircut before he was shown those
18 photographs.

19 THE COURT: I'm going to find that the six pictures
20 and the photograph lineup admonition is not suggestive as
21 far as the photographs.

22 Now as to the second prong, on -- well there is a
23 substantial likelihood of identification error and I
24 believe we're talking about opportunities for the witness
25 to view, the witness's degree of -- asking the witness

1 with -- prior description, the level of certainty
2 demonstrated by the witness at the confrontation, the
3 length of time between the crime and confrontation. I
4 don't know how I can address those issues without hearing
5 from the witness.

6 MR. DURANT: Well, Your Honor, the case of Neil v
7 Biggers says you don't have to.

8 THE COURT: I understand that ---

9 MR. DURANT: --- but Neil v Biggers ---

10 THE COURT: --- the State v Drayton and other cases
11 lay out the criteria that the court is supposed to look
12 at.

13 MR. DURANT: I understand that, Your Honor, but if
14 you read those cases they all are like this. They say
15 only if the court determines that the identification
16 method was suggested do you even get to those factors.
17 It's only in a case of like a ---

18 THE COURT: --- well, all I'm saying is the photos
19 themselves are not suggestive. What is suggestive from
20 the court's perspective was the statement that apparently
21 the witness made and it says he -- and I don't know if I
22 can quote it exactly, he says he would have a hard time
23 picking him out. I believe that's what the police
24 officer said. Now then he comes in and picks someone
25 out. I mean that sort of leans to the likelihood of

1 misidentification.

2 MR. DURANT: I understand that, Your Honor, but ---

3 THE COURT: --- so that's my problem and you're
4 sitting there telling me you don't want to call the
5 witness.

6 MR. DURANT: I'll call the witness, Your Honor, but
7 what I'm saying is that as a legal matter ---

8 THE COURT: --- don't get me wrong. All I'm saying
9 is these six photographs do not suggest that the
10 defendant -- point to the defendant.

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

12 THE COURT: --- that's all I'm saying. I'm not
13 addressing the overall issue of whether it's unduly
14 suggestive in the second prong.

15 MR. DURANT: And I understand your ruling and I'm
16 not going to argue with you anymore, Judge. It's just
17 that I have a different understanding of the law.

18 THE COURT: I understand.

19 MR. DURANT: And I've deferred to your ---

20 THE COURT: --- I mean I agree with you what the
21 case has said, but I think you got to look at totality of
22 the circumstances. And in the totality of the
23 circumstances the photos themselves are not suggestive.
24 But the fact that the eyewitness says hey, I may not be
25 able to pick him out that may be unduly suggestive.

1 MR. DURANT: Okay ---

2 THE COURT: --- you can't pick him out, but he may
3 be in here.

4 MR. DURANT: I understand. I'll call him...

5 THE COURT: I think we're saying the same thing
6 just a little bit different.

7 MR. DURANT: Okay.

8 THE COURT: I'm not ready to completely rule at the
9 whole -- I think you've got to look at totality of
10 circumstances and that's the entire procedure. I'm not
11 ready to rule it's not unduly suggestive.

12 MR. DURANT: I understand, Your Honor. The State
13 would call ---

14 THE COURT: --- I didn't mean to be -- anything the
15 defense would like to add to that at this point in time?

16 MR. BUTLER: No, sir.

17 MR. DURANT: The State would call ---

18 THE COURT: --- I enjoy a lively debate with the
19 State's attorney, Mr. Bruce DuRant. I enjoyed that
20 lively debate.

21 MR. DURANT: Well, nobody has ever accused me to
22 not like an argument. The State would call Kennedy
23 Smith.

24 [Whereupon, Mr. Smith comes forward]

25 [Whereupon, the witness is duly sworn by the Clerk

1 of Court as follows: do you swear or affirm your
2 testimony will be the truth, the whole truth, and nothing
3 but the truth so help you God]

4 MR. SMITH: I do.

5 CLERK OF COURT: State your full name and spell
6 your last name.

7 MR. SMITH: Kennedy Smith S-M-I-T-H.

8 [Whereupon, the witness takes the witness stand]

9 THE COURT: Yes sir, please proceed.

10 MR. DURANT: Thank you, Your Honor.

11 - - - - -

12 KENNEDY SMITH,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DURANT:

17 Q. Mr. Smith, you are the father of the deceased in
18 this case James Javon Smith is that correct?

19 A. That's correct.

20 Q. You were with your son James Javon Smith when he was
21 murdered.

22 A. Yes.

23 Q. And let's pick it up from the point where you took
24 your son over to in West Oak Forest
25 on March the 1st of 2011. You remember that date of

1 course.
2 A. Yes.
3 Q. How did you get over to West Oak Forest?
4 A. I picked my son up at the B.P -- at the Amoco.
5 Q. I understand that. But let's get right to taking
6 him over to Street okay?
7 A. Okay.
8 Q. Y'all left from where to go over to
9 A. We left from Doscher's grocery store on Highway 17.
10 Q. Okay. And Tiddy wanted you to take him where?
11 A. He wanted me to take him and drop him off where his
12 home boys were over in West Oak Forest.
13 Q. Okay. And your son by the way goes by the nickname
14 Tiddy is that correct?
15 A. Yes.
16 Q. Pretty much everybody calls him that?
17 A. Yes.
18 Q. So how did you know where to go over to -- where to
19 go over in West Oak Forest?
20 A. I knew how to get into West Oak Forest but he told
21 me he would have to show me the street because I didn't
22 know -- because I didn't know it; it was a little short
23 street.
24 Q. Okay.
25 A. So we turned in on Wantoot.

1 Q. Okay. And then you turned off of Wantoot onto St.
2 Clair is that correct?
3 A. No, he told me before he wanted to go there he told
4 me ---
5 Q. --- I understand what happened before, but let's get
6 to the point where the shooting occurred, okay. That's
7 the only part that is relevant right now, okay. So you
8 turned off of Wantoot onto correct?
9 A. Correct.
10 Q. You were in your car?
11 A. Correct.
12 Q. What kind of car was that?
13 A. It's a '86 or '87 Celica.
14 Q. Okay. Toyota?
15 A. Yes.
16 Q. And who was driving?
17 A. I was driving.
18 Q. And who was in the passenger seat?
19 A. James was in the passenger seat.
20 Q. And where did y'all pull over?
21 A. We pulled over to the 4th house on the right on
22 Street going down towards Playground
23 Road.
24 Q. Okay. And where did you pull over? Did you pull
25 into a driveway or did you pull over to the side of the

1 road? Where exactly did you pull over?

2 A. I stayed near the street. One -- the rear tire
3 partially in the driveway, the front tire partially on
4 the grass.

5 Q. Okay. And where was the driveway at
6 in relationship to your car?

7 A. We were sitting next to the driveway, the extreme
8 left side of the driveway facing would be
9 halfway the car.

10 Q. Okay. And was -- did you see anybody in front of
11

12 A. There was approximately nine people standing at the
13 extreme front of the concrete driveway; some in front of
14 a car that was there.

15 There were two cars in the driveway.. The one all
16 the way up front some people was in front of it and
17 perhaps two or three people standing slightly to the side
18 on the concrete.

19 Q. And what time of the day was this?

20 A. It was approximately 4 o'clock, 4:15, 4:30.

21 Q. And this was in March is that correct?

22 A. Correct.

23 Q. Was it light or was it dark?

24 A. It was light.

25 Q. And how far apart from your car were these folks

1 standing?
2 A. Two car lengths.
3 Q. Okay. And did one of those persons separate from
4 the crowd and approach your vehicle?
5 A. Yes.
6 Q. Who was that?
7 A. Freddie.
8 Q. And when you say Freddie who are you talking about?
9 A. Freddie sitting there [indicates] separated and
10 started walking directly to the car.
11 Q. Okay. And were you able to observe him as he
12 walked up to the car?
13 A. Yes.
14 Q. Did you see his face?
15 A. Yes. I seen his face as soon as he started walking.
16 Q. Okay. And you say he approached from like two car
17 lengths away?
18 A. Yes.
19 Q. So maybe 20 or 30 feet is that correct?
20 A. Yes.
21 Q. And you watched him the whole way?
22 A. No.
23 Q. And what happened when he came up to the car?
24 A. When he came up to the car the last few steps is
25 when -- I need to describe the whole -- from the time

1 that I saw him walking to when I said what I did.

2 Q. Okay.

3 A. When I pulled up and turned the car off I looked
4 over to my son James and okay, we're here. So basically
5 I just looked forward.

6 When I looked over to tell him okay see you later I
7 saw Freddie step out coming towards the car. I looked
8 back forward. When he's halfway I hear someone say you
9 know he would be riding dirty.

10 Then I looked back so I see Freddie again. This is
11 when I see him he's pretty much halfway in my view; my
12 son is pretty much blocking his view.

13 Q. Okay.

14 A. After he proceeds my son began to get out of his
15 view and he's swinging his hand while he's walking
16 aggressively.

17 And then as he stepped up to the car I see his hand
18 go behind him or in his shirt or back like this
19 [indicates] comes straight out with the gun, sticks the
20 gun in the car, and pulls the trigger and shoots.

21 Q. Shoots your son?

22 A. He's shooting into the car. I don't think he was
23 hitting...

24 Q. Okay. And what happened after he shot that first
25 shot?

1 A. After the first shot the gun jams.

2 Q. And what did he do then?

3 A. He then began to aggressively try to reload the gun,
4 very frantically, twitching, moving -- moving extremely
5 fast as I said bobbing back from the car trying to avoid
6 James from grabbing the gun or being able to grab a hold
7 of him; whatever the case may be. And then he sticks
8 the gun back into the car and fires it two more times.

9 Q. Did you get a look at his face when he was messing
10 with the gun?

11 A. Yes, definitely.

12 Q. And what happened after he shot those other two
13 shots?

14 A. After he shot the other two shots as he was trying
15 to reload the gun I was trying to start the car. During
16 the two shots the car gets started and I began to move.

17 As I begin to move he looks behind my son and sticks
18 the gun behind there and fired the last shot at me. The
19 gunpowder from the gun burns the side of my neck.

20 Q. And were you looking at him when that happened?

21 A. Yes, I could still see his face.

22 Q. And what was he looking at?

23 A. He was looking as if he was trying to hit me.

24 Q. Now moving ahead to that night you took your --

25 we're going to fill in some things. You drove your son

1 to a fire station is that correct?

2 A. Correct.

3 Q. And you were arrested trying to get rid of some
4 marijuana?

5 A. Yes.

6 Q. And you were taken to the police station later on
7 that evening -- that afternoon.

8 A. Yes.

9 Q. Did you tell the police what happened?

10 A. Yes. I told them about the shooting.

11 Q. Okay. What did you tell them about the shooter?
12 What did -- how did you describe the shooter?

13 A. I told them the basic description was probably 5'7
14 to 5'8 to 6 feet, dark, hair was curly short in twists,
15 dark clothes probably.

16 Q. Mr. Flowers right now doesn't have twists in his
17 hair is that correct?

18 A. No, he doesn't.

19 Q. Did he have twists in this hair back then?

20 A. No, he didn't.

21 Q. And why did you tell the police that he had twists
22 in his hair?

23 A. That particular day, that particular time I couldn't
24 believe what had happened because everybody was supposed
25 to be his home boys where he was going. And with that

1 many people in that yard I really would have encouraged
2 street justice. And I felt and knew that street justice
3 would come; meaning that someone will get Freddie for
4 shooting my son.

5 So I didn't want to be a part neither did I want the
6 police to think that I was a part should someone get him.
7 So the farther I stayed from his description the better
8 off I was.

9 Q. So what you're telling us is you intentionally
10 misled the police as to the description?

11 A. Yes, I did.

12 Q. And you did that when you talked to the detectives
13 on the 1st is that correct; March the 1st?

14 A. Yes.

15 Q. And when you first talked to Detective Osborne on
16 March the 2nd you told him the same thing right?

17 A. Yes.

18 Q. Now he came and talked to you again on March the 9th
19 is that correct?

20 A. Correct.

21 Q. And did the hair description change at that time?

22 A. Yes, it did.

23 Q. And what did you tell him the shooter's hair style
24 was at that time?

25 A. Low cut.

1 Q. And was that the truth?

2 A. Yes.

3 Q. Now I'm going to show you what's previously been
4 marked as State's exhibit number 42.

5 [Whereupon, the witness is shown exhibit]

6 Q. Do you remember that document?

7 A. Yes, I do.

8 Q. And did Detective Osborne go over that with you
9 prior to showing you any photographs?

10 A. Yes, he did.

11 Q. Did you understand his instructions?

12 A. Yes, I did.

13 Q. And did you sign that form indicating that you
14 understood his instructions?

15 A. Yes.

16 Q. And what happened after he went over those
17 instructions with you?

18 A. He began showing me the lineup.

19 Q. Okay. And I'll hand you what's been marked as
20 State's exhibit number 43 and ask if you recognize that?

21 [Whereupon, the witness is shown exhibit]

22 A. Yes, I do.

23 Q. And what is that?

24 A. That is the person that I pointed out as the
25 shooter.

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- 1 Q. And that would be number 5 is that correct?
- 2 A. Correct.
- 3 Q. And did you tell -- after you circled it and signed
- 4 it did you come back to this admonition form State's
- 5 exhibit 42?
- 6 A. Yes.
- 7 Q. You had a choice to write -- sign your name in two
- 8 places on that is that correct?
- 9 A. That's correct.
- 10 Q. And what are those two places?
- 11 A. One is with the officer and me as a witness and the
- 12 other one that states that I have a positive
- 13 identification of the individual in photo number 5.
- 14 Q. Okay. But you also had the opportunity at that
- 15 time to sign this one did you not? What does that one
- 16 say?
- 17 A. I was unable to make a positive identification from
- 18 these photographs.
- 19 Q. And why didn't you sign that one?
- 20 A. Because I knew the photograph made a positive
- 21 identification.
- 22 Q. Okay. And those comments that you wrote down there
- 23 are your comments is that correct?
- 24 A. Yes.
- 25 Q. Did at any -- at any time did Detective Osborne tell

1 you that the guy that shot your son would be in that
2 group of photographs?

3 A. No, he did not.

4 Q. At any time did he point out who you should pick out
5 of those photographs?

6 A. No.

7 Q. At any time did he tell you who to pick out of those
8 photographs?

9 A. No.

10 Q. Why did you pick out photograph number 5?

11 A. Because that's the face and that's Freddie's face
12 who shot my son.

13 Q. Okay. And to be clear you didn't know Freddie
14 Flowers at the time is that correct?

15 A. Never seen him.

16 Q. And you didn't know his name was Freddie?

17 A. I never knew his name was Freddie.

18 Q. Okay. You know his name is Freddie Flowers now is
19 that correct?

20 A. Yes.

21 Q. And if you would I'd like you to take a look at him
22 and let the Judge know is this the fellow that shot your
23 son that night?

24 A. Freddie is the person who shot my son, James Smith.

25 Q. The fellow in the grey suit over here [indicates]

1 sitting between his two lawyers is that correct?

2 A. Yes.

3 Q. Would you please answer any questions defense
4 counsel may have for you?

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION

7 BY MS. FORD:

8 Q. So you admit that you lied to the police?

9 A. Yes, I did.

10 Q. Okay. So -- but you told them more -- you told the
11 police more than just the shooter's hair, correct?

12 A. Yes.

13 Q. You told them that the guy was between 5'8 and 6
14 feet tall?

15 A. Yes.

16 Q. And that he had -- the first time you talked to them
17 you told them he had a dark complexion?

18 A. Yes.

19 Q. Okay. And that he had a slim build.

20 A. Yes.

21 Q. And that he was wearing a red shirt.

22 A. Okay.

23 Q. That's what you told them correct?

24 A. Yes. If that's written, yes.

25 Q. And that you couldn't remember anything else.

1 A. Yes.

2 Q. You even suggested let me be hypnotized so I can
3 remember more correct?

4 A. Yes.

5 Q. So was any of that true; any of that description
6 true?

7 A. No.

8 Q. Okay. So none of its true; or is it just the hair?

9 A. None of it is true.

10 Q. Okay. So what about the clothing?

11 A. I didn't even really know what color clothing it
12 was.

13 Q. So you didn't know what color clothing the shooter
14 was wearing?

15 A. Exactly. I just picked red.

16 Q. You just picked red out of a hat?

17 A. Yes.

18 Q. Was he wearing dark clothing or light or you don't
19 even know that?

20 A. I didn't even care.

21 Q. So you didn't care what color of clothing the
22 shooter was wearing?

23 A. No.

24 Q. Was the shooter -- you told the detective that he
25 had a slim build correct?

- 1 A. Yes.
- 2 Q. Was he fat?
- 3 A. No.
- 4 Q. Was he the opposite?
- 5 A. No.
- 6 Q. So is that true?
- 7 A. Now that one is true.
- 8 Q. And you mentioned 5'9 to 6 feet. That's average
- 9 height correct?
- 10 A. Yes.
- 11 Q. So was that true?
- 12 A. That was not true to what I actually saw. But that
- 13 is true what I said.
- 14 Q. Okay. So you lied about the height too?
- 15 A. Yes.
- 16 Q. Okay. And dark complexion that was a lie too?
- 17 A. Definitely yes.
- 18 Q. Okay. So other than slim build and red shirt it
- 19 all was a lie?
- 20 A. Yes.
- 21 Q. And red shirt actually may be true because you
- 22 didn't know -- you didn't see what color the shooter was
- 23 wearing correct?
- 24 A. [No response]
- 25 Q. You just said you didn't care what color of shirt

1 the shooter was wearing but you don't know what color he
2 was wearing correct?

3 A. No, I don't.

4 Q. Okay. So red could be true?

5 A. It could be.

6 Q. Okay. And when you told them this -- when you gave
7 them this description -- just to be clear they were --
8 you had been arrested for drug charges correct?

9 A. Yes.

10 Q. Because after you left the fire station you took
11 some marijuana with you correct?

12 A. Yes.

13 Q. And you tried to throw it away?

14 A. Throw it on top of the building.

15 Q. Okay. And the police officers caught you and they
16 asked you about it correct?

17 A. Yes.

18 Q. And you said I didn't throw it. The officer is
19 wrong.

20 A. I said I had never seen it before.

21 Q. Okay. So when the detectives spoke to you that
22 evening they were kind of upset with you weren't they?

23 A. Yes.

24 Q. So even though you were the victim's dad they were
25 giving you a hard time.

1 A. A very hard time.

2 Q. Okay. They showed you -- they did show you some
3 photos that night right?

4 A. Yes.

5 Q. Okay. And they showed you some guys with twists in
6 their hair?

7 A. It was everything.

8 Q. Okay. And you pointed out some guys saying yes,
9 that could be him, that could be him.

10 A. Not that could be him. I pointed out a person who
11 used to be my neighbor and a cousin of the person who I
12 pointed out who used to be my neighbor. And I said I
13 know that person; not that that person was at the scene.

14 Q. So you're saying you didn't identify anyone as
15 actually being the shooter that night?

16 A. No one that was the shooter neither no one that was
17 at the scene.

18 Q. Okay. You didn't say I'm 65 percent sure;
19 something like that?

20 A. I don't recall that.

21 Q. When you said to Detective Osborne on, I guess this
22 was the day after the shooting you told him -- he again
23 knew -- interested in a description of the shooter
24 correct?

25 A. Yes.

- 1 Q. Because they were trying to find who shot your son.
2 A. Yes.
3 Q. And you told him I didn't get a good look.
4 A. Yes.
5 Q. Okay. You told him that the vehicle obstructed
6 your view.
7 A. Yes.
8 Q. And you told us you drive or you drove a Celica, a
9 Toyota Celica?
10 A. Yes.
11 Q. And that's a small car correct?
12 A. Semi small.
13 Q. Okay. Well it's lower to the ground right?
14 A. Lower than a truck.
15 Q. Right. It was not a SUV. You're not -- if someone
16 normally walks up to your car -- like you're in a parking
17 lot and somebody walks up to your car they are generally
18 going to have to bend down to talk to you right or you're
19 going to have stretch your neck?
20 A. Depends on how close they are to the car.
21 Q. Okay. But they -- they really were -- they were
22 pressing you this time too, correct?
23 A. Yes they were.
24 Q. They were still upset with you right?
25 A. Yes.

- 1 Q. And they kept asking about a description.
- 2 A. Yes.
- 3 Q. And you kept maintaining I didn't get a good view.
- 4 I wouldn't be able to identify someone.
- 5 A. Yes.
- 6 Q. So when you met with Detective Osborne again on I
- 7 believe it was the 9th, March 9th?
- 8 A. Yes.
- 9 Q. At that point you had been charged with the drug
- 10 charges correct?
- 11 A. Yes.
- 12 Q. And Obstruction of Justice.
- 13 A. Yes.
- 14 Q. For -- they felt you had lied about something in the
- 15 investigation.
- 16 A. About the marijuana.
- 17 Q. Right. But this one you had a lawyer right? David
- 18 Aylor?
- 19 A. Yes.
- 20 Q. Okay. So when you met with the detectives Mr.
- 21 Aylor's investigator was there, Levi Miles?
- 22 A. Yes.
- 23 Q. So this interview was not recorded correct?
- 24 A. Correct.
- 25 Q. But the prior one had been recorded. The prior

1 interview had been recorded or you don't know?

2 A. I know that the interview that night with the two
3 investigators was recorded. I don't know what other
4 investigations are recorded.

5 Q. Okay. So at this point when they talked to you --
6 this is the time that you gave the I.D. of Freddie
7 correct?

8 A. We had many -- when we met it was -- in Mr. Aylor's
9 office, yes.

10 Q. Okay. And so you gave a different description of
11 the shooter at this point right?

12 A. Correct.

13 Q. And this time you said the guy had a low cut hair.

14 A. Yes.

15 Q. And this time you wanted to be truthful right?

16 A. Yes.

17 Q. Because you had already been arrested for two sets
18 of charges.

19 A. Yes.

20 Q. You had a lawyer.

21 A. Yes.

22 Q. And your lawyer advised you to tell the truth right?

23 A. Yes.

24 Q. Tell the truth or don't talk.

25 A. Yes.

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1 Q. And so this time you told the truth?
2 A. Yes.
3 Q. Okay. So at this point you said the guy was thin
4 to medium build.
5 A. Yes.
6 Q. That he had a light brown complexion?
7 A. Yes.
8 Q. That he had a low cut hair.
9 A. Yes.
10 Q. It was unknown whether he had facial hair.
11 A. Yes.
12 Q. That he had dark clothing on.
13 A. Okay.
14 Q. So that time you thought it was dark.
15 A. Yes.
16 Q. And you said that he -- you still said the shooter
17 was between 5'7 and 6 feet tall.
18 A. Yes, an average height.
19 Q. Huh?
20 A. I gave them an average height.
21 Q. Okay. So that was what you thought the shooter
22 was.
23 A. Yes.
24 Q. Okay. So again you were trying to be truthful with
25 them.

- 1 A. Yes.
- 2 Q. So you thought the shooter was between 5'7 and 6
3 feet tall?
- 4 A. I don't know if I said between or about. But I told
5 them that is going to be an average height meaning he
6 wasn't a short guy but he was of medium height to tall.
- 7 Q. Okay. And you also told the detectives -- you met
8 with Detective Osborne on March 31st, 2011 too, correct?
9 That's when you gave a written statement. Do you
10 remember giving a written statement?
- 11 A. What's the date?
- 12 Q. It's dated March 31st. Would seeing it help you?
- 13 A. March 31st if I'm not mistaken is the date that we
14 were in Mr. Aylor's office.
- 15 Q. Okay. And Detective Osborne wrote a statement for
16 you?
- 17 A. Yes.
- 18 Q. And you wrote down or you gave him a description
19 that day correct?
- 20 A. Correct.
- 21 Q. And the description you gave that date was again 5'7
22 to 6 feet.
- 23 A. Yes.
- 24 Q. Slim to medium build.
- 25 A. Yes.

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1 Q. Light brown complexion.
2 A. Yes.
3 Q. Low cut hair.
4 A. Yes.
5 Q. Unknown facial hair.
6 A. Yes..
7 Q. Dark clothing.
8 A. Yes.
9 Q. So that's actually the same description I just went
10 over with you. But you at this point said that you had
11 just said he had twists before because you saw something
12 shaking at the base of his neck. Does that sound
13 familiar?
14 A. That's an answer that is on there.
15 Q. Okay. So you did tell them that?
16 A. Yes, because the question that was asked was what
17 did you say before.
18 Q. Right.
19 A. And what I said before is that answer. I said that
20 he had twists before.
21 Q. But they asked you why your story changed from
22 twists to no twists correct? They said before you said
23 the shooter had twists. Now you're saying he had a low
24 cut hair. They asked you why that changed.
25 A. No. I don't recall them asking me why did I change

1 my story.

2 Q. Okay. But you told -- and I'm trying -- are you
3 admitting or not admitting that you told them that the
4 reason you said twists before, you thought he had twists
5 before is because you saw something shaking at the base
6 of his neck.

7 A. The questions that was asked and that I answered are
8 the questions that are on that sheet. And the questions
9 that are on that sheet, if I recall correctly it doesn't
10 ask me the question why did I change my statement.

11 Q. Okay. Well they have not directly said why but you
12 offered up that you said he had twists before because I
13 thought I saw something shaking at the base of his neck;
14 shaking or moving.

15 A. And once again I say the question that was asked was
16 what did I say before. To answer the question what did I
17 say before I must repeat what I said before. And what I
18 said before is that I thought I saw twists.

19 Q. Would you like to see your statement? Would that
20 help you?

21 A. [No response]

22 Q. I'm not -- I understand that you're saying that you
23 lied, you deliberately lied before correct?

24 A. Correct.

25 Q. But when you met Detective Osborne at this time in

1 Mr. Aylor's office you changed your description correct?

2 A. Correct.

3 Q. But you didn't tell him that you had deliberately
4 lied before correct?

5 A. I don't recall that question as being asked. And
6 once again before I begin to ask questions I was told
7 that I was under oath and that I was -- that I would be
8 asked a number of questions.

9 The answers that I gave would be recorded so
10 therefore he began to write the question before he asked
11 it. And I answered what he asked. And when he asked the
12 question that was the answer that I gave him.

13 Q. Okay. Let me -- I want to show you your statement.
14 I think that will resolve some ---

15 A. --- you may but I don't need to see it. I read it
16 over.

17 Q. Well I think we need to go over it.

18 A. Okay.

19 Q. Okay?

20 MS. FORD: Your Honor, may I approach?

21 THE COURT: Yes, ma'am.

22 [Whereupon, Court's exhibit number 1 is marked by
23 the court reporter]

24 Q. [Ms. Ford] I'm marking you -- giving you your
25 statement and its marked as Court's exhibit 1 okay.

1 [Whereupon, the witness is shown exhibit]
2 Q. Do you want to take time to review it?
3 A. No, ma'am.
4 Q. Okay. So you're not interested in what it says?
5 A. No, I know what it says.
6 Q. Okay. Then...
7 A. Is there a particular one you want me to review?
8 Q. Yes. I'm going to direct you to page 4 of 5. Do
9 you see it?
10 A. Yes, ma'am.
11 Q. And Detective Osborne asked you to describe the
12 shooter correct?
13 A. Correct.
14 Q. And the description is black male; 5'7 to 6 feet,
15 thin medium, light brown complexion, low cut unknown
16 facial hair, dark colored clothing, black semi-automatic
17 correct?
18 A. Correct.
19 Q. Okay. And then there is no additional question and
20 it just says I said he had twists before because I
21 thought I saw something shaking or moving at the base of
22 his neck. If it was twists, it was short. Correct?
23 A. Correct.
24 Q. So at this meeting you did not tell police that you
25 deliberately lied correct?

1 A. I do not remember the questions being asked because
2 I was told the questions that would be asked is what's on
3 the paper.

4 Q. Okay.

5 A. And I do not remember being asked and I do not
6 remember telling him that.

7 Q. Okay. Well he wrote this statement for you
8 correct?

9 A. Correct.

10 Q. But you signed it correct?

11 A. Correct.

12 Q. You signed it on every single page.

13 A. Yes, I did.

14 Q. So did you read it?

15 A. Not really.

16 Q. Did Detective Osborne just add in things for kicks?
17 Did he just add in things without you saying it?

18 THE COURT: Ms. Ford, can I -- I mean what's -- I
19 understand we don't have a jury here and I understand you
20 want to maybe attack his creditability but what does this
21 have to do with the narrow issue that I'm trying to
22 decide?

23 MS. FORD: Yes, sir. Well I'm ---

24 THE COURT: --- I mean we're getting ---

25 MS. FORD: --- really trying to go into ---

1 THE COURT: --- we're getting sort of far of field.

2 MS. FORD: Right. I'm trying to go into that his
3 description does not match the description of Mr.
4 Flowers.

5 THE COURT: I understand. You've asked him several
6 times and he's given you the same answer.

7 MS. FORD: Right. But he hasn't ---

8 THE COURT: --- but I mean I've heard it once,
9 twice, three, four times.

10 MS. FORD: Yes, sir. Well, I'll move on from that.

11 THE COURT: I mean where are we going?

12 MS. FORD: I'm just going over the different
13 descriptions and now I'm going to go to like the next
14 line for example did the shooter crouch? And he said no.
15 And so I think that's important as far as vantage.

16 THE COURT: Well, could we short circuit some of
17 this if you just give me the statement and let me read
18 it?

19 MS. FORD: Yes, Your Honor.

20 THE COURT: And I don't mind you marking it as a
21 court's exhibit if you want to mark it.

22 MS. FORD: I already marked it ---

23 THE COURT: --- I understand you ---

24 MS. FORD: --- this is a copy, Your Honor.

25 [Whereupon, Ms. Ford proffers documents to the

1 court]

2 [Whereupon, the court views documents]

3 THE COURT: You want to go into his creditability.

4 MS. FORD: Yes, Your Honor.

5 THE COURT: And that may be an issue here, but I

6 don't think that's the major issue that we're talking

7 about.

8 Q. [Ms. Ford] You told detectives that day that he did

9 not -- the shooter never crouched correct?

10 A. Correct.

11 Q. When you went to it was for -- you were

12 dropping your son off correct?

13 A. Correct.

14 Q. So you didn't know anything was going to go down

15 there right?

16 A. Right.

17 Q. You told Mr. DuRant that you heard someone say he be

18 riding dirty.

19 A. Yes.

20 Q. Initially you thought they were referring to a song

21 and so you didn't pay any attention to that correct?

22 A. No, I wouldn't say that.

23 Q. Okay. So you're denying that you told police that.

24 A. I don't remember telling the police that I said I

25 thought they were referring to a song. I told police

1 that I heard someone yell out of the crowd, you know he
2 be riding dirty.

3 Q. Right. And you told the detectives when you first
4 spoke to them that you didn't think anything of it
5 because it was a song. He be riding dirty; that song.
6 You did mention that. You're saying ---

7 A. --- I don't remember ---

8 Q. --- you're saying today you didn't mention that?

9 A. I don't remember adding the words it's a song.

10 Q. Okay, okay. You told us today that the shooter he
11 backed up from the car and that's when you got to see his
12 face.

13 A. That was one of the times, yes.

14 Q. Okay. Did the guy -- how far away did he walk?
15 How far away from the car did he get?

16 A. I don't understand the question.

17 Q. Okay.

18 A. How far did he walk away from the car?

19 Q. Right. My understanding is, but I could be wrong,
20 is that you said tried to shoot you know put the gun in
21 the car, it messed up and so he was trying to
22 aggressively fix it correct?

23 A. Correct.

24 Q. And so I think you mentioned that he got away from
25 the car so Javon -- so Tiddy could not get the gun away

1 from him.

2 A. Correct.

3 Q. Okay. What I'm asking you is that when you are
4 telling us that he got away from the car how far away did
5 he get?

6 A. I would say maybe one step or a step and a half. He
7 just backed away because my son when he shot into the car
8 and the gun jammed he raised up -- he raised his arms up
9 as if he was trying to reach out and grab the gun or grab
10 him so he went back as he was trying to eject the gun.

11 Q. Okay. So anyway the shooter was still close to the
12 car correct?

13 A. Yes, he was.

14 Q. Okay. At that point you were in the driver's seat
15 correct?

16 A. Yes.

17 Q. And your son was between you and the shooter
18 correct?

19 A. Not directly. As he drifted and frantically tried
20 to reload the gun he was moving all different directions;
21 he was just moving.

22 And when he -- when my son leaned up like this
23 [indicates] he halfway took a step a little bit forward
24 away from my son. Not directly to the side of my son but
25 on an angle like to that way [indicates].

1 Q. Okay. And so for you it was just a perfect angle
2 for you to see him?

3 A. Yes, it was.

4 Q. Okay. Now, and I'm just -- you said it sounded
5 like you were saying you were paying attention to the guy
6 correct? After the shooter walked -- stepped away were
7 you paying attention to him or were you trying to start
8 the car?

9 A. Everything was happening at the same time. I was
10 trying to start the car, looking back and forth trying to
11 put my foot on the clutch, trying to turn the key;
12 everything at once in approximately three to four
13 seconds.

14 Q. Okay. So this is a really short amount of time?

15 A. Yes.

16 Q. Now Mr. Smith when you met with the Solicitor like
17 within the past month that's when you told them that you
18 deliberately lied correct, about the description?

19 A. [No response]

20 Q. Didn't you tell Mr. DuRant you deliberately lied
21 because you were hoping for street justice?

22 A. Yes. Yes, I think that was the first time that I
23 actually said that but I do remember that I told him the
24 truth that I lied.

25 Q. Okay. He showed you some other pictures of some

1 guys that may have been out there, correct?

2 A. Correct. Excuse me, he showed me some pictures of
3 some other guys. I don't remember him calling or saying
4 or suggesting that they were out there.

5 Q. Okay.

6 A. He just simply -- the same instructions that I was
7 given in every lineup to identify someone if you can
8 identify them.

9 Q. Okay. You in fact did identify someone didn't you?

10 A. [No response]

11 Q. You said -- a picture he showed you you said that
12 looked like -- that could have been the shooter.

13 A. I did not sign the paperwork or anything or circle
14 anything saying that this is anyone, so to definitely
15 identify one, no I did not.

16 Q. But you mentioned it didn't you?

17 A. I made a comment.

18 Q. Okay. That this person looked like it could have
19 been the shooter?

20 A. My exact words were he resembles the shooter.

21 Q. He resembles the shooter?

22 A. Yes.

23 Q. Just like Freddie resembles the shooter? What we
24 talked about on direct is that you were shown when you
25 identified Freddie Flowers you said this person most

1 resembles.

2 A. Yes.

3 Q. Okay. So Freddie mostly resembled the shooter from
4 that lineup correct?

5 A. That's what I wrote on my paper.

6 Q. Okay. And the person you were shown the other week
7 -- within the past month he most resembled the shooter.

8 A. That's what -- that's the words I used the last few
9 weeks or whenever I was shown that?

10 Q. I wasn't there.

11 A. And I'm not sure if I used the word resembled on
12 this right here [indicates]. The actual words I wrote
13 was this looks the closest to the person who shot my son
14 next to -- neck and side of face complexion is what I
15 saw.

16 Q. Again, you identified someone. Even though today
17 you're saying that this person [indicates] Freddie
18 Flowers is the person who shot your son. You're saying
19 that today correct?

20 A. Yes, he is.

21 Q. Okay. But within the past month you said someone
22 else looks like -- resembled the shooter.

23 A. Yes. What I meant when I said resembled, the
24 slimness, the smallness of the head; that's what I meant.
25 And also the picture just as when they told me about the

1 pictures before they told me that some pictures could be
2 old and some could be faded, some could not actually look
3 like the person exactly. And the picture that I saw was
4 a very poor picture.

5 And also the picture of Freddie here [indicates] if
6 you ask me they do him a little bit better justice; it's
7 maybe a little bit clearer than he actually is.

8 Q. So you're saying the picture from the I.D. is better
9 or worse than...

10 A. It may be a little bit lighter.

11 Q. Lighter than?

12 A. Freddie actually is.

13 Q. Okay.

14 MS. FORD: Beg the court's indulgence?

15 THE COURT: Yes, ma'am.

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

17 Q. [Ms. Ford] Mr. Smith, Mr. Durant asked you -- you
18 said now, you don't know Freddie Flowers correct?

19 A. Correct.

20 Q. And because you were talking like Freddie is the
21 shooter, Freddie did this; like you did know him. But
22 you never knew him -- you never saw him correct?

23 A. I never saw him before.

24 Q. Did someone tell you that the shooter's name was
25 Freddie?

1 A. No.

2 Q. So Jennifer Myers, that was Tiddy's girlfriend, she
3 never mentioned it to you?

4 A. Not to my remembrance.

5 Q. No one mentioned to you that the person's name was
6 Freddie?

7 A. May I say this? Before I made the identification I
8 heard of no name. After the identification and after, if
9 I'm not mistaken, perhaps it may have come across the
10 television, and also it was in the newspaper after he was
11 arrested, after I identified the face.

12 After the identification of the face and it was
13 printed yes, his name was everywhere. Someone could have
14 told me his name.

15 Q. So at the time of the identification you had never
16 heard the name Freddie?

17 A. No.

18 Q. Okay. No further questions.

19 THE COURT: Any redirect?

20 MR. DURANT: No, sir.

21 THE COURT: You may step down. Thank you very much
22 Mr. Smith.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: Ms. Ford, any argument?

1 MS. FORD: Yes, Your Honor. I think under the
2 totality of the circumstances Mr. Smith's identification
3 is not reliable. He admits that he deliberately lied
4 multiple times. The actual identification was made 9 or
5 10 days later after the shooting so it wasn't close in
6 time.

7 THE COURT: I think it was 8 days wasn't it? It
8 was made on the 9th and the shooting was on the 1st; eight
9 days?

10 MS. FORD: Yes, Your Honor.

11 THE COURT: Okay. You said 9 or 10.

12 MS. FORD: Well, I guess it depends on how you
13 calculate it.

14 THE COURT: We can say 8 or 9 okay?

15 MS. FORD: Yes, sir.

16 THE COURT: All right.

17 MS. FORD: And so it was not made close in time.
18 He gives several descriptions; even -- you know of course
19 it's not from the picture, but even he maintained he lied
20 about a lot.

21 But he said the 5'7 to 6 feet range was the height
22 of the shooter. Freddie Flowers is way -- is a very tall
23 man, Your Honor. So that does not fit the description
24 and the other things are very vague in general. He
25 specifically said -- he even admitted I didn't see the

1 color of his shirt. He wasn't paying enough -- close
2 enough attention to see dark or light, yet he expects us
3 to believe that he was paying close enough attention to
4 see the person's face.

5 The car was blocking him. He's trying to say he did
6 get certain good views, but he was in a low car; a car
7 low to the ground, Your Honor. When he rode up he didn't
8 know anything was going to happen when he first rode up
9 to pay very close attention.

10 He told police repeatedly initially that he couldn't
11 see the guy; there's no way I can really make an I.D.
12 All of that, Your Honor, I think under the totality of
13 the circumstances he is just -- it is not a reliable
14 identification.

15 He has since identified someone else of possibly
16 being the shooter. Even when he identified Freddie
17 Flowers from the lineup, it's not a direct I.D. He said
18 this person basically from the side of his face and
19 everything that looks like it's him.

20 So he's not saying I am 100 percent sure that that
21 is the shooter. And so I don't think that his I.D. is
22 reliable enough to allow any trial, Your Honor.

23 THE COURT: Okay. Thank you very much. Mr.
24 DuRant, anything you want to add?

25 MR. DURANT: Your Honor, just back to my original

1 point there is nothing suggestive about that lineup. He
2 picked out Mr. Flowers. He told you why he picked out
3 Mr. Flowers. 4 o'clock on a Thursday afternoon bright
4 sunlight and watched him approach from 20 feet away.

5 Sat there and watched him when he pulled back from
6 the car to try to clear the gun. He watched him when he
7 stuck his head in the door and tried to shoot at him in
8 the face -- or tried to shoot him in the head.

9 He had a good look at him under the circumstances
10 that he would have been paying attention. All of those
11 are nice jury arguments but that's what they are, Your
12 Honor. And I would ask that you allow the
13 identification.

14 THE COURT: Okay. I find after reviewing the
15 totality of the circumstances I find that the
16 identification is reliable and I will allow it in. He
17 had opportunity for the witness to view it. He had a
18 strong degree of attention and the length of time between
19 the crime and the confrontation was not but 8 days.

20 And I find as to the level of certainty as
21 demonstrated by the witness that the confrontation was
22 adequate. And I'm not going to disallow the
23 identification. Its 10 minutes to 4. Could I see the
24 attorneys up here just a second?

25 [Whereupon, an off the record bench conference is

1 held]

2 THE COURT: We'll take about a five minute break
3 and we'll get started.

4 [Whereupon, a brief recess is held]

5 THE COURT: Is the State ready to proceed?

6 MR. DURANT: Yes, Your Honor.

7 THE COURT: Is the defense ready?

8 MS. FORD: Yes, Your Honor.

9 THE COURT: Bring us the jury please?

10 [Whereupon, the jury enters the courtroom at 3:55
11 p.m.]

12 THE BAILIFF: All the jurors are seated, Your Honor.

13 THE COURT: Thank you very much. Do you want to
14 swear the jury for us, please?

15 CLERK OF COURT: Please raise your right hands to
16 be sworn.

17 [Whereupon, the jury is duly sworn by the Clerk of
18 Court]

19 CLERK OF COURT: Please indicate by saying I do.

20 THE JURY: I do.

21 THE COURT: All right. Ms. Schlesinger, juror
22 number 234, I'm going to appoint you as Forelady. And if
23 you'll sit in that chair all the time and the two
24 alternates if you'll sit in those two chairs; wherever
25 the rest of you sit, however you file in is fine.

1 Basically this afternoon we are going to have
2 opening statements from the State and the defense
3 attorney. And hopefully we can call a couple of short
4 witnesses and we'll come back in the morning. Solicitor?

5 OPENING STATEMENT

6 MR. DURANT: Good afternoon ladies and gentlemen. I
7 had the opportunity to briefly introduce myself before.
8 My name is Bruce DuRant. I am the Chief Deputy Solicitor
9 for Charleston and Berkeley Counties. And it's my
10 privilege to be able to represent the State of South
11 Carolina in what we now know is a murder case.

12 The defendant in this case, Frederick Flowers, has
13 been charged with murder. He's been charged with
14 murdering a guy named James Javon Smith. That's his real
15 name but everybody called him Tiddy. That was his
16 nickname and that was the name everybody knew him by.

17 He was 25 years old and he was murdered out in front
18 of in West Oak Forest West of the
19 Ashley as he sat in his father's -- as a passenger in his
20 father's old beat up Toyota. And he was murdered by
21 Freddie Flowers. And not to pull any punches from the
22 beginning and not to sugarcoat anything James Javon Smith
23 was a drug dealer. That's what he did. That's how he
24 made a living. And I'm not here to tell you that is a
25 good thing and I'm not here to sugarcoat it. But he was

1 not a violent guy and he didn't deserve to be murdered.

2 Now you might say when you choose that profession
3 it's kind of an occupational hazard. And quite frankly
4 it is because it's a profession that makes you a target.
5 Drug dealers make good victims. They make good victims
6 because number one they usually have a lot of cash on
7 them and number two they usually have a lot of drugs on
8 them.

9 The people who utilize their services are like Mr.
10 Flowers. So Tiddy was a target in this case and he was
11 Freddie Flowers target.

12 The story really begins -- he was murdered on March
13 the 1st of last year but the story really began May 4th --
14 also over at This is a house -- and let
15 me just tell you a little bit about It's a house
16 in a residential neighborhood in West Oak Forest.

17 The guy who lives there is named Brandon Singletary,
18 everybody calls him Homer, and his sister Tracy and their
19 Mom. But the yard has kind of become the community
20 hangout and everybody likes to hang out and do what they
21 call chilling; talking, smoking, and drinking. Amongst
22 the group that hangs out there is Freddie Flowers. And
23 the victim James Javon Smith serves out there and he had
24 previously sold some marijuana and Freddie and his
25 friends thought he was a little bit light on the weight.

19 All of these guys are Forest guys. They grew up in
20 the neighborhood together and they're friends together.
21 And then there is a 5th guy out there that is not really a
22 Forest guy but he's gotten in with these guys the last
23 year or two. His name is Michael Quarles, or Little
24 Mike. This was the group that was hanging out there on
25 March the 1st of 2011.

1 And while they were out there Freddie apparently is
2 short on money or drugs or money and drugs and they are
3 talking about knocking over a drug dealer. And first
4 they call up this fellow named Joshua Wilder who is
5 another drug dealer, but Joshua has got a little too much
6 sense to come over there apparently because he doesn't
7 show up.

8 And when he doesn't show up Freddie says hey man,
9 let's call Tiddy. And by the way he just screwed us on
10 some weed yesterday. So he takes his cell phone and he
11 calls Tiddy on the phone come on over man we need some
12 weed.

13 This time Tiddy is in Doscher's grocery store on
14 Savannah Highway with his father, Kennedy Smith. They
15 are grocery shopping when he gets the call. So as they
16 are checking out he tells his Dad, Dad I need you to run
17 me over to the Forest I've got to take care of some
18 business. So once they get checked out at Doscher's they
19 get in his red Toyota. Kennedy Smith, the father, is
20 driving. Tiddy Smith is in the passenger seat. Tiddy
21 directs his father over to pulls over to
22 the side of the road, not into the driveway but at the
23 end of the driveway where the driveway connects to St.
24 Clair. Passenger side of the car is facing

1 And Freddie and all of his friends are there in the
2 driveway hanging around this car parked in the driveway.
3 So at the time Tiddy drives up Freddie separates himself
4 from the crowd and walks up to the car. He's got a cell
5 phone in one hand like he's talking to somebody, and has
6 the other hand behind his back.

7 And the reason he's got that other hand behind his
8 back is because in it he has a 380 semi auto pistol. And
9 he walks right up to the passenger seat where Tiddy is
10 sitting, sticks the gun in the window and fires.

11 Something happens to the gun and it jams. He backs
12 up to try to get the thing un-jammed, and while this is
13 going on he inadvertently drops his cell phone in Mr.
14 Smith's car. He gets the gun cleared and fires two to
15 three more times at Tiddy as he's sitting there in the
16 passenger seat.

17 In the meantime Mr. Smith is trying to get the car
18 cranked and get the heck out of there. He gets the car
19 going and takes off. He goes to the end of the block,
20 takes a left, gets on Sherwood and takes a right, and
21 he's driving down 61 trying to get some help for his poor
22 son. But it's already too late because one of those
23 shots fired by Mr. Flowers went under his right arm
24 through his right lung and severed his aorta, went
25 through his left arm and lodged in his left ribcage.

1 And as a result he died of massive internal bleeding
2 and was dead before his Dad could even get him some help.
3 Nevertheless, he calls 911 when he gets on Playground
4 Road heading down Playground Road toward Highway 61 calls
5 911 and tells them his son has been shot and he's taking
6 him to the fire station.

7 He gets there a couple of minutes later, a minute or
8 two later, this fire station right there on Highway 61
9 near Sam Rittenberg -- between Sam Rittenberg and Wappoo
10 Road. He pulls into the fire station, one of the bays is
11 empty and he pulls all the way through the fire station,
12 sees two or three fireman over there working on a fire
13 truck, stops and tells them his son has been shot.

14 They get the son out of the car; he already doesn't
15 have a pulse. They try emergency resuscitation
16 procedures to no avail. And in the meantime Mr. Kennedy
17 Smith, the father, while the firemen are working on his
18 son sees that Tiddy's marijuana is in the floorboard of
19 the car. So he grabs that weed and he runs away. And he
20 runs over to behind the old Sofa Super Store that was on
21 Wappoo Road; it's closed now. He's trying to get rid of
22 the weed by throwing it on top of the store, when he is
23 caught and arrested by the police. He tells them about
24 his son being shot. He shows them where his son was shot
25 at, and he's taken downtown where he is questioned.

1 And although he is forthcoming about what happened,
2 he's not forthcoming about who shot his son for reasons
3 that he will tell you himself. But eventually he has a
4 change of heart and a week later he picks Freddie Flowers
5 out of a photograph lineup.

6 He's not the only one who hasn't been forthcoming in
7 this case because all of Freddie's friends out there, all
8 five of them; and I believe you will hear testimony from
9 all five this week, probably not today but this week, all
10 the lot, every one of them, every single one of them I
11 didn't see nothing. I wasn't there. I don't even know
12 what happened; same old thing. They either did what
13 their friends -- hooked up and they didn't want to get
14 themselves involved; they didn't want to be a snitch.
15 For whatever reason; every one of them lied.

16 But the cops didn't give up. They kept at them and
17 one by one they started telling the truth. And one by
18 one they all identified Freddie Flowers as the man that
19 killed James Javon Smith that day out in front of

20 They all lied but they all ended up moving
21 towards the truth. And that's what we will ask you to do
22 as jurors at the end of this case is to render a verdict
23 that does speak the truth. And the truth in this matter
24 ladies and gentlemen is that this man [indicates]
25 murdered James Javon Smith on March the 1st of 2011 as he

1 sat in the passenger seat of his father's car. And I
2 would ask that you return a verdict of guilty against
3 Freddie Flowers for Murder and for Possession of a Weapon
4 during the Commission of a Violent Crime. Thank you.

5 THE COURT: Ms. Ford? Do you want the podium?

6 MS. FORD: No, Your Honor ---

7 MR. DURANT: --- she said she didn't, Your Honor.

8 THE COURT: Okay.

9 OPENING STATEMENT

10 MS. FORD: Survival is an incredibly important
11 strong motivator for people. Now James Javon Smith,
12 Tiddy, he was murdered. And despite his profession he
13 didn't deserve that. He's a father, a son, loved by a
14 lot of people. People had a lot of good things to say
15 about him.

16 But Frederick Flowers, this young man sitting here
17 before y'all, he did not do this. He did not kill James
18 Javon Smith. Instead he's here because others have
19 decided that he should be a casualty in their quest for
20 their freedom and their fight for their survival. And
21 Mr. DuRant told you that you are going to hear from
22 multiple people that are going to say that they saw
23 Frederick shoot Tiddy. However, that's not why he was
24 arrested because those people they didn't really give
25 that story for the most part until recently; as recently

1 as last week in some cases.

2 So how did it come to this? How did Freddie end up
3 here? Well Kennedy Smith was driving his son around that
4 day in March of last year. They were just hanging out
5 and running errands and Tiddy needed to go to
6 to do some business.

7 And so Mr. Smith, Kennedy Smith, drives up and sees
8 a group of guys outside. And while they are both seated
9 in the car one of them walks up and ends up shooting at
10 the car and hitting Tiddy; and Tiddy dies. So the police
11 start out obviously by talking to the persons who was
12 there.

13 The person who they would think would want the
14 shooter to be caught, Kennedy Smith; the Dad, who for
15 some reason he lied about multiple things. He's even
16 charged with Obstruction of Justice for lying about
17 things in this case. He gave multiple descriptions. At
18 first he said the guy had twists in his hair. He said he
19 had twists; he was wearing a red shirt, thin, dark
20 complexion, 5'7 to 6 feet tall. And you know the police
21 keep asking him and asking him about the description and
22 he maintains over several interviews well, I really
23 didn't get a good luck because they are in the car after
24 all and they never get out of the car, it's a Celica so
25 it's pretty low to the ground.

1 And he's like I had nothing, you know I didn't think
2 anything was going to happen so I wasn't paying attention
3 and then everything went so fast. And so he gives
4 several descriptions.

5 But there is one thing the police found; because
6 they don't find much as far as physical evidence, they
7 find a phone in the car. And at first they don't know
8 anything because it's a phone; Tiddy was a drug dealer,
9 he would have multiple phones of his own. And so they
10 couldn't -- they didn't know who it belonged to. They
11 asked the Dad who didn't know, they asked the girlfriend
12 and she didn't know.

13 And they were able to trace this phone back to
14 Frederick Flowers as one of the phones that he used
15 because he did have a couple of phones that he would use.
16 And so on occasion he would use this phone that was in
17 that car. Freddie ended up being arrested. And so since
18 he was arrested last year there is that group of five
19 boys that Mr. DuRant told you about. And since that time
20 last year they have told story after story after story,
21 lie after lie. And Mr. DuRant told you that all of a
22 sudden here today this week they are going to tell the
23 truth. Well, they all have different stories from one
24 another in some way. All maintain their own innocence in
25 anything. And so what have these boys been doing the

1 past year now?

2 Well they have been talking to law enforcement
3 numerous times. They have been talking to one another.
4 And they have been dealing with their own mounting
5 issues, both related to this case and unrelated. Some
6 people besides the Dad have been charged with Obstruction
7 of Justice as well. So they have some pending charges.

8 And so they are going to get on the stand and they
9 are going to tell you what happened that day. Some will
10 say what they last said but maybe they will say something
11 else entirely. We'll all be able to see what they say on
12 the stand.

13 And that's when your job as jurors that's when it
14 starts to really come into play because it's not an easy
15 job at all. It's not easy knowing the absolute truth of
16 what happened and didn't happen because everything is not
17 recorded at all times. There is no recording of this
18 shooting happening and so you have to look at things and
19 try to determine if you can find out what has been proven
20 or not proven; if you can be convinced beyond a
21 reasonable doubt that Freddie did this thing. And so one
22 thing that I would ask you to do is pay close attention
23 to their creditability.

24 Creditability is huge because after all again we
25 don't have everything recorded that happened and so we

1 have to just look at people and listen to how they are
2 talking and where they are looking and things like that
3 to determine if they are credible.

4 All of this has to do with at some point some of us
5 more than others sometimes every day have to determine
6 creditability. So use your common sense. But you can
7 look at certain things. Look at prior stories for
8 example. Look at stories compared to somebody else's
9 story. Look at motive, motive to lie. That's when you
10 go back to the survival motive because a motive can be
11 fear. Fear of being charged themselves. Fear of someone
12 else who is able to do something to you.

13 Freddie Flowers, Frederick, he is guilty of nothing
14 other than of hanging around with this bad group of guys
15 who have made a decision after all this time to blame him
16 because after all he was already arrested. He was
17 already a goner. You will have an incredibly difficult
18 job ahead of you. And so I would just ask that you pay
19 close attention to the witnesses and I'm sure you will,
20 and pay close attention to their creditability. And at
21 the end of this trial Frederick and I are going to ask
22 you to find him not guilty. Thank you.

23 THE COURT: Solicitor, if you would call your first
24 witness please?

25 MR. DURANT: The State would call Nathaniel Fry.

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1 [Whereupon, Mr. Fry 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 MR. FRY: I do.

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

9 MR. FRY: I name is Nathaniel Fry. The last name is
10 spelled F-R-Y.

11 [Whereupon, the witness takes the witness stand]

12 - - - - -

13 NATHANIEL FRY,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. DURANT:

18 Q. I know it's pretty obvious but could you please tell
19 our jury where you work?

20 A. I work for the Charleston Police Department.

21 Q. And how long have you been with the Charleston
22 Police Department?

23 A. I've been with them a little over five years.

24 Q. And what are your current duties at the police
25 department?

1 A. I serve on the T-4 CAT team, which is a community
2 action team, particularly over in the Ardmore community
3 in that neighborhood.

4 Q. Okay. And what is the community action team?

5 A. Yes.

6 Q. What is the community action team I said?

7 A. Oh, we try and get to know the residents in the
8 neighborhood; that's why we are specifically put in those
9 neighborhoods. We work in there every day. And unless
10 something is in progress when a call for service goes out
11 we are required to stay in that neighborhood.

12 Primarily those neighborhoods have been problematic
13 for years and we have decided to take a stand against
14 that and focus primarily on them and with an effort to
15 get to know the citizens so that we can establish a
16 working relationship with them in order to deter crime.

17 Q. And were you doing that same thing on March the 1st
18 of 2011?

19 A. Yes, I was.

20 Q. In that capacity did you have an opportunity to
21 respond to 1775 Ashley River Road ---

22 A. --- I did ---

23 Q. --- on the afternoon of March the 1st?

24 A. Correct.

25 Q. In reference to what?

1 A. We had a call for service in reference to a shooting
2 that had just occurred.

3 Q. Okay. And who did y'all understand would be at
4 that location?

5 A. At the time I was the first responder on scene. I
6 was the first officer. And I located a maroon in color
7 Toyota Celica parked in the rear of the fire station.
8 When I got close enough I observed several firefighters
9 performing CPR on an unidentified black male that was
10 laying on the passenger side.

11 Q. And just to be clear what business or building or
12 whatever is located at 1775?

13 A. That is the Saint Andrews Fire Department.

14 Q. Okay. What time did C-P-D or Charleston Police
15 Department receive the report of a shooting?

16 A. Approximately 4:48 in the afternoon.

17 Q. Okay. And you had already indicated you were the
18 first officer on the scene.

19 A. Correct.

20 Q. And from what you observed when you got there where
21 you able to observe any wounds on the victim in the case?

22 A. He had an apparent gunshot wound under his right arm
23 close to his armpit.

24 Q. Okay. And they had already kind of removed his
25 clothing at that point?

1 A. Correct.

2 Q. The firemen were trying to -- what were the firemen
3 trying to do?

4 A. They were performing CPR in an attempt to revive the
5 victim.

6 Q. Was the -- Mr. Smith, the victim's father, there at
7 that time?

8 A. He was not.

9 Q. Kennedy Smith?

10 A. Yes, he was not on scene.

11 Q. Okay. Was EMS called to the scene?

12 A. They were called. They arrived shortly after. And
13 the paramedics then also began trying to revive the
14 victim.

15 Q. And were they successful?

16 A. They were unsuccessful. He was pronounced dead at
17 approximately 5:05 in the evening.

18 Q. And did you run the car on the -- the tag on the car
19 in which the victim was riding?

20 A. I did.

21 Q. And who was that car registered to?

22 A. Registered to Kennedy Smith at an address in North
23 Charleston.

24 Q. Okay. And you later learned Kennedy Smith was the
25 victim's father is that correct?

1 A. Correct.

2 Q. And I just want to show you --

3 MR. DURANT: Do you have any objection to State's
4 exhibit number 30?

5 MS. FORD: No objection.

6 MR. DURANT: Your Honor, we would offer State's
7 exhibit number 30 at this time, which is an aerial
8 photograph ---

9 THE COURT: --- State's exhibit number 30 admitted
10 without objection.

11 [Whereupon, State's exhibit number 30 is entered
12 into evidence by the court]

13 Q. [Mr. DuRant] And if you would I just want to pan --
14 hold this up here where you can see it. Do you
15 recognize this aerial photograph?

16 A. I do.

17 Q. And could you please orient the jury and tell them
18 where Sam Rittenberg is and where Ashley River Road is
19 and where Wappoo Road is and where the fire station is?

20 A. Okay. This is Ashley River Road [indicates],
21 Highway 61. This is Sam Rittenberg [indicates], that
22 intersection of Wappoo Road would be down here
23 [indicates] and continue through Highway 61. The fire
24 station is located right here [indicates] right in
25 between Sam Rittenberg and Wappoo Road.

1 Q. Okay. Where was the car actually located when you
2 got there; the Toyota?

3 A. The car was parked just outside in the rear of the
4 fire station.

5 Q. Okay. So all the way behind the fire station?

6 A. Correct.

7 Q. Okay. And could you point out the old Sofa Super
8 Store building?

9 A. This [indicates] is the old Super Store -- Sofa
10 Superstore, which is now empty.

11 Q. Okay. Thank you very much. Would you please
12 answer any questions defense counsel may have for you?

13 MS. FORD: I have no questions for this witness.

14 THE COURT: Okay. You may step down. Thank you
15 very much.

16 MR. DURANT: Your Honor, I would ask that Officer
17 Fry be excused if there ---

18 THE COURT: --- any objection Ms. Ford?

19 MS. FORD: No, Your Honor.

20 THE COURT: Officer Fry, you may be excused. Thank
21 you very much.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness please, sir.

25 MR. DURANT: The State would call Kenneth Chapel.

1 [Whereupon, Mr. Chapel 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 MR. CHAPEL: I do.

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

9 MR. CHAPEL: My full name is Kenneth Chapel,
10 C-H-A-P-E-L.

11 - - - - -

12 KENNETH CHAPEL,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DURANT:

17 Q. Good afternoon. Could you please tell our jury
18 where you are employed?

19 A. I work for Saint Andrews Fire Department.

20 Q. And how long have you been with Saint Andrews Fire
21 Department?

22 A. Just short of eight years now.

23 Q. And where are you currently stationed?

24 A. I'm currently stationed at a station right in front
25 of the County dump over at Main and 17.

1 Q. Okay. And that's where you've been -- was that
2 where you were also back on March the 1st of 2011?
3 A. That is the station that I work at, yes.
4 Q. Okay. Did you have the occasion to be at Station 4
5 or Station 1 I think it is on March the 1st of 2011?
6 A. We did, sir. We were up there switching out our
7 equipment and --
8 Q. And where is Station 1?
9 A. 1775 Ashley River Road; right by the intersection.
10 Q. That was previously described?
11 A. Uh huh.
12 Q. And y'all were there for what reason?
13 A. We were putting another truck into service. Our
14 truck was going out to get some work done on it.
15 Q. Okay. On that day shortly before 5 p.m. did a red
16 or burgundy Toyota pull into the back of the station?
17 A. Yes, sir.
18 Q. And where were y'all actually working on the truck?
19 A. Right behind the bays, which is right behind the
20 station.
21 Q. And where did the car come from ---
22 A. --- it came in ---
23 Q. --- through the station or around the station?
24 A. It came through the station. It came off of Highway
25 61 and came through the bay that EMS normally parks in

1 and pulled up right next to me.
2 Q. And what did you observe when the car came to a
3 stop?
4 A. The first thing I noticed the guy who was driving
5 looked at me and said that the guy next to him had been
6 shot.
7 Q. Okay.
8 A. And when I looked into the window I could see that
9 the guy was slumped over in his car and not breathing.
10 Q. He didn't look to be alive at that time to you?
11 A. No, sir.
12 Q. Were the windows down in the car?
13 A. They were, sir.
14 Q. And where was the victim in the car; the driver's
15 side ---
16 A. --- he was ---
17 Q. --- the front seat, back seat?
18 A. The front seat passenger side.
19 Q. Okay. Who were you with at the time?
20 A. I was with my firefighter Malone and my Captain was
21 in the bay; Captain Finny [phonetic].
22 Q. And what did y'all do when this car pulled up and
23 stopped?
24 A. I leaned in to see what was going on and he stated
25 that this guy had been shot. I looked at him. I looked

1 over at my Captain and told him to call the police; the
2 guy has been shot.

3 Firefighter Kimmel [phonetic] had come out of the
4 workroom that was right next -- when he heard what was
5 going on and together we pulled him out of the car.

6 Q. And what did you do after you pulled him out of the
7 car?

8 A. We immediately checked for vitals, found none.

9 Q. Where was he? Was he laid on the ground?

10 A. Yes, sir. We opened the car door and pulled him out
11 of the car to put him on the ground to start CPR.

12 Q. Okay. And I believe you said you checked for a
13 pulse?

14 A. We did.

15 Q. What were the results of that?

16 A. Negative.

17 Q. What did you notice about his mid section; his
18 belly?

19 A. His stomach was very bloated. It was very firm.
20 You could tell that there was a lot of blood inside of
21 him. And when we cut off his shirt we could see the
22 bullet hole.

23 Q. And you are trained in emergency medicine?

24 A. Yes, sir.

25 Q. Are you not? So what happened, what did you see

1 when you cut off his shirt?

2 A. We found some blood under his arm there. And when
3 we lifted his arm I could see the small hole here
4 [indicates].

5 We immediately rolled him over and looked for an
6 exit wound or any other holes and couldn't find any. So
7 we started doing CPR on him and held the hole.

8 Q. What other efforts did you make to revive him?

9 A. We attached an EDT to him to look at -- which is a
10 defibrillator ---

11 Q. --- like you always see on T.V.?

12 A. Yes, sir.

13 Q. Okay. To shock him?

14 A. It did not, which typically means there is either no
15 heartbeat or a heartbeat that shows life.

16 Q. Okay. Now did the driver of the vehicle was he
17 sticking around while y'all worked on the victim? Tell
18 me about that.

19 A. When we first pulled him out of the car he exited
20 and came around and watched us. I don't know for how
21 long. We immediately set about doing CPR. And the next
22 moment when I looked up to ask him what had occurred he
23 was not there.

24 Q. Okay. So you didn't see where he had gone?

25 A. No, sir.

1 Q. Did you see the driver afterwards, after that?

2 A. When the police brought him back.

3 Q. Okay. So they did bring him back to the station?

4 A. Yes, sir.

5 Q. And were you asked to identify him?

6 A. Yes, sir.

7 Q. And was it the same person that you had seen driving
8 the car to that location?

9 A. It was indeed.

10 Q. Thank you, sir. Could you please answer any
11 questions defense counsel may have for you?

12 THE COURT: Cross-examination?

13 MS. FORD: I have no questions for this witness,
14 Your Honor.

15 THE COURT: Okay. You may step down. Any reason
16 he can't be excused?

17 MR. DURANT: I'd ask that he be excused, Your
18 Honor.

19 THE COURT: Mr. Chapel, thank you very much. You
20 may be excused.

21 [Whereupon, the witness is excused and exits the
22 witness stand]

23 MR. DURANT: May we approach a moment, Your Honor?

24 THE COURT: Yes, sir.

25 [Whereupon, an off the record bench conference is

1 held]

2 THE COURT: All right. Madame Forelady and ladies
3 and gentlemen of the jury, we are going to stop at this
4 time. The next witness will probably be rather lengthy
5 and I'm not sure how long it would take. And I try to
6 stop as close to 5 as we can and it's 20 minutes till
7 now.

8 So we are going to break at this time. Be back in
9 the courtroom -- excuse me, be back in the jury room at
10 9:30 in the morning. Please don't discuss the case with
11 anyone else, don't read anything in the paper or watch
12 anything on television. I want you to make a decision on
13 what you hear in the courtroom; not what somebody else's
14 opinion in the newspaper or the T.V. if it's there.

15 As I said earlier don't use any electronic means or
16 any research on the Internet or any newspaper reports or
17 anything else. I want you to make a decision on what you
18 hear in the courtroom; not what is outside the courtroom.
19 See you in the morning at 9:30. When you come to the
20 courthouse come straight to the jury room. And as I said
21 earlier we'll go from 9:30 to somewhere between 12 and 1
22 and take an hour and half for lunch and run again to 5 or
23 5:30 tomorrow afternoon. See you tomorrow. Have a good
24 evening.

25 [Whereupon, the jury exits the courtroom at 4:34

1 p.m.]

2 THE COURT: Thank you, sir. Can I see y'all back
3 up here for a second?

4 [Whereupon, an off the record bench conference is
5 held]

6 THE COURT: All right. We'll adjourn until 9:30
7 in the morning.

8 [Whereupon, court is in recess at 4:42 p.m.]

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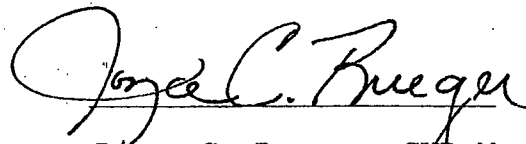
25

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 27th 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 2 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 28, 2012, Commencing at 9:50 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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PROCEEDINGS

MS. FORD: Your Honor, I'm just going to ask perhaps the jury might want to take notes just because there are going to be a lot of different stories.

THE COURT: Well if -- I don't volunteer it. If the jurors request that I do it; because it is a lot of headaches for the clerk. If they want to do it I permit it, but I don't volunteer it, okay.

MS. FORD: All right. Thank you, Your Honor.

THE COURT: Now if you want me to give them notepads from your perspective and you're requesting it, I don't have any problem doing that. Do you want them to have notepads?

MS. FORD: Yes, Your Honor.

THE COURT: Okay. I'll be happy to do it. When I say request the jurors or the attorneys -- if they request it I don't have any problem doing it.

MS. FORD: Yes, Your Honor.

THE COURT: That's fine. I just don't volunteer it. If the lawyers or the jurors request it I'll do it but other than that it's -- no need to add work to the clerk unless you have to. If you'll bring the jury in please?

[Whereupon, the jury enters the courtroom at 9:53 a.m.]

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

2 THE COURT: Thank you very much. Madame Forelady
3 and ladies and gentlemen of the jury, I'm going to --
4 first of all who would like to take notes? If you want
5 to take notes raise your right hand and we'll provide you
6 with pads and pens.

7 Everybody? I guess I should say who doesn't want to
8 take notes raise your hand. All right. The Bailiff
9 will pass out the pads and the pens and pencils.

10 All right. Does everybody have a notepad?
11 Everybody have something to write with? Write your name
12 inside the notepad if you would please. When you leave
13 the courtroom leave your notepads in your chairs and the
14 clerk will collect them at the end of the day and during
15 lunch and redistribute them when you come back.

16 At the end of the trial after all the testimony and
17 the closing arguments and the charge and you begin your
18 deliberations at that time I'll let you take the notepads
19 back with you to the jury room. But in the meantime the
20 court will maintain control of the notepads through the
21 clerk. Solicitor, if you'll call your next witness
22 please.

23 MR. DURANT: Thank you, Your Honor. The State
24 would call Kennedy Smith.

25 [Whereupon, Mr. Smith comes forward]

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

5 MR. SMITH: I do.

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

8 MR. SMITH: Kennedy Smith, S-M-I-T-H.

9 [Whereupon, the witness takes the witness stand]

10 - - - - -

11 KENNEDY SMITH,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DURANT:

16 Q. Mr. Smith, how old are you?

17 A. I'm 51.

18 Q. And are you currently working?

19 A. No, I'm not.

20 Q. Why not?

21 A. I'm disabled.

22 Q. And what is the nature of your disability?

23 A. It's classified as manic depression.

24 Q. And do you have to take medication as a result of
25 that?

- 1 A. Yes, I do.
- 2 Q. And does the medication you take affect your ability
3 to recall?
- 4 A. No, it doesn't.
- 5 Q. Were you taking your medication on March the 1st of
6 2011?
- 7 A. Yes, I was.
- 8 Q. And are you currently taking your medication?
- 9 A. Yes, I am.
- 10 Q. And does the medication assist you in stabilizing
11 your mood?
- 12 A. Yes, I'm stable.
- 13 Q. How long has it been since you were able to work?
- 14 A. I worked approximately seven years ago.
- 15 Q. Okay. And when you were working what kind of --
16 when you were able to work what kind of work did you do?
- 17 A. I worked at the temp service, Trojan Temp Service as
18 a transporter of the workers to the work site and come
19 back to work site and I drove for the owner of the temp
20 service on the weekends.
- 21 Q. Okay. And before that you worked where?
- 22 A. I worked at the Food Lion grocery store and also as
23 a bus driver.
- 24 Q. Okay. And I believe you also were in the service
25 is that correct?

- 1 A. Yes, seven years in the U.S. Army.
- 2 Q. And what years were you in the Army?
- 3 A. From 1979 to 1986.
- 4 Q. Are you married?
- 5 A. I'm divorced.
- 6 Q. And how long have you been divorced?
- 7 A. I've been divorced ever since 1993.
- 8 Q. What is your ex-wife's name?
- 9 A. Ms. Lucretia Elaine Johnson.
- 10 Q. And did you and Ms. Johnson have any children
- 11 together?
- 12 A. Yes, we did.
- 13 Q. How many?
- 14 A. Two children.
- 15 Q. And boy and girl or both?
- 16 A. Boy and a girl.
- 17 Q. What's the boy's name?
- 18 A. James Javon Smith.
- 19 Q. And how old is James?
- 20 A. He was 25.
- 21 Q. Okay. And your girl's name is what?
- 22 A. Allison Janine Smith.
- 23 Q. And your son James Javon Smith was the one who was
- 24 murdered in this case is that correct?
- 25 A. That's correct.

- 1 Q. And you were present when he was murdered?
- 2 A. Yes.
- 3 Q. And I believe you may have already answered this how
- 4 old was he at the time of the murder?
- 5 A. Twenty-five.
- 6 Q. Now back in March of 2011 was James living with you?
- 7 A. No, he wasn't.
- 8 Q. How often did you actually -- was he out on his own?
- 9 A. Yes, he was.
- 10 Q. How often did you actually see him back then?
- 11 A. Just before he was killed I had not seen him in
- 12 approximately three or four weeks.
- 13 Q. Okay. Did you stay in touch with him by other
- 14 means?
- 15 A. Yes, we talked on the phone.
- 16 Q. And what was his nickname?
- 17 A. Tiddy.
- 18 Q. And how long has he had that nickname?
- 19 A. Ever since approximately '91 or '92.
- 20 Q. Okay. Is that pretty much what everyone called
- 21 him?
- 22 A. Yes.
- 23 Q. Let's talk about the day Tiddy was murdered. How
- 24 did you happen to meet up with him that day?
- 25 A. He called me that morning at 10:30 to 11 o'clock and

1 he asked me to go to the auto mechanics shop to look at a
2 vehicle that he had prior asked me to fix for him where
3 the headlights -- the bumper had been pushed in.

4 And the bumper could not be removed so that it could
5 be repaired. And I told him that I was a little bit too
6 sick at the time and I told him he needed to take it to a
7 mechanic.

8 Q. Okay. And what did he want you to do?

9 A. He wanted me to go with him because he told me that
10 he had taken it to a mechanic and that it had been there
11 a little bit longer than he thought it should have been
12 there for just the work that was supposed to be done.

13 And he wanted me to go there to take a look and talk
14 to the mechanic to see if everything was okay or see if
15 the guy was ripping him off.

16 Q. Why? Did you have any knowledge of cars?

17 A. Yes, I went to school for mechanics.

18 Q. Okay. Where was -- this was Tiddy's car?

19 A. Yes.

20 Q. And where was it in the shop at?

21 A. It was located up off Remount Road a little side
22 street across from Doscher's.

23 Q. Did you agree to go with him?

24 A. Yes. I finally agreed.

25 Q. And where did you meet him?

- 1 A. I met him at the Amoco down on Carriage Lane.
- 2 Q. And I believe that used to be Amoco. It's now BP is
- 3 that correct?
- 4 A. I'm not exactly sure.
- 5 Q. Okay. But right there -- which BP is this?
- 6 A. It's the V where 61 goes up to Wappoo Road to Sam
- 7 Rittenberg and the right goes -- Carriage Lane sits in
- 8 the middle and you go right ---
- 9 Q. --- okay. I understand where that is. So you
- 10 picked your son up from that gas station?
- 11 A. Yes.
- 12 Q. And after you picked him up where did y'all go?
- 13 A. We proceeded to go up to Remount Road. We took the
- 14 back streets. We took Cosgrove over to Spruill Avenue
- 15 around Park Circle, North Rhett on to Remount and up to
- 16 the mechanics shop.
- 17 Q. And did you meet with the mechanic at that location?
- 18 A. Yes, we did.
- 19 Q. And after doing that where did y'all go?
- 20 A. We -- I told him that I needed to stop at the
- 21 grocery store and buy some groceries. We got back in and
- 22 took the back streets again and came back over to
- 23 Doscher's on Highway 17.
- 24 Q. Okay. That's on Highway 17 right across from West
- 25 Oak Forest is that correct?

- 1 A. Yes.
- 2 Q. West of the Ashley?
- 3 A. Yes.
- 4 Q. And what did you do when you got to Doscher's?
- 5 A. I told him that if he wanted anything he could go
6 ahead and get a bag of chips or something like that, a
7 soda, and I would be getting a few items. And I was going
8 on in the store getting what I was getting and he was
9 basically on the phone the whole time.
- 10 Q. He was getting calls while he was in there?
- 11 A. Yes, he was.
- 12 Q. Okay. And I hand you what's previously been marked
13 as State's exhibit number 33 for identification and ask
14 if you recognize that?
- 15 [Whereupon, the witness is shown exhibit]
- 16 A. Yes.
- 17 Q. And what is that?
- 18 A. That is a C.D. that I had been -- that I had
19 previous...
- 20 Q. Previously viewed?
- 21 A. Yes.
- 22 Q. Those are your initials and date there?
- 23 A. Yes.
- 24 Q. And this is a C.D. of you and Tiddy at Doscher's is
25 that correct?

1 A. That's correct.

2 MR. DURANT: Your Honor, I believe we would offer
3 State's exhibit 33 into evidence I think without
4 objection.

5 MS. FORD: That's correct, Your Honor, without
6 objection.

7 THE COURT: All right. State's number 33 admitted
8 without objection.

9 [Whereupon, State's exhibit number 33 is entered
10 into evidence by the court]

11 [Whereupon, the CD is played; but not transcribed]

12 Q. [Mr. DuRant] Do you recognize this video Mr. Smith?

13 A. Yes I do, sir.

14 Q. Who is that right there [indicates] in the checkout
15 line?

16 A. The first one is me.

17 Q. Okay. And who is that [indicates] right behind you
18 with the black shirt and chain with the red stripe across
19 it?

20 A. That's my son, James Smith.

21 Q. And is this -- at what point is this that you were
22 in Doscher's? I assume this is when you are checking out
23 is that correct?

24 A. That is correct.

25 Q. And the time right now according to the video at

1 least with regard to the clock that Doscher's was using
2 is about 16:34, which 4:34 is that correct?

3 A. Yes, correct sir.

4 Q. And do you dispute that would be the time that you
5 were in Doscher's?

6 A. No, that's the approximate time.

7 Q. That's your son there [indicates] at the bottom with
8 his back to us now?

9 A. Yes it is, sir.

10 Q. Let me speed this up a little bit toward the end.
11 This is still you right here [indicates] correct?

12 A. Correct.

13 Q. And this [indicates] is your son?

14 A. Yes.

15 Q. And that's when y'all were leaving the store right
16 there [indicates]?

17 A. Correct.

18 Q. And that's at 16:37 correct?

19 A. Correct.

20 Q. You said that while y'all were in Doscher's y'all
21 were getting calls on the phone is that correct?

22 A. That's correct.

23 Q. And where did he want you to take him?

24 A. While I was shopping in the store he came to me and
25 he said I know where I want you to drop me off now

1 because previously he did not know where he wanted me to
2 drop him off at. He just said he wanted me to drop him
3 off West Ashley. But he said he would know exactly
4 later.

5 Q. Okay. And where did he want you to take him?

6 A. He said he wanted me to drop him off in the Forest.
7 He said that's where his home boys was and he would have
8 to show me the street because it's a little short street
9 and I didn't know where it was.

10 Q. Okay. So when y'all left Doscher's where did you
11 go?

12 A. We got on 17 and went down to the Amoco on Wantoot,
13 took a right and went down to Street.

14 Q. Okay. And what were y'all driving?

15 A. We was driving a little red '86 Toyota Celica.

16 Q. Whose car was that?

17 A. It was my car.

18 Q. And who was driving?

19 A. I was driving.

20 Q. And who was the passenger?

21 A. My son, James.

22 Q. Nobody else in the car is that correct?

23 A. Nobody, correct.

24 Q. Now -- so runs -- is off of Wantoot
25 Boulevard. After he directed you onto Street

1 where did y'all go on

2 A. We went down to the 4th house on the right.

3 Q. Okay. And when you got there where did you park?

4 Did you park? Did you stay in the middle of the road?

5 Did you pull in the driveway? Where did you go?

6 A. When I got there I pulled up the rear tire, the rear
7 passenger tire on the pavement approximately halfway up
8 the concrete of the driveway to the extreme left if you
9 were facing the driveway on

10 And the front right tire was about a foot away from
11 the grass right to the left of the driveway.

12 Q. Okay. So you didn't pull into the driveway?

13 A. No, I didn't.

14 Q. You were over on the side of the road?

15 A. Yes.

16 Q. At the end of the driveway to

17 A. Yes.

18 Q. Okay. And where were you exactly and where was the
19 driveway in relation to your vehicle?

20 A. Approximately halfway the vehicle.

21 Q. Okay. Now -- let me ask you this question. The
22 way you were coming down would be on the
23 driver's side or the passenger side?

24 A. The passenger side.

25 Q. Okay. So Tiddy was actually on the side of

1
2 A. Correct.
3 Q. And who was out in the yard or the area of
4 ?
5 A. There were approximately nine people; young black
6 males.
7 Q. Any of them that you knew?
8 A. No, not that I could recognize.
9 Q. Okay. Were you familiar with Tiddy's friends?
10 A. No.
11 Q. And what happened when you pulled over to the side
12 of the road?
13 A. As soon as I pulled up Freddie stepped out from the
14 group that was standing at the front of the driveway ---
15 Q. --- who are you talking about?
16 A. Freddie, sitting right there [indicates].
17 Q. This guy right here [indicates]?
18 A. Yes. Grey suit white shirt.
19 Q. Now you didn't know any of these guys. How did you
20 know his name was Freddie?
21 A. After identifying him, his name in the paper, and
22 people just talking about his nickname being Freddie ---
23 Q. --- actually you found out his name later. You
24 didn't know the name at the time is that correct?
25 A. Right.

1 Q. Okay. Anyway what did he do?

2 A. He stepped out from the group and began to walk
3 towards the car.

4 Q. And where were the rest of these guys hanging out?

5 A. At the extreme front of the driveway. There was two
6 cars parked in the driveway. Some of the guys was at the
7 front of the front car near the house and there was a few
8 guys standing to the left of the front car in the
9 driveway.

10 Q. Okay. But they were closer towards the house?

11 A. Yes.

12 Q. Okay. And you say this fellow [indicates] came
13 towards the car is that correct?

14 A. Yes, Freddie did.

15 Q. Did anybody else come towards the car?

16 A. No.

17 Q. And tell us what happened. What did you see after
18 you saw him start coming towards the car?

19 A. As he was coming towards the car approximately half
20 the distance to the car there was a voice that yelled out
21 from the crowd; you know he would be riding dirty. All
22 of a sudden simultaneously happening at the same time ---

23 Q. --- let me ask you about that. What does that mean
24 you know he would be riding dirty?

25 A. I don't know what it means and it didn't register

1 anything to me then.

2 Q. Okay.

3 A. When I first drove up I just simply turned the car
4 off, looked to my son and said okay basically, see you
5 later and I looked back forward.

6 As the voice said you know he would be riding dirty
7 I looked back to the right again and I could still see
8 Freddie once again coming towards the car.

9 Q. Okay ---

10 A. --- still ---

11 Q. --- and when you say Freddie you're talking about
12 this fellow [indicates]?

13 A. Yes.

14 Q. And how was he acting?

15 A. He was walking aggressively.

16 Q. And what -- do you remember what he was wearing
17 then?

18 A. No, I don't remember what he was wearing.

19 Q. And what happened when he came up to the car? Well,
20 let's start this way. How far away was he when you first
21 saw him?

22 A. Immediately as soon as we -- as soon as I stopped
23 instantly he stepped out of the crowd. So I seen him
24 instantly when I stopped.

25 Q. And how far away was he when you first saw him?

1 A. Two car lengths because it was two cars in the
2 driveway and they was all standing at the front of the
3 car.

4 Q. Okay. And light or dark out there?

5 A. Light.

6 Q. This was shortly after 3:30 -- 4:37 is that correct?

7 A. Yes, correct.

8 Q. Because you went straight over there?

9 A. No -- or no, sir. Before we went there I went -- I
10 turned -- Tiddy told me he said he wanted to ride around
11 the block.

12 So he showed me where he wanted to go around the
13 block. And basically we made a square and he showed me
14 how to go back to get to

15 Q. Okay. So he kind of did a -- do a box around the
16 block before he actually went to

17 A. Yes.

18 Q. Okay. So Freddie is walking toward the car. Its
19 daylight and you see him. What did -- what happened
20 next?

21 A. After the person that said you know he's riding
22 dirty when I looked over to the right he's still coming
23 aggressively.

24 I'm still thinking nothing is going to happen. I'm
25 not aware of anything going on wrong because I'm just

1 going to take -- drop him off where his friends were so I
2 assumed that everything was fine. Yet he's coming up to
3 the car aggressively.

4 And he steps up to the car. And as he steps up to
5 the car about the last step as he steps up the gun comes
6 back from around his right side, he sticks it in the car,
7 and shoots one time.

8 Q. In whose direction?

9 A. He shot it at my son with the gun pointing down
10 towards his leg and the seat.

11 Q. Okay. And what happened then?

12 A. The gun goes off and jams and appears as if the
13 bullet hits the seat and just flies up ---

14 Q. --- when you say it jams what made you think the gun
15 jammed?

16 A. The gun jammed because it wouldn't fire anymore. He
17 pulled the gun back out of the window, raised his hands
18 up, taking a step back and racking the gun at the same
19 time trying to reload.

20 Q. Okay. And did he step back from the car when he
21 did that?

22 A. Yes, he did.

23 Q. And why?

24 A. My son -- when the gun went off my son reacted in a
25 shout raising up -- an arm coming up leaning back just in

1 a scared reaction.

2 Q. Leaning back towards you?

3 A. Back towards as if -- to see if he was shot and also
4 launching in a sense perhaps to -- if he could grab him
5 or whatever the case may be.

6 Q. Okay. What is Freddie doing?

7 A. He was racking the gun ---

8 Q. --- after he was messing with the gun?

9 A. Trying to reload the gun. As soon as he got it back
10 reloaded he stepped back up to the car and put the gun
11 into my son's ribcage and fired it twice.

12 Q. And before any of this happened or before the
13 shooting started did Javon say anything to him?

14 A. No, he didn't.

15 Q. So he basically came up and just started shooting?

16 A. Yes.

17 Q. What happened then?

18 A. After the two shots to my son's side then he leaned
19 over stuck the gun into the car towards me and fired one
20 more time as the car was pulling off.

21 As he was racking the gun also I was trying to get
22 the car back started. It's a stick shift and the
23 combination of starting the car and the clutch has got to
24 be down turn the key and taking off. I was trying to do
25 all that at the same time. All of it happened probably

1 in approximately three to four seconds. He stuck the gun
2 back over towards me, leaned over behind my son and fired
3 the gun. The gun powder hit me on the right side of my
4 neck as I was taking off.

5 Q. Okay. And what was he looking at?

6 A. Directly at me.

7 Q. Now were you able to get the car started?

8 A. Yes.

9 Q. And what did you do when you got the car started?

10 A. I immediately took off.

11 Q. And how did you get out of the neighborhood?

12 A. is kind of like a dead end street going
13 towards Playground Road. Went to the dead end to the
14 left, then to the right on North Sherwood and out to
15 Playground Road and then left on Playground.

16 Q. Okay. Headed toward Highway 61?

17 A. Yes.

18 Q. And you were obviously driving fast at this point is
19 that correct?

20 A. That's correct.

21 Q. Where were you going?

22 A. I was going to the fire station on the corner of Sam
23 Rittenberg and Highway 61.

24 Q. Now was your son still alive?

25 A. Yes, he was.

- 1 Q. Did he say anything?
- 2 A. Yes.
- 3 Q. And what did he say?
- 4 A. He asked me he said, what happened? And I said -- I
- 5 didn't say anything. He looked down and he said, oh I
- 6 got shot. And he took a deep breath and he basically
- 7 leaned over and he was gone.
- 8 Q. So you think he was dead then?
- 9 A. I grabbed his arm, his left arm and started praying
- 10 for him. I didn't feel a pulse.
- 11 Q. Did you call 911?
- 12 A. Yes, I did.
- 13 Q. And where were you when you called 911?
- 14 A. I was just past the swimming pool, which is on the
- 15 right hand side of Playground Road just before the
- 16 baseball park going to 61.
- 17 Q. Okay.
- 18 A. And I was in between the swimming pool and the
- 19 baseball park.
- 20 Q. And I'm going to show you what has previously been
- 21 marked as State's exhibit number 34 and ask you to
- 22 identify that.
- 23 [Whereupon, the witness is shown exhibit]
- 24 Q. Those are your initials and date on that?
- 25 A. Yes, it is.

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1 Q. Okay. This is a copy of the 911 call is that
2 correct?
3 A. That's correct.
4 MR. DURANT: Your Honor, we would offer State's
5 exhibit 34. I believe without objection.
6 THE COURT: Any objection?
7 MS. FORD: No, Your Honor.
8 THE COURT: All right. State's 34 admitted
9 without objection.
10 [Whereupon, State's exhibit number 34 is entered
11 into evidence by the court]
12 [Whereupon, the CD is played; but not transcribed]
13 Q. [Mr. DuRant] Do you know if you had hung up the
14 phone by then?
15 A. Yes, I did.
16 [Whereupon, the CD concludes]
17 Q. [Mr. DuRant] That part was after you got to the fire
18 station you were talking to the firemen is that correct?
19 A. That's correct.
20 Q. Now tell us about you getting to the fire station.
21 You were coming from the direction of Playground Road is
22 that correct?
23 A. Yes.
24 Q. So the fire station would have been on your left?
25 A. Yes.

1 Q. As you were heading towards Sam Rittenberg?
2 A. Correct..
3 Q. Where did you -- where did you pull into at the fire
4 station?
5 A. I pulled into the open bay to the left of the fire
6 station, went through the fire station and pulled out of
7 the back of the fire station approximately one car length
8 in the rear of the fire station.
9 Q. And what did you see when you got to the rear of the
10 fire station?
11 A. There were three firemen that was out there doing
12 their maintenance or work; whatever the case may be. And
13 I stopped and got out the car.
14 Q. Okay. And what did you do?
15 A. I was yelling ---
16 Q. --- after you stopped and got out of the car?
17 A. Yelling to them that he had got shot.
18 Q. Okay..
19 A. And ---
20 Q. --- as we just heard on the 911 call correct?
21 A. Yes. I went around to the passenger side and as I
22 was yelling to them the firemen were approaching the car.
23 And one of the firemen walked up to the car and opened
24 the car and checked his pulse.
25 Q. Okay.

1 A. And he said he doesn't have a pulse.

2 Q. What did they do at that point?

3 A. I asked them -- I said I take full responsibility to
4 take him out of the car; you guys won't be responsible.
5 Let's take him out and put him on the ground and see if
6 we can revive him. And that's what we did.

7 Q. Okay. So he was removed from the car and placed
8 where?

9 A. On the ground.

10 Q. And what did the firemen do after they got him on
11 the ground?

12 A. He checked the pulse again. And as he checked the
13 pulse the Chief was coming out simultaneously and was
14 there -- or whoever the senior person was, and he turned
15 and told him also that he didn't have a pulse and then
16 continued to work on him. I could hear the E-M-S coming
17 up.

18 Q. Okay. And what did you do while they were working
19 on your son?

20 A. After the second time of hearing that from him that
21 he didn't have a pulse basically deep down inside I
22 somewhat gave up.

23 I turned around, walking back to the car, put my
24 hand on my head; whatever the case may be, just torn
25 apart. And I looked to the car and I saw a bag at the

1 floor of where my son was sitting.

2 Q. A bag of what?

3 A. It was weed in the bag.

4 Q. Marijuana, correct?

5 A. Yes.

6 Q. Okay. And where did you see it in the car?

7 A. Sitting where -- on the floorboard where my son was

8 sitting.

9 Q. And what did you do when you saw the marijuana on

10 the floor board of the car?

11 A. I said to myself oh no, no drugs in the car. So I

12 grabbed the bag and looked around me and said this won't

13 be on the scene whatsoever. So I looked for a place to

14 throw it away.

15 Q. And where did you go?

16 A. I looked and there was an opening in the fence to

17 the next building the super -- the old Super Sofa store

18 and the thought was if I could get it on top of the

19 building they won't see it, they won't find it, and they

20 won't know it.

21 Q. Okay. And -- so you ran over there?

22 A. Yes. I ran over there and threw the weed.

23 Q. Okay. And what happened when you got over behind

24 the Sofa Super store?

25 A. The weed wasn't heavy enough to make it up on top of

1 the building so it came back down short. So when it came
2 back down short I began to go toward the weed to get it
3 again. As I was going toward the weed a police officer
4 was coming up and he made chase behind me and told me to
5 halt. I still continued:

6 He pulled his gun and told me to halt again.
7 Finally I stopped. He came over and arrested me, got
8 the weed, and brought me back to the fire station.

9 Q. Okay. This has previously been marked as State's
10 exhibit number 30 into evidence. Do you recognize this
11 aerial photograph?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes, I do.

14 Q. And this would be the fire station there
15 [indicates]?

16 A. Yes, that's the fire station.

17 Q. And would you show the jury where your car was?

18 A. That is my car sitting right there [indicates]
19 outside, the red vehicle.

20 Q. Well, it would be in that location is that correct?

21 A. Yes.

22 Q. This wasn't taken at that time.

23 A. Okay.

24 Q. And where was the Sofa Super store -- the Sofa Super
25 store, if you know?

- 1 A. It would be this building over here [indicates].
2 Q. Okay. So you ran from here [indicates] over to
3 here [indicates].
4 A. Yes, through the fence...
5 Q. Okay. And there is a whole in the fence there?
6 A. Yes.
7 Q. And you were trying to throw the marijuana on top of
8 this building?
9 A. Yes.
10 Q. And where did the policeman come from that arrested
11 you?
12 A. All I know is it was from behind.
13 Q. Okay. So after they arrested you did they take you
14 back over to the fire station?
15 A. Yes.
16 Q. Why?
17 A. They took me back over there to get a positive
18 identification for the person who drove my son there.
19 Q. Okay.
20 A. And also the person who was running over there
21 behind the next building.
22 Q. Okay. So, to identify you as the driver of the car
23 pretty much?
24 A. Yes.
25 Q. Okay. Now you were put in a police car?

1 A. Yes, I was.
2 Q. And where did you take the police?
3 A. I was told that I had to go with them and identify
4 the location of the shooting.
5 Q. Okay. And where did you take them to?
6 A. I took them back down Street and
7 identified the house.
8 Q. And identified the house and is that correct?
9 A. That's correct.
10 Q. And where did they take you then?
11 A. They then took me down to the police station.
12 Q. Now what happened when you got down to the police
13 station?
14 A. Ultimately they took me up and placed me in the room
15 where I was interviewed.
16 Q. And you were interviewed by a couple of detectives,
17 is that correct?
18 A. Yes, two.
19 Q. One of them I believe may have been this gentleman
20 right here [indicates] Detective Burckhardt?
21 A. Yes.
22 Q. And I believe Detective Flynn is that correct?
23 A. Yes.
24 Q. What did you tell them about how your son had been
25 shot?

1 A. I told them that we went into West Oak Forest on
2 Wantoot.
3 Q. The same thing you told this jury today or something
4 different?
5 A. The same thing.
6 Q. Okay. What did you tell them regarding a
7 description of the shooter?
8 A. I told them a black male 5'6 to 5'7 to 6 feet, curly
9 hair.
10 Q. What kind of hair?
11 A. Short curly hair, dark skin.
12 Q. Say anything about a hair style?
13 A. Yes, basically short hair. I'm sorry, if the hair
14 was long or short it was somewhat short and made into
15 twists.
16 Q. You told them he had twists in his hair is that
17 correct?
18 A. Yes, correct.
19 Q. Was that true?
20 A. No, it wasn't.
21 Q. It doesn't sound much like him.
22 A. No, it isn't.
23 Q. Did you tell them you would be able to identify the
24 shooter?
25 A. I told them I could not.

1 Q. Was that the truth?
2 A. No, it wasn't.
3 Q. Okay. Let me get this right. So your son has just
4 been shot ---
5 A. --- yes ---
6 Q. --- right in front of you.
7 A. Right.
8 Q. And you -- they take you down there and you tell
9 them what happened. Why didn't you tell them the truth
10 about the shooter?
11 A. Because I could not believe that nine people or
12 approximately nine people number 1 could be standing out
13 in broad daylight and this happened.
14 After thinking of that I said he had friends and he
15 had good friends that I know that he talked about, or
16 supposedly friends that he talked about ---
17 Q. --- who ---
18 A. --- over and over and over ---
19 Q. --- who had good friends?
20 A. James.
21 Q. Your son Tiddy?
22 A. Yes. And I said ---
23 Q. --- what has that got to do with anything?
24 A. There has to be someone out there that was standing
25 there that either will take care of whoever shot him or

1 will tell someone else to take care of whoever shot him.

2 So I was basically looking for street revenge to take its
3 course.

4 Q. Oh, okay. You didn't want to bother with the
5 judicial system is that what we're talking about?

6 A. At that particular time, no.

7 Q. Do you remember the detectives -- the detectives
8 were pretty upset with you weren't they?

9 A. Yes, they were.

10 Q. Do you remember them showing you a bunch of
11 pictures?

12 A. Yes, they did.

13 Q. Were you able to pick out anybody?

14 A. Yes, I did.

15 Q. And did you pick out anybody positively?

16 A. I picked out someone who used to be my neighbor when
17 I lived on Medaron [phonetic] Drive.

18 Q. Okay. But you didn't -- you didn't pick out
19 anybody as being the shooter is that correct?

20 A. No.

21 Q. I think one time you said there was -- they showed
22 you one person that you said looked like the shooter;
23 maybe 65 percent is that correct?

24 A. Correct.

25 Q. You told them that?

1 A. Right.

2 Q. But you never said anybody that they showed you a
3 picture of that was the actual shooter is that correct?

4 A. Right.

5 Q. So you never -- you remember how many photograph
6 lineups they showed you that night?

7 A. I know they showed me numerous sheets.

8 Q. Okay. And you were telling them this looks like
9 somebody that may or may not be in the yard or some --
10 were you telling them things like that?

11 A. Right, just anything.

12 Q. Once again, were you being straight with the cops?

13 A. No. I didn't want to -- I didn't want them to think
14 that I knew who it was ---

15 Q. --- why ---

16 A. --- so that if anything happened they wouldn't come
17 looking at me because I didn't know who it was. I didn't
18 know how he looked; it didn't matter.

19 Q. So you were thinking that if somebody did take care
20 of business they wouldn't think you were responsible
21 because you didn't know who did it right?

22 A. Exactly.

23 Q. Could be that you might have been thinking about
24 taking things into your own hands could it?

25 A. May I be -- yes.

1 Q. You also lied about something else that night is
2 that correct?

3 A. Yes.

4 Q. What was that?

5 A. I told him that I had never seen the weed and didn't
6 know where it came from.

7 Q. And that wasn't true was it?

8 A. No, it wasn't.

9 Q. And for all your efforts with the police department
10 what ended up happening to you that night?

11 A. I was locked up.

12 Q. For what?

13 A. Marijuana.

14 Q. And you were locked up for the marijuana that night
15 correct?

16 A. Correct.

17 Q. And then the next day do you remember being
18 interviewed by Detective Osborne, this detective
19 [indicates]?

20 A. Yes.

21 Q. And what did he do to you for your efforts the night
22 before? Did he arrest you again?

23 A. Yes, he did.

24 Q. For what?

25 A. Because I admitted that I did throw the weed and I

1 had lied so...

2 Q. Okay. So he arrested you for Obstruction of
3 Justice is that correct?

4 A. Right.

5 Q. He interviewed you again?

6 A. Yes.

7 Q. On the 2nd. What did you tell him if you remember
8 concerning the shooter's description?

9 A. Slim male, low hair cut, medium --

10 Q. And I think you were telling them -- lying to him
11 too, weren't you, about the description?

12 A. The number of days and the number of times that ---

13 Q. --- this is like the next day. You were arrested on
14 the 1st; he talked to you on the 2nd. Do you remember
15 what description you gave him at that time?

16 A. That particular day without dates or transcript I
17 really don't know as of the date. But if it's in the
18 transcript, that's what I said.

19 Q. Well, let me ask you if I can. Now it is true that
20 you told him the truth about the marijuana is that
21 correct?

22 A. That's correct.

23 Q. And that was on March the 2nd?

24 A. Yes.

25 Q. Okay. Do you recall telling him that the shooter

1 was a black male, 5'8 to 6 feet tall, slim with twists in
2 his hair, on March the 2nd?

3 A. On that day?

4 Q. On March the 2nd do you recall telling him that?

5 A. I would say just once again the exact date without
6 looking at it on the paper and signing it because of how
7 I ---

8 Q. --- do you deny that you told Detective Osborne on
9 the next day that he had -- he was slim and he had twists
10 in his hair?

11 A. No, I do not.

12 Q. If you don't deny it, you admit it right?

13 A. Yes.

14 Q. Okay. Now was that true? Did the shooter have
15 twists in his hair?

16 A. No, he didn't.

17 Q. So you still haven't been straight with the cops?

18 A. Exactly.

19 Q. But you did tell them about the weed?

20 A. Yes. They had asked for a fingerprint on the weed.
21 And I did believe and think that the officer did see me
22 partially as he was chasing me because he was far enough
23 behind me and I figured that possibly my fingerprint was
24 on the bag.

25 Q. Okay. Let move ahead a week to March the 9th of

1 2011. You were still in jail at that point correct?
2 A. Correct.
3 Q. And do you recall Detective Osborne picking you up
4 from the jail and taking you down to headquarters of
5 C-P-D?
6 A. Yes, I do.
7 Q. And do you recall at that point him showing you any
8 pictures?
9 A. Yes.
10 Q. And that was at police headquarters is that correct?
11 A. That's correct.
12 Q. Now prior to him talking to you about -- or showing
13 you any photographs he sat down and talked to you again,
14 is that correct?
15 A. Correct.
16 Q. And I believe your attorney's investigator was there
17 is that correct?
18 A. Yes.
19 Q. And you told him what happened again?
20 A. Right.
21 Q. Except you changed your description at that time.
22 What did you tell them then?
23 A. I told them that the shooter was approximately 5'7
24 to 6 feet, light brown to medium -- medium to light brown
25 complexion, short hair cut.

1 Q. So a low hair cut instead of a twist is that
2 correct?

3 A. Yes, correct.

4 Q. Okay. And you said that he showed you a photograph
5 of a lineup is that correct?

6 A. That's correct.

7 Q. I hand you what's previously been marked as State's
8 exhibit number 42 for identification and ask you if you
9 recognize that document?

10 [Whereupon, the witness is shown exhibit]

11 A. Yes, I do.

12 Q. And what is that?

13 A. That is the information where I signed according to
14 identifying the person who I chose.

15 Q. Okay. And that's your signature on this document
16 [indicates]?

17 A. Yes, it is.

18 Q. At this point [indicates]?

19 A. Yes.

20 Q. And at this point [indicates] is that correct?

21 A. Correct.

22 Q. These are your initials there [indicates]?

23 A. Yes.

24 Q. Okay. And there is some writing up at the top
25 there [indicates]. Did the Detective read that to you or

1 did you read it yourself prior to him showing you the
2 photographs?
3 A. Both he told me and I read it.
4 Q. Okay. And did you understand the directions?
5 A. Yes, I did.
6 Q. And did you tell Detective Osborne you understood
7 the directions?
8 A. Yes.
9 Q. And after he went over that did you sign that
10 document indicating that you understood the directions?
11 A. Yes.
12 Q. And after he did that -- I'm going to hand you
13 State's exhibit number 43 and ask if you recognize that?
14 [Whereupon, the witness is shown exhibit]
15 A. Yes, I do.
16 Q. What is that?
17 A. This is the photo lineup where I picked Freddie ---
18 MS. FORD: --- Your Honor, objection based on the
19 prior --
20 THE COURT: Pardon?
21 MS. FORD: Objection based on the pretrial hearing.
22 THE COURT: I understand. Objection overruled.
23 MS. FORD: Thank you.
24 THE COURT: Do you have any other objections to
25 admissibility of 42 and 43 other than what has previously

1 been raised?

2 MS. FORD: No Your Honor, no other objection.

3 THE COURT: All right. I'm going to admit State's
4 exhibit 42 and State's exhibit 43 with objection.

5 [Whereupon, State's exhibit numbers 42 and 43 are
6 entered into evidence by the court]

7 MR. DURANT: Thank you, Your Honor.

8 Q. [Mr. DuRant] Regarding State's exhibit 43 what did
9 you do when he handed you that group of photographs?

10 A. I looked at it and I identified Freddie as the
11 shooter who shot and murdered my son.

12 Q. And which photograph is that if you'd show it to the
13 jury?

14 A. It's the bottom center photo.

15 Q. And who drew the circle around it?

16 A. I drew the circle and I signed it.

17 Q. That's your signature there [indicates]?

18 A. Yes, it is.

19 Q. Okay. And that was done on March the 9th is that
20 correct?

21 A. That's correct.

22 Q. At about what time? I believe its right there on
23 State's exhibit 42.

24 A. 3:10 p.m.

25 Q. Now once you did that did you tell -- let me ask you

1 this. At any time did Detective Osborne tell you who to
2 pick out?

3 A. No, he didn't.

4 Q. At any time did Detective Osborne tell you that the
5 guy who shot your son wouldn't even be in those
6 photographs?

7 A. No, he didn't.

8 Q. So you picked that out of your own accord?

9 A. Yes.

10 Q. Now once you picked it out what did you do on
11 State's exhibit number 42 the admonition?

12 A. He asked me to write a comment and this is the
13 comment that I wrote.

14 Q. Okay. And what did you put down there as the
15 comment?

16 A. This looks the closest to the person who shot my
17 son. Neck and side of the face and complexion is what I
18 saw.

19 Q. Okay. And that's your signature there [indicates]
20 is that correct?

21 A. That's correct.

22 Q. Now you had two places that you could have signed
23 here [indicates]. And what do those two places say?

24 A. One of them says I was unable to make a positive
25 identification from these photos. I did not sign it.

1 The other one says I've made a positive identification of
2 the individual in the photo -- and I signed it.

3 Q. Okay. Why did you change your mind?

4 A. When I was told that I'm going to sit and rot in
5 jail. I did believe -- and also I wanted justice for my
6 son and I could not believe that that many people were
7 out there on that day and no one had did anything.

8 I hadn't seen anything on the news or heard anything
9 on the news of anything or any kind of justice. So I
10 felt that it was time that I just let the police have it,
11 which actually truly as humans we should do.

12 Q. Which you should have done to begin with?

13 A. Correct.

14 Q. Is it fair to say you had cooled down a little bit
15 by then?

16 A. Definitely.

17 Q. And you picked out photograph 5 is that correct?

18 A. That's correct.

19 Q. And who is that a photograph of?

20 A. That's a photo of Freddie, the person who murdered
21 my son.

22 Q. The Freddie that you previously identified sitting
23 at this table [indicates] is that correct ---

24 A. --- yes ---

25 Q. --- with the grey suit and the tie on?

1 A. Yes.

2 Q. And are you sure that that's the fellow that shot
3 your son?

4 A. I'm positive.

5 Q. And having put your hand on the Bible and sworn are
6 you telling this jury that that is the person who shot
7 your son?

8 A. I'm positive that's the person who murdered my son.
9 [Whereupon, Mr. DuRant and Ms. Ford confer]

10 MR. DURANT: Your Honor, at this time the State
11 offers State's exhibit numbers 1 through 7, photographs,
12 I believe without objection.

13 THE COURT: Any objection to 1 through 7?

14 MS. FORD: No, Your Honor.

15 THE COURT: All right. State's 1 through 7
16 admitted without objection.

17 [Whereupon, State's exhibit numbers 1, 2, 3, 4, 5,
18 6, and 7 are entered into evidence by the court]

19 Q. [Mr. DuRant] This is State's exhibit number 1. Do
20 you recognize that automobile?

21 [Whereupon, the witness is shown exhibit]

22 A. Yes, I do.

23 Q. And whose automobile is that?

24 A. My automobile. The vehicle I was driving that day.

25 Q. Okay. What's that over there [indicates] behind

1 it?
2 A. Those are the officers at the fire station.
3 Q. That's the fire truck [indicates] is that correct?
4 A. Yes.
5 Q. So this is back behind the fire station is that
6 correct?
7 A. That's correct.
8 Q. State's exhibit number 2 that's what [indicates]?
9 [Whereupon, the witness is shown exhibit]
10 A. That's the beat up part of the car.
11 Q. Okay ---
12 A. --- and my license plate.
13 Q. You obviously didn't have a trunk on it?
14 A. No, I didn't.
15 Q. A trunk lid I should say?
16 A. Correct.
17 Q. That [indicates] is your tag number?
18 A. Yes, it is.
19 Q. State's exhibit number 3, same car obviously?
20 [Whereupon, the witness is shown exhibit]
21 A. Yes.
22 Q. And who is this right here [indicates]?
23 A. A picture of my son, James Smith lying on the
24 ground. That's where we placed him.
25 Q. Okay. And State's exhibit 4?

1 [Whereupon, the witness is shown exhibit]
2 A. That's the open car.
3 Q. Okay. On the passenger side is that correct?
4 A. Correct.
5 Q. Who was sitting in that seat?
6 A. Yes, he was.
7 Q. Who was sitting in the seat over there [indicates]?
8 A. James Smith.
9 Q. State's exhibit number 5. That is what area of your
10 car?
11 [Whereupon, the witness is shown exhibit]
12 A. The passenger side floorboard.
13 Q. What is that [indicates]?
14 A. That's a cell phone.
15 Q. Had you ever seen that cell phone before?
16 A. No, I haven't.
17 Q. Does it belong to you?
18 A. No, it doesn't.
19 Q. Did you see your son with that cell phone?
20 A. No, I didn't.
21 Q. Was it in your car before you went on
22 Street?
23 A. Let me say this. I don't remember seeing that
24 phone. I don't remember seeing my son with that phone.
25 I don't remember.

1 Q. So you've never seen that phone before?

2 A. No, I haven't.

3 Q. Okay. State's exhibit 6, who is that [indicates]?

4 [Whereupon, the witness is shown exhibit]

5 A. That's my son, James Smith.

6 Q. And State's exhibit 7?

7 [Whereupon, the witness is shown exhibit]

8 A. That's the bullet wound that evidently killed him.

9 Q. That would be under his right arm?

10 A. Yes.

11 MR. DURANT: Court's indulgence.

12 [Whereupon, Mr. DuRant and the investigator confer]

13 Q. [Mr. DuRant] Just one other thing I wanted to ask

14 you about. You'd already told us that you met with

15 detectives on March the 1st and March the 2nd and Detective

16 Osborne again on March the 9th.

17 And do you remember meeting with Detective Osborne

18 again on March the 31st and giving him a written

19 statement?

20 A. Yes.

21 Q. And that was a five page written statement?

22 A. Correct.

23 Q. And do you recall in that statement how you

24 described the shooter?

25 MS. FORD: Objection.

1 THE COURT: What's your legal objection?

2 MR. BUTLER: May we approach, Judge.

3 THE COURT: Yes, sir.

4 [Whereupon, an off the record bench conference is
5 held]

6 Q. [Mr. DuRant] Anyway back to where I was. You gave a
7 written statement on the 31st is that correct?

8 A. Correct.

9 Q. And I believe you provided a description. And after
10 you gave him that description you mentioned something
11 about the twist. Do you remember what it was you said
12 about the twists?

13 A. Yes.

14 Q. What did you tell him about the twists in the hair
15 and why you told him that?

16 A. I was asked another question. I was asked, what did
17 I tell the police prior.

18 Q. And you described him correct and then you said
19 something about the twists. Do you remember what you
20 said about the twists?

21 A. Yes. I said I told the police prior that I thought
22 I saw twists or his hair was twisted because I thought I
23 saw something at the back of his neck.

24 Q. Okay. But you didn't -- the description you gave
25 before making that statement did not indicate twists, is

1 that correct?

2 A. Correct, because that was the description of him.

3 Q. Okay. My question is why didn't you just tell the

4 cops then that you had lied about his description

5 earlier?

6 A. I don't understand the question.

7 Q. Why didn't you just tell them then that you -- read

8 to the jury what you said about the twists; just this

9 part right here [indicates] the last paragraph.

10 A. I said he had twists before because I thought I saw

11 something shaking at the base of his neck or moving. If

12 it was twists it was short.

13 Q. Okay.

14 A. And the reason why I said that ---

15 Q. --- now let me -- my question is this. You had

16 previously told them that he had twists?

17 A. Yes.

18 Q. You then changed that?

19 A. Yes.

20 Q. You told this jury that you did?

21 A. Yes.

22 Q. Because you were hoping for a little street justice

23 and you were intentionally trying to mislead them is that

24 correct?

25 A. Yes, correct.

1 Q. Why didn't you just tell them that then? That's my
2 question.

3 A. Because the question that is not there is a question
4 of what did you tell the police.

5 Q. I understand that. But why didn't you just tell
6 them then whatever I told you before was bull because I
7 was hoping for street justice?

8 A. It was just my choice of words.

9 Q. The fact of the matter is you could have told them
10 then and you didn't?

11 A. Yes.

12 Q. And you didn't tell them then to protect yourself
13 right?

14 A. Correct.

15 Q. Thank you. I have no further questions.

16 THE COURT: Cross-examination?

17 MS. FORD: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. FORD:

20 Q. Mr. Smith, you told us you were just dropping Tiddy
21 off at the house on

22 A. That's what he told me he wanted me to do when I was
23 at Doscher's.

24 Q. So your plan is just to drop him off?

25 A. Correct.

1 Q. But you didn't know what was going to happen there,
2 right?

3 A. Correct.

4 Q. His plans were to go there to sell drugs correct?

5 A. I don't know that, ma'am.

6 Q. But you knew your son sold drugs?

7 A. No.

8 Q. You didn't know that?

9 A. I have never witnessed him selling drugs. I've
10 heard people say that he sold drugs.

11 Q. You had recently bonded him out of jail for drugs
12 correct?

13 A. Correct.

14 Q. But you didn't want anything to do with his drug
15 business?

16 A. Correct. And may I say yes I bonded him out. That
17 was what he was charged with. He had not been convicted.

18 Q. I understand. So when you went to the house you
19 didn't think -- you told us you didn't think anything was
20 going to really happen there correct?

21 A. Correct.

22 Q. It all happened really fast right?

23 A. Yes, it did.

24 Q. Within a matter of a few seconds?

25 A. Correct.

1 Q. And Tiddy never even got out of the car?
2 A. No, he didn't.
3 Q. And there was no conversation with anybody between
4 Tiddy and anyone there, correct?
5 A. No, not at first.
6 Q. Not at first?
7 A. No, not in person. He was talking on the telephone
8 even coming from Doscher's over there.
9 Q. Okay. But when he got there you didn't hear him
10 say anything to anybody?
11 A. No.
12 Q. And you saw someone approach the car?
13 A. I saw Freddie approach the car.
14 Q. But Tiddy -- he didn't say a name or anything like
15 that?
16 A. No, he didn't.
17 Q. And when the person approached the car you didn't
18 see anything in his hands right?
19 A. From the distance of the front of the car where he
20 first stepped out to approximately the last step to the
21 car I do not remember seeing anything in his hand.
22 Q. But you saw him take the gun out correct?
23 A. Approximately the last step maybe step and a half to
24 the car I saw the gun come from behind his back or
25 somewhat from the back of his shirt from behind in this

- 1 direction [indicates].
- 2 Q. But you didn't see a phone in his hand or anything
3 like that?
- 4 A. I do not recall a phone.
- 5 Q. And so you were in -- the Solicitor showed you some
6 pictures of your Celica?
- 7 A. Yes.
- 8 Q. And this is a fairly small car right?
- 9 A. Medium car.
- 10 Q. It's a two-door car?
- 11 A. Yes, it is.
- 12 Q. And low to the ground?
- 13 A. Somewhat.
- 14 Q. Not an SUV or anything like that?
- 15 A. No, it isn't. Neither is it a mini car.
- 16 Q. Okay. But it's a little sporty car correct?
- 17 A. I'm not sure if it would be classified as a sports
18 car?
- 19 Q. Well sporty. It's just a two-door small car, fairly
20 small?
- 21 A. It's a two-door small car.
- 22 Q. So you drove up and Tiddy was the one closer to the
23 house correct?
- 24 A. Correct.
- 25 Q. So when you were in this car you had -- Tiddy was

1 between you and the shooter correct?

2 A. Correct.

3 Q. And then also of course there was the car door.

4 Q. Correct.

5 Q. Because the door wasn't open.

6 A. No, it wasn't.

7 Q. The shooter never crouched down or anything like

8 that correct?

9 A. I do not remember the shooter crouching.

10 Q. Now you talked about how after the shooter shot one

11 time the gun jammed?

12 A. Yes.

13 Q. And then the shooter stepped back.

14 A. Yes.

15 Q. But he didn't go very far right?

16 A. No, he didn't.

17 Q. He was still right next to the car?

18 A. He was approximately a foot, foot and a half.

19 Q. Okay.

20 A. Maybe two foot.

21 Q. He was really close to the car still.

22 A. Approximately a foot and a half; maybe two foot.

23 And he did not step just back. He stepped on an angle to

24 the slight back front, maybe he was somewhat on the side

25 of Tiddy when he made his first shot. Then he kind of

1 stepped to the front tire up like up and away from Tiddy
2 being able to grab him.

3 Q. Okay. But this is only about a foot away?

4 A. About a foot and a half, two foot probably.

5 Q. You -- we talked about how you told detectives --
6 the detectives were trying to get a description from you
7 correct?

8 A. Correct.

9 Q. And you spoke to Detective Fleming about that?

10 A. I didn't know any of them; their names.

11 Q. Okay. Well ---

12 A. --- yes, I talked to the detectives.

13 Q. Detective Fleming is the black gentleman ---

14 A. --- yes, I talked to a black detective that night.

15 Q. And then he pointed out Detective Burckhardt and you
16 talked to him?

17 A. Yes.

18 Q. And then of course you talked to Detective Osborne
19 here several times correct?

20 A. Yes.

21 Q. So you talked to at least three people about the
22 shooter's description?

23 A. Yes.

24 Q. And they were really concerned about the description
25 weren't they?

1 A. Yes.

2 Q. And you -- when you met with Detective Osborne on
3 March 2nd you told him that you couldn't get a good view
4 of the person?

5 A. Yes.

6 Q. You said I have a small car.

7 A. Yes.

8 Q. That the person's head was at the top of the car.

9 A. Yes.

10 Q. That the blockage is my son.

11 A. Yes.

12 Q. That you could not see. You told them that you
13 could not see.

14 A. I could not see what?

15 Q. That you could not get a good view of the shooter.
16 That's what you told him that night. I'm not asking if
17 what you are saying is true. On March 2nd you told him I
18 couldn't see.

19 A. Yes, I did say that.

20 Q. And you said for God's honest truth I couldn't see.

21 A. Yes.

22 Q. And you told detectives if you want me to lie to you
23 I'm not going to make up a lie.

24 A. Yes.

25 Q. You swore you were telling the truth.

- 1 A. Correct.
- 2 Q. Now also today you told us that the shooter tried to
3 shoot at you.
- 4 A. Yes, he did.
- 5 Q. And that the gunshot residue even got on your face
6 or your neck.
- 7 A. On my neck.
- 8 Q. And again you met with several detectives about this
9 case.
- 10 A. Correct.
- 11 Q. On at least four or five occasions.
- 12 A. I don't know the exact number of times.
- 13 Q. Well you met with police the day of the shooting
14 correct?
- 15 A. Yes.
- 16 Q. And then you met with Detectives Burckhardt and
17 Fleming that evening or later that day correct?
- 18 A. Right.
- 19 Q. And you spoke with Detective Osborne on March 2nd the
20 next day.
- 21 A. Yes.
- 22 Q. And then you spoke with Detective Osborne on March
23 9th when you made the identification.
- 24 A. Correct.
- 25 Q. And then you spoke to Detective Osborne on March 31

1 and gave your written statement.
2 A. Yes.
3 Q. So you spoke to police at least those times.
4 A. Yes; everything that's reported that I signed.
5 Q. Okay. But you never said anything at any point to
6 any of them about the shooter trying to shoot at you.
7 A. I -- that cannot be correct. I ---
8 Q. --- but you're saying you did tell police that
9 before.
10 A. If it's not in the record I'm not going to say that
11 I did not tell them. But I'm almost positive I mentioned
12 that.
13 Q. Okay. Well who -- to who? Was it Detective
14 Osborne, Fleming, or Burckhardt? Who was it?
15 A. No, I can't say who I told that to. If it's
16 recorded, if it's in the record it should show.
17 Q. Okay. So you're not sure that you told anyone
18 that. Is that what you're saying?
19 A. I'm saying that I'm almost positive I told someone
20 that. And it should be in the record. I'm not sure.
21 Q. Okay. Now when the detectives were trying to get a
22 description from you and -- I want to talk about those
23 descriptions, okay. When you talked to Detective Osborne
24 on March 2nd you gave a description about the twists in
25 the hair, correct? That's what you were still saying on

1 March 2nd right?

2 A. Yes.

3 Q. Okay. Detective Osborne told you that that didn't
4 match the description of the person they were looking at.

5 A. I don't recall him telling me that doesn't match the
6 description.

7 Q. Okay. So you don't remember that?

8 A. I don't -- I'm not denying it, but I do not recall
9 him telling me that.

10 Q. And Detective Osborne also told you he didn't
11 believe you when you said your vision was obstructed.

12 A. I can believe that he did say that because he --
13 someone told me it's impossible that you couldn't see --
14 that you didn't and couldn't see in broad daylight who
15 shot and murdered your son. It's almost impossible.
16 They didn't say it's impossible, but almost impossible.

17 Q. Well he was giving you a hard time about your
18 description correct?

19 A. Yes.

20 Q. So I think it's important to go over your
21 descriptions in a little detail okay, so I want to do
22 that.

23 On the day of the shooting, March 1st, this is when
24 you spoke to detectives Fleming and Burckhardt, correct?

25 A. Correct.

1 Q. And you gave them a description, correct?
2 A. Correct.
3 Q. And that the shooter was 5'9 to 6 feet tall correct?
4 A. No. I'm almost positive that I used 5'7 to 5'8 to 6
5 feet almost every time that I said it.
6 Q. Okay. So 5'6 to 5'7 to 6 feet okay?
7 A. If it's recorded that I said 5'9. I'm not denying
8 that I said it if it's recorded.
9 Q. That he had short twists hairstyle correct?
10 A. I said the hair was short, possibly twists..
11 Q. You said the shooter was wearing a red shirt?
12 A. I do not recall saying that he was wearing a red
13 shirt.
14 Q. Okay. You don't recall saying that he may have
15 been even wearing a sweatshirt?
16 A. No, I do not recall it at this time.
17 Q. And you're telling us today that you don't remember
18 what the shooter was wearing?
19 A. No, I do not remember what the shooter was wearing.
20 Q. But the police officers they did ask you that
21 question right?
22 A. Yes, they did.
23 Q. And you did give them an answer correct?
24 A. I think I said perhaps he was wearing dark clothing.
25 Q. Okay. But you're denying that on March 2nd you told

1 Detective -- oh, I'm sorry on March 1st you told
2 detectives that the shooter was wearing red.
3 A. No, I'm not denying that. I'm saying that I don't
4 remember and don't recall saying that.
5 Q. Isn't it true that you didn't care what the shooter
6 was wearing?
7 A. Exactly.
8 Q. Okay.
9 A. I didn't care the description I gave the police
10 officer.
11 Q. You said the shooter had a slim build.
12 A. Same day?
13 Q. Right. I'm still talking about March 1st.
14 A. It's possible that I said that.
15 Q. Dark complexion?
16 A. I think I did, yes.
17 Q. And what -- I know people may consider complexions
18 differently, but do you consider yourself dark or medium
19 or how would you consider yourself?
20 A. I would say medium.
21 Q. And you told them that you couldn't remember
22 anything more about the description.
23 A. If that's all that's recorded, yes.
24 Q. And you even offered that you were willing to be
25 hypnotized.

1 A. Yes, because that's just something else to throw
2 them off.

3 Q. Okay. So you were trying -- you just wanted to
4 make it seem like you were being helpful.

5 A. I wanted them to know that I was willing to be
6 hypnotized. There is no way that I possibly could save
7 him if something happened to himself. If I'm willing to
8 be hypnotized they'll come looking for me.

9 Q. And you told us today how they showed you multiple
10 pictures that day.

11 A. Yes. I looked at the sheets.

12 Q. One picture they showed you you said you weren't
13 sure and you wanted to go back to it later.

14 A. I don't recall saying that. If it's recorded that I
15 said it I did.

16 Q. Okay. You did point to one guy -- I think Mr.
17 DuRant asked you a little about you pointing to one guy
18 and said that he resembled the shooter.

19 A. On that day?

20 Q. Yes?

21 A. I don't recall exactly saying that but if it's
22 recorded also I did and I said it.

23 Q. That he had hair and facial features that were the
24 same.

25 A. If I said it and it's in the transcript I did it.

1 I'm not denying it.

2 Q. Right. So Detective Burckhardt told you well you
3 can't I.D. this person then and then you said but wait.
4 You made a big deal about wait, I don't know yet. I
5 don't want to sign that sheet saying I can't identify
6 this person.

7 A. I'm not denying that. I don't recall that also.
8 I'm not denying what you're saying but I also don't
9 recall that incident.

10 Q. Okay. You said you were 65 percent sure that that
11 person was the shooter.

12 A. I do not recall that but I'm not denying that.

13 Q. But the detectives told you that wasn't good enough,
14 correct?

15 A. I'm not denying that, but I don't recall that.

16 Q. And you talked to them for a while about four
17 minutes about how you wanted to identify the guy but they
18 were telling you look man, we're not just going to
19 randomly have you identify some guy you're not sure of
20 correct?

21 A. I'm not denying that, but I don't recall that
22 either.

23 Q. So you were acting to them that you wanted to I.D.
24 somebody but you just couldn't say you were 100 percent
25 sure.

1 A. I'm not going to agree that I was acting like that.

2 I don't recall that but I'm not denying that.

3 Q. So you were actually looking at that person

4 considering that he was the shooter.

5 A. I'm not going to agree to that but I'm not denying

6 that.

7 Q. Okay. Let's go to the next time you spoke to

8 police officer Detective Osborne on the 2nd. And that

9 conversation that's recorded too, correct? Do you recall

10 him saying this is being recorded?

11 A. [No response]

12 Q. If you're not sure that's okay.

13 A. All of the recordings, the dates and things of that

14 nature we now looking at the date -- what I signed I do

15 not know exactly where I was just off the top of my head.

16 Q. Okay. Well this was the day after the shooting so

17 you would already have been charged with marijuana

18 correct?

19 A. Okay.

20 Q. And it's when Detective Osborne was about to charge

21 you with Obstruction of Justice. Do you remember that

22 conversation with him?

23 A. Yes.

24 Q. Okay. And he again asked you for a description of

25 the shooter correct?

1 A. I'd have to refer back to the date that I signed
2 whatever statement I gave them and whatever is on that
3 statement in order to say correct or not correct. But
4 I'm not denying anything.

5 Q. Okay. So you're not sure if you gave Detective
6 Osborne a description of the shooter on that day?

7 A. I'm not sure about the dates.

8 Q. Okay. You had a conversation with Detective
9 Osborne correct?

10 A. Yes.

11 Q. And this was after your conversation with Detectives
12 Burckhardt and Fleming.

13 A. Yes.

14 Q. Okay. And again you told him, swore to God that in
15 the panic you could not be certain what the shooter
16 looked like.

17 A. Ma'am, I would have to say if it's recorded on the
18 monitor, if the incident was recorded by video or by
19 audio I'm not denying and I agree if it's not -- I'm not
20 disagreeing. But I don't remember it.

21 Q. And you gave the description of height 5'8 to 6 feet
22 tall.

23 A. I do not remember saying 5'8.

24 Q. Okay. You said that the shooter was slim.

25 A. Ma'am, if it's written that I said it, I said it.

1 If it's not written I'm not denying it. But I don't
2 remember saying it.

3 Q. You actually said the shooter was handsome, you
4 wrote handsome.

5 A. Ma'am, if it's not written or in the audio or video
6 I'm not going to say that I said it, but I'm not denying
7 that I said it.

8 Q. And again you talked about the twisted hair correct?

9 A. If it's on that date, ma'am and it's recorded, it's
10 there.

11 Q. Okay. Let's jump ahead to March 9th, which is when
12 you identified Mr. Flowers okay?

13 A. Yes.

14 Q. All right. So at that point you had already been
15 charged with two sets of charges correct?

16 A. Correct.

17 Q. You had the marijuana charges correct?

18 A. Yes.

19 Q. And the Obstruction of Justice charge?

20 A. Yes.

21 Q. And so you had hired an attorney at that point?

22 A. Correct.

23 Q. David Aylor?

24 A. Yes.

25 Q. And your lawyer told you man, you need to tell the

1 truth right?

2 A. Definitely my lawyer advised me to tell the truth.

3 Q. All right. So you met with Detective Osborne on
4 that day and you gave him a description on this day
5 correct?

6 A. Yes.

7 Q. At this point -- this is when you maintained that
8 the person had a low haircut.

9 A. Correct.

10 Q. But you again said the shooter was 5'8 to 6 feet
11 tall.

12 A. If I'm not mistaken I said 5'6 to 5'7 to 6 feet.

13 Q. Okay. Medium ---

14 A. --- I'm not denying it unless it's recorded.

15 Q. Okay. Well this conversation isn't recorded.

16 A. You mean a written recording of what I said?

17 Q. No, on video ---

18 A. --- audio or video or handwritten with a pen.

19 Q. Okay. You said he had medium complexion. On this
20 date you were saying the shooter had a medium complexion.

21 A. On that day if I'm not mistaken I signed what I --
22 the description that I gave him. And whatever is in the
23 description on that day that's what I said.

24 Q. Well this isn't the day you gave a written statement
25 okay. You said that the shooter had a dark shirt on.

1 A. Ma'am, I would say I'm not denying anything but if
2 it isn't written, recorded, or audio recorded I can't say
3 I did or didn't.

4 Q. And you said the shooter was between the ages of 25
5 and 32 years old.

6 A. And once again if it's not recorded I'm not denying
7 it but I can't -- I'm not saying that I said it.

8 Q. And -- so when you did identify Mr. Flowers you told
9 us what you had indicated. You actually said this looks
10 the closest to the person who shot my son. Neck and side
11 of face and complexion is what I saw.

12 A. Yes.

13 Q. So at this point you were telling them you that you
14 saw the shooters neck and side of the face.

15 A. When he was up close to the car.

16 Q. That's how you were able to make the I.D. that's
17 what you said -- that's what you indicated.

18 A. That's what I wrote.

19 Q. Okay.

20 A. That's not all that I used to identify the shooter.

21 Q. Okay. That's what you wrote.

22 A. What I used to identify the shooter is when we first
23 drove up I could clearly see his face when he first
24 stepped out.

25 Q. Okay.

1 A. As he was walking to the car. In the middle of
2 walking to the car I could not clearly see him. As he
3 got up to the car, he stepped to the car; the last step I
4 could see his hand and the gun.

5 And when the gun jammed and he stepped back from the
6 car I could clearly see his face. And also I could
7 clearly see his face when he made his last shot.

8 Q. Okay. I understand what you're saying now. But
9 you didn't tell the detectives that at the time correct?

10 A. At the time meaning what ma'am? I don't understand
11 the question ---

12 Q. --- on March 9th when you identified Mr. Flowers you
13 didn't go back and fix your prior statement that you
14 didn't have a good view correct?

15 A. When I identified Mr. Flowers I wrote the I.D. on
16 there. The I.D. was recorded on paper and I signed it on
17 that day. And that's the day that I correctly identified
18 Mr. Flowers.

19 Q. Right. At that point you gave a description with a
20 low hair cut correct?

21 A. On the day that I identified him, yes.

22 Q. But you didn't tell Detective Osborne I lied earlier
23 to you about not being able to get a good view of the
24 shooter.

25 A. If it's not recorded ma'am, audio, written, or video

1 I'm not going to deny it. But I don't recall him asking
2 me why did I lie. So there would be no need for me to
3 just voluntarily tell him.
4 Q. So you weren't going to offer why you lied?
5 A. [No response]
6 Q. You were going to wait for him to ask you?
7 A. I've learned the hard way to try to keep it short
8 and sweet..
9 Q. Okay. So you met again with Detective Osborne on
10 March 31st when you gave your written statement correct?
11 A. Yes.
12 Q. And this again was with your lawyer Mr. Aylor?
13 A. Yes.
14 Q. There was another Detective Sabarco [phonetic]?
15 A. Yes.
16 Q. And you gave a statement correct?
17 A. Correct.
18 Q. And Detective Osborne actually wrote it for you?
19 A. He did record both the questions and the answers.
20 Q. But you signed the statement correct?
21 A. Yes, I did.
22 Q. You actually signed every single page correct?
23 A. Yes I did.
24 Q. And this is when Mr. DuRant was asking you that you
25 said I thought he had twists before because something was

1 shaking at the base of his neck.

2 A. State the question again?

3 Q. That you were confused about the shooter having
4 twists because you thought he had twists because you saw
5 something shaking at the base of his neck.

6 A. No, I wasn't confused about anything ma'am.

7 Q. No, that's what you told detectives. I'm not
8 talking about what you're saying the truth is. I'm
9 saying what you told Detective Osborne that day.

10 A. Ma'am, I don't remember telling the detectives that
11 I was confused about anything. Now if it's on audio or
12 video or recorded some other way I'm not denying it.

13 Q. Okay. Well Mr. DuRant had you read back part of
14 your statement earlier didn't he?

15 A. Yes, he did.

16 Q. And after you gave the description you said I said
17 he had twists before because I thought I saw something
18 shaking or moving at the base of his neck. If it was
19 twists it was short. That's what your statement says.

20 A. Yes.

21 Q. Okay.

22 A. And after the yes the reason why I said that is
23 because the question was asked of me what I did say
24 before. And the answer to exactly what I said before is
25 exactly what was written because that is what I said

1 before when I was lying.

2 Q. But you -- the fact that you said the -- you said I
3 said he had twists before because I think I saw something
4 shaking or moving at the base of his neck. That's what
5 you said correct?

6 A. That's what I said.

7 Q. Okay. Wouldn't that -- don't you think that's a
8 response to why your description changed?

9 A. No. I think that is in response to the question
10 that I was asked, which is what did you say before and
11 the answer what was written.

12 Q. But that statement is not a question -- do you have
13 your statement up there? Did Mr. DuRant leave that up
14 there?

15 A. No, it isn't.

16 MS. FORD: May I approach?

17 THE COURT: Yes, ma'am.

18 Q. [Ms. Ford] I'm showing you what's been marked as
19 Court's exhibit 1 okay.

20 [Whereupon, the witness is shown exhibit]

21 A. Yes, ma'am.

22 Q. That's a copy of your statement correct?

23 A. Correct.

24 Q. So page 4 Detective Osborne has a Q there for
25 question correct?

- 1 A. Correct.
- 2 Q. Describe the shooter, right?
- 3 A. Right.
- 4 Q. And then you give a description of the shooter 5'7
- 5 to 6 feet, correct?
- 6 A. Correct.
- 7 Q. Thin to medium, light -- thin to medium, correct?
- 8 A. Correct.
- 9 Q. Light brown complexion.
- 10 A. Correct.
- 11 Q. Low cut hair.
- 12 A. Yes.
- 13 Q. Unknown facial hair.
- 14 A. Correct.
- 15 Q. Dark colored clothing.
- 16 A. Yes.
- 17 Q. Black semi-automatic.
- 18 A. Yes.
- 19 Q. And then there's no new question listed there
- 20 correct?
- 21 A. Correct.
- 22 Q. And then I said he had twists before because I
- 23 thought I saw something shaking at the base of his neck.
- 24 A. Correct.
- 25 Q. So that's it.

1 A. That's correct. And I think we need to refer back
2 to the audio or video of that date of this recording so
3 that we all can see everything if there was another
4 question that was stated, if there is a question that is
5 missing.

6 Q. Okay.

7 A. Because the answer that I gave is the answer to the
8 question what did you say before.

9 Q. All right. Well this statement is not video
10 recorded.

11 A. Okay.

12 Q. Do you understand that?

13 A. Okay. I did not know that. I thought it was being
14 video recorded.

15 Q. Now also I think now that we have your statement out
16 I want to go over something else we touched on earlier.
17 Detective Osborne the last thing he asked you was at what
18 point were you able to see the shooter's face correct?

19 A. Correct.

20 Q. And you said when he racked his side -- when he
21 racked his slide he leaned back and I could see his face.
22 He may have taken a step backward. That's your answer
23 right?

24 A. Yes.

25 Q. And that's it.

1 A. Okay.

2 Q. And that's the end of your answer correct?

3 A. Correct.

4 Q. That's actually the end of your statement?

5 A. Yes.

6 Q. You didn't say anything how you got a good look at

7 the shooter when he first walked up?

8 A. Correct.

9 Q. So you didn't say that to Detective Osborne?

10 A. I don't remember saying that.

11 Q. Okay.

12 A. And may I say this?

13 Q. Sure.

14 A. The question was at what point during the encounter

15 were you able to see his face. It's didn't say what

16 points. It didn't say how many times. I chose to give

17 that point.

18 Q. Okay. So you just felt that you would just keep it

19 simple and list one time is that correct?

20 A. That's what I chose to say.

21 Q. All right. Just to talk about your pending charges

22 a little bit okay. You told us that you were charged

23 with possession with intent to distribute marijuana

24 correct?

25 A. That's correct.

1 Q. So you're looking at a possibility of five years in
2 prison for that?

3 A. I don't know what time, ma'am.

4 Q. You're also charged with proximity to a school zone.

5 A. That's what the charge is.

6 Q. Okay. So you don't know that carries up to ten
7 years in prison?

8 A. No, I do not know the charge or time.

9 Q. And you're charged with Obstruction of Justice.

10 A. Yes.

11 Q. And that carries up to ten years in prison as well.

12 A. I don't know the charge or the time.

13 Q. But ultimately you don't want to go to prison
14 correct?

15 A. No, I do not.

16 Q. When you took the marijuana from the car so you
17 admit that today?

18 A. Yes, I do.

19 Q. But initially you denied that?

20 A. Yes, I did.

21 Q. And detectives Fleming and Burckhardt they actually
22 got pretty upset with you about that correct?

23 A. Yes, they were.

24 Q. Because you were saying that that cop was lying when
25 he said he saw you throwing it.

- 1 A. Yes.
- 2 Q. But you were determined. You were like maybe there
3 is a video. Go get the video from the cop car. Correct?
- 4 A. Yes.
- 5 Q. So they were upset at you?
- 6 A. Yes.
- 7 Q. Mr. Kennedy -- I'm sorry, Mr. Smith you've
8 identified Freddie that day on March 9th correct?
- 9 A. If that's the date that I signed it, yes.
- 10 Q. And that was more than a week after the shooting?
- 11 A. Yes.
- 12 Q. So since that time you have spoken to the Solicitor
13 though correct?
- 14 A. Yes, I have.
- 15 Q. In preparation for this case?
- 16 A. Yes.
- 17 Q. And he showed you some pictures as well.
- 18 A. Yes, he did.
- 19 Q. And he wanted to see if you recognized anyone?
- 20 A. Yes. He read me the same thing that gets read every
21 time a photo lineup is given to you.
- 22 Q. And did they show you line ups or did they show you
23 pictures one by one?
- 24 A. I don't recall exactly which one it was, ma'am.
- 25 Q. So you don't recall that? That was like a month or

1 so ago.

2 A. I don't recall whether it was individual pictures or
3 singles. It's a possibility that it may have been a
4 combination of both.

5 Q. So most people you didn't recognize though right?

6 A. As a matter of fact I will say that I know I did do
7 the combination of pictures like this [indicates].
8 Whether or not there were some single ones I just do not
9 remember right now.

10 Q. But you did identify one person who was not Freddie
11 as being someone who possibly looked like the shooter?

12 A. No. I deny identifying anyone as possibly being
13 Freddie.

14 Q. So you're denying that? You met with Mr. DuRant
15 correct?

16 A. I'm denying. No, I did meet with him. I'm denying
17 that I said -- I identified someone as him. I did not
18 use those exact words.

19 I'm saying that I said this is a picture where there
20 are facials that the picture resembles. And it did. He
21 was slim, he had a low haircut.

22 And also I was told also some of the pictures would
23 be poor pictures, it could be of different times and it
24 could not be exactly -- the person or -- the person could
25 have changed or the picture could have changed.

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

2 THE COURT: Yes, ma'am.

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

4 [Whereupon, Ms. Ford, Mr. Butler, and Mr. DuRant
5 confer]

6 MS. FORD: May I approach, Your Honor?

7 THE COURT: Yes, ma'am.

8 Q. [Ms. Ford] Mr. Smith, I'm going to hand you what's
9 been marked as Defendant's exhibit 1.

10 [Whereupon, the witness is shown exhibit]

11 Q. Is that a photo that the Solicitor and his
12 investigator showed you when he met with you in the past
13 month or so?

14 A. I cannot say that it is or it isn't. If I signed
15 the sheet saying that I looked at it, then yes.

16 Q. So you don't recall if they showed you this picture
17 or not?

18 A. I'm not saying that I do recall or don't recall.
19 I'm saying that I don't remember.

20 Q. Then just -- I'm sincerely not clear on this so I do
21 not -- I'm just sincerely not clear.

22 Did you or did you not when you spoke to the
23 Solicitor and Mr. Casey within the past month or so; I'm
24 not sure the date that you met with them, did you point
25 out someone as resembling the shooter?

1 A. Yes.

2 Q. Okay. No further questions.

3 THE COURT: Any more questions?

4 MS. FORD: [No response]

5 THE COURT: Anymore questions?

6 MS. FORD: No, Your Honor. I'm sorry.

7 THE COURT: Okay. Redirect?

8 MR. DURANT: I just have one.

9 REDIRECT EXAMINATION

10 BY MR. DURANT:

11 Q. Is the guy who shot your son in this courtroom?

12 A. Yes, he is. Freddie is the person who shot my son

13 and murdered him.

14 Q. And you're positive of that?

15 A. I'm positive.

16 Q. Thank you. I have nothing else.

17 THE COURT: Any recross on that one question?

18 MS. FORD: No, Your Honor.

19 THE COURT: Okay. Thank you very much.

20 [Whereupon, the witness is excused and exits the

21 witness stand]

22 THE COURT: Madame Forelady and ladies and

23 gentlemen of the jury, we are going to take a break at

24 this time. If you need anything, let the Bailiffs know.

25 If we have any smokers let the Bailiffs know and they

1 will take you to the appropriate place for smoking.
2 Please don't discuss the case amongst yourselves. Leave
3 your notepads in your chairs.

4 [Whereupon, the jury exits the courtroom at 11:40
5 a.m.]

6 THE COURT: All right. Anything from the State
7 before we take a break?

8 MR. DURANT: Nothing from the State.

9 THE COURT: Anything from the defendant?

10 MS. FORD: No, Your Honor.

11 THE COURT: All right. We'll take about a 15 or
12 20 minute break.

13 [Whereupon, court is in recess from 11:40 a.m. until
14 12:03 p.m.]

15 THE COURT: Is the State ready to proceed?

16 MR. DURANT: Could I have one minute, Your Honor?

17 THE COURT: Pardon?

18 MR. DURANT: Just a second so I can write something
19 down here.

20 THE COURT: Yes, sir.

21 MR. DURANT: Yes sir, I'm ready.

22 THE COURT: Is the defense ready to proceed?

23 MS. FORD: Yes, Your Honor.

24 THE COURT: All right. Bring us the jury please?

25 [Whereupon, the jury enters the courtroom at 12:05

1 p.m.]

2 THE BAILIFF: All jurors present, Your Honor.

3 THE COURT: All right. Thank you very much. If

4 you'll call your next witness, please?

5 MR. DURANT: Thank you, Your Honor. The State will

6 call Caleb Bradish.

7 [Whereupon, Mr. Bradish comes forward]

8 [Whereupon, the witness is duly sworn by the Clerk

9 of Court as follows: do you swear or affirm your

10 testimony will be the truth, the whole truth, and nothing

11 but the truth so help you God]

12 MR. BRADISH: I do.

13 CLERK OF COURT: State your full name and spell

14 your last name.

15 MR. BRADISH: My full name is Caleb -- Bradish.

16 Last name B-R-A-D-I-S-H.

17 [Whereupon, the witness takes the witness stand]

18 - - - - -

19 CALEB BRADISH,

20 Having been first duly sworn,

21 Was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. DURANT:

24 Q. Good afternoon. Could you please tell our jury

25 where you are employed?

- 1 A. City of Charleston Police Department.
- 2 Q. And how long have you been with the City?
- 3 A. October will be five years.
- 4 Q. And what are your current duties?
- 5 A. I patrol Orange Grove Road in West Ashley.
- 6 Q. Okay. That's Team 4?
- 7 A. Yes sir, it is.
- 8 Q. And does that area include the area of 1775 Ashley
- 9 River Road?
- 10 A. Yes, sir.
- 11 Q. Did you have an occasion to be dispatched to that
- 12 location on March the 1st of 2011?
- 13 A. Yes, sir.
- 14 Q. In reference to what?
- 15 A. A shooting that just occurred.
- 16 Q. Okay. And who was allegedly at that location?
- 17 A. The victim had been driven to that location.
- 18 Q. Okay. What time did C-P-D receive this call?
- 19 A. 4:48 p.m.
- 20 Q. And what is located at 1775 Ashley River Road?
- 21 A. It's the Saint Andrews Fire Department, their fire
- 22 house.
- 23 Q. Okay. What did you observe when you got to the
- 24 fire station?
- 25 A. When I got there Officer Pagani [phonetic] had put

1 up foot pursuit in the area of 1775 Ashley River Road.
2 Q. And who was Officer Pagani in foot pursuit of?
3 A. A party that had -- was fleeing behind the old Sofa
4 Super Store.
5 Q. Okay. That was the party that had driven the
6 deceased to the fire station is that correct?
7 A. Yes, sir.
8 Q. And so when you got that broadcast what did you do?
9 A. I went to assist him. I parked my car behind the
10 Sofa Super store near the Laundromat of that shopping
11 center.
12 Q. Okay.
13 A. And assisted Officer Pagani.
14 Q. And you were in the patrol car at that time?
15 A. Yes, sir.
16 Q. And what did you observe when you got up to the area
17 of the Sofa Super store?
18 A. I observed Officer Pagani had the party detained or
19 had Kennedy Smith detained, and pointed to a bag of
20 marijuana that Mr. Smith attempted to get rid of as he
21 was in pursuit.
22 Q. Okay. And -- so he had Mr. Kennedy Smith in
23 custody; the fellow that had testified earlier is that
24 correct?
25 A. Yes, sir.

1 Q. And you recovered the marijuana is that correct?

2 A. Yes, sir.

3 Q. What did you do with Mr. Smith?

4 A. I put two and two together that he was the party
5 that fled. I went over and asked him if he knew the
6 party that was shot and he identified that party as his
7 son.

8 Q. Okay. And where did you take Mr. Smith at that
9 point?

10 A. I then escorted him back to the firehouse so that
11 the firefighters could identify him as the party that
12 dropped off the victim and as the party that fled from
13 that location.

14 Q. Okay. Was he so identified?

15 A. Yes. He was identified by firefighters as the party
16 that dropped off the victim.

17 Q. And where did Mr. Smith take you to then?

18 A. We went to the location -- I took him to the area of
19 Wantoot and we went to He identified
20 that as the exact instant location of the shooting.

21 Q. Okay. And that's located in West Oak Forest
22 subdivision is that correct?

23 A. Yes, sir.

24 Q. And is that location in Charleston County?

25 A. Yes, sir.

1 Q. Previously in evidence is State's exhibit number 30.

2 Do you recognize that exhibit?

3 [Whereupon, the witness is shown exhibit]

4 A. Yes. This is Wappoo Road, Ashley River Road, Sam
5 Rittenberg, the firehouse, and Sofa Super store right
6 there.

7 Q. If you would can you tell the jury how you got there
8 and where Mr. Smith was apprehended?

9 A. He was apprehended in this area right here
10 [indicates] behind the Sofa Super store, which is now a
11 consignment shop. But right here [indicates] I parked my
12 vehicle right here [indicates] and got out on foot to
13 assist Officer Pagani.

14 Q. Okay. And by that time Officer Pagani already had
15 him in custody?

16 A. Yes, he had him detained.

17 Q. And where did you recover the marijuana from?

18 A. It was up against the back of the now consignment
19 shop, but the old Sofa Super store.

20 Q. And of course this right here [indicates] is the
21 fire station?

22 A. Yes, that's the firehouse.

23 [Whereupon, Mr. DuRant confers with Ms. Ford]

24 MR. DURANT: Your Honor, we would offer State's
25 exhibit numbers 31 and 32 I believe without objection.

1 THE COURT: All right. State's exhibit numbers 31
2 and 32 are admitted without objection.

3 [Whereupon, State's exhibit numbers 31 and 32 are
4 entered into evidence by the court]

5 Q. [Mr. DuRant] I'm now directing your attention to
6 State's exhibit number 32 in evidence and ask do you
7 recognize this exhibit?

8 [Whereupon, the witness is shown exhibit]

9 A. Yes. This is the intersection of Sam Ritt and
10 Highway 61.

11 Q. Okay. And what is this area ---

12 A. --- this is West Oak Forest [indicates]. This will
13 be Street [indicates] and the house in blue
14 right here [indicates] is

15 Q. Okay. And how about this [indicates]?

16 A. That is the firehouse.

17 Q. Okay. And this is Playground Road here
18 [indicates]?

19 A. I believe so, yes. Yes, it is.

20 Q. Okay. Thank you very much. And when you got to

21 Street, I'm directing your attention to State's
22 exhibit number 31 and ask if you can identify for the
23 jury which house was picked out by Mr. Smith?

24 A. It's this house right here [indicates].

25 Q. Is it the third or the fourth?

1 A. It's the fourth. It's it's the fourth house
2 down, one, two, three, four [indicates] --
3 Street.
4 Q. Okay. Thank you very much. Can you please answer
5 any questions that Ms. Ford may have for you?
6 A. Yes, sir.
7 THE COURT: Cross-examination?
8 MS. FORD: Yes, Your Honor, just briefly.
9 CROSS-EXAMINATION
10 BY MS. FORD:
11 Q. Officer Bradish, you took Mr. Smith to point out
12 where the shooting happened right?
13 A. Where the incident location was, yes ma'am.
14 Q. But you had to take him there because he couldn't
15 tell you exactly where it was.
16 A. He could give an area. He knew it was off Wantoot.
17 He wasn't sure the exact street.
18 Q. So he didn't know the address?
19 A. Huh?
20 Q. He didn't know the address?
21 A. He knew the house. He knew the house that was on
22 He pointed out
23 Q. No, beforehand?
24 A. No, he did not give me the exact address. He just
25 gave me areas.

1 Q. So he couldn't tell you at that time the fourth
2 house on the...
3 A. No, no ma'am, I don't believe so.
4 Q. Okay. No further questions.
5 THE COURT: Any redirect?
6 MR. DURANT: No redirect, Your Honor.
7 THE COURT: All right. You may step down. Any
8 reason he can't be excused?
9 MR. DURANT: I would ask that he be excused, Your
10 Honor.
11 THE COURT: Thank you very much.
12 MS. FORD: No objections.
13 [Whereupon, the witness is excused and exits the
14 witness stand]
15 THE COURT: Call your next witness.
16 MR. DURANT: The State would call Rich Burckhardt.
17 [Whereupon, Mr. Burckhardt comes forward]
18 [Whereupon, the witness is duly sworn by the Clerk
19 of Court as follows: do you swear or affirm your
20 testimony will be the truth, the whole truth, and nothing
21 but the truth so help you God]
22 MR. BURCKHARDT: Yes, I do.
23 CLERK OF COURT: State your full name and spell
24 your last name.
25 MR. BURCKHARDT: My name is Richard Burckhardt.

1 That's B-U-R-C-K-H-A-R-D-T.

2 [Whereupon, the witness takes the witness stand]

3 - - - - -

4 RICHARD BURCKHARDT,

5 Having been first duly sworn,

6 Was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DURANT:

9 Q. Detective Burckhardt, could you tell our jury where
10 you are employed?

11 A. I'm employed with the City of Charleston Police
12 Department.

13 Q. And in what capacity?

14 A. I'm a Detective in the violent crime unit.

15 Q. And how long have you been a Detective with the
16 city?

17 A. I've been in the Detectives office for approximately
18 15 years.

19 Q. Okay. And you were doing the same thing on March
20 the 1st of 2011 is that correct?

21 A. Yes, I was.

22 Q. When did you become involved in the case?

23 A. Immediately after the call went out it was closing
24 on almost 5 o'clock that afternoon. It was actually
25 several of us that were in our vehicles and we were

1 getting off duty for the most part. The call went out
2 and several of us responded to the fire station. That's
3 where I first went.

4 Q. Okay. So you actually went out to the fire
5 station?

6 A. I did.

7 Q. Was the victim still there at the time?

8 A. The victim was still present on the scene.

9 Q. And were you there when Mr. Kennedy Smith was
10 brought back and identified by the firemen?

11 A. Yes.

12 Q. And where did you go after Mr. Smith had identified
13 as the shooting location?

14 A. Myself along with now retired Detective Fleming
15 proceeded to the what was then determined to be the
16 incident location of in an attempt to find
17 any witnesses or gain any information that we could as to
18 what had taken place.

19 Q. And I believe that was previously pointed out on
20 State's exhibit 31 is this residence here [indicates]?

21 A. That would be the house I went to.

22 Q. How was your reception?

23 A. There were several individuals that were still
24 present on the front porch. Myself and Detective
25 Fleming, to answer your question, we were trying to gain

1 some information and we weren't received real well by any
2 of the people that were there.

3 Q. What do you mean you weren't received well?

4 A. Well we started with just some basic questioning.
5 You know why you're here -- were you people here when
6 this event took place? Were you present when shots were
7 fired?

8 Just some basic questions and we were pretty much
9 getting stonewalled at that time or shut down by any of
10 the individuals that were at the house. There was a
11 female at one point that showed up that created quite a
12 scene at our presence and wanted us to leave.

13 So when Detective Fleming wasn't gaining any
14 information that would have kept us there at that point
15 we then proceeded to headquarters to receive Mr. Kennedy
16 Smith.

17 Q. Do you recall any of the individuals that were still
18 in the house when y'all got over there?

19 A. There was an individual Carlos Jones, there was a
20 Michael Quarles, Brandon Smalls, Brandon Singletary and I
21 believe his sister, Tracy Singletary.

22 Q. Now after y'all got nowhere out at where did
23 you go?

24 A. We went to headquarters to begin an interview with
25 Mr. Smith.

1 Q. And who interviewed Mr. Smith?

2 A. Conducted a tandem interview myself with Detective
3 Fleming.

4 Q. Okay. And during the interview did you recall
5 showing him a bunch of photographic lineups?

6 A. We did. And the lineups were derived out of
7 individuals that were known to be at that house.

8 Q. Okay. What was your opinion after showing him all
9 these lineups?

10 A. I didn't believe -- and Detective Fleming and I
11 concurred that Mr. Smith wasn't being completely honest
12 with us.

13 In fact I think we believed him to be actually
14 evasive with us in any attempt to positively identify any
15 individuals. It got kind of silly actually.

16 He was pointing to certain fillers. And fillers are
17 -- we present lineups in a 6 pack fashion; being 6 photos
18 of individuals and obviously there is one of interest
19 that we know of. But he was actually going to kind of
20 dancing around to others that were insignificant.

21 Q. You believed he wasn't being honest with you is that
22 correct?

23 A. Yes.

24 Q. I'm going to hand you what's previously been marked
25 as State's exhibit numbers 52, 53, 54, 55, 56, and 57.

1 [Whereupon, the witness is shown exhibits]

2 MR. DURANT: Your Honor, I believe I can offer
3 these without objection.

4 MS. FORD: No objection, Your Honor.

5 THE COURT: 52 through 57?

6 MR. DURANT: 52 through 57.

7 THE COURT: Okay. 52 through 57 admitted without
8 objection.

9 [Whereupon, State's exhibit numbers 52, 53, 54, 55,
10 56, and 57 are entered into evidence by the court]

11 Q. [Mr. DuRant] And Detective I've like to start with
12 State's exhibit number 52. That is one of the photo
13 lineups that were shown to him that night?

14 [Whereupon, the witness is shown exhibit]

15 A. That's correct.

16 Q. And if you recognize who the target is in there fine
17 and if not that's fine too. Do you recognize who the
18 target is in that photograph?

19 A. I don't in this particular 6 pack.

20 Q. Okay. Did Mr. Kennedy Smith make any
21 identification out of that photographic lineup?

22 A. There is not a positive identification. I referred
23 to my notes at the bottom here and he said the person at
24 number 1 resembles the person that was in the yard.

25 Q. Okay. How about State's exhibit 53? Was that one

1 of the ones that was shown to him that night?

2 [Whereupon, the witness is shown exhibit]

3 A. I did show this lineup.

4 Q. And do you recognize who the target was in that
5 photographic lineup?

6 A. The person in position 3 would be that of Carlos
7 Jones.

8 Q. Okay. Was he able to make any identification from
9 that lineup?

10 A. No, he was not.

11 Q. I hand you what's been marked as State's exhibit
12 number 54 and ask if you recognize who the target is in
13 that lineup?

14 [Whereupon, the witness is shown exhibit]

15 A. Yes, there is an individual in position number 3
16 that of Brandon Smalls.

17 Q. Okay. And that's the guy who goes by Nubby?

18 A. Nubby would be his street name.

19 Q. Okay. And what comments did he make on that
20 photographic lineup?

21 A. He doesn't actually identify anybody. My notes
22 reflect persons in position 1, 4, and I think 6 resemble
23 the person that was in the yard.

24 Q. Okay. And the target in there was not 1, 4 or 6.

25 Was it ---

1 A. --- no ---
2 Q. --- it was number 3?
3 A. Yes.
4 Q. How about State's exhibit number 55? Who is the
5 target in that lineup?
6 [Whereupon, the witness is shown exhibit]
7 A. The person in position number 2 would be that of
8 Michael Quarles.
9 Q. Okay. Was he able to make any kind of
10 identification on that?
11 A. No, he didn't. But my notes reflect that number 3
12 -- I noted number 3 may have been in the yard. Number 3
13 as I --
14 Q. Okay. State's exhibit number 56. Who was the
15 target on that?
16 [Whereupon, the witness is shown exhibit]
17 A. This is a female. Tracy Singletary in position 6
18 and he did not identify her.
19 Q. Why was Tracy Singletary in there?
20 A. She was present at the house. She was one of the
21 people who ---
22 Q. --- she actually resides in that house doesn't she?
23 A. Yes.
24 Q. Okay. And how about State's exhibit number 57?
25 [Whereupon, the witness is shown exhibit]

1 A. The target individual would have been the person in
2 position number 4 of Brandon Singletary, Tracy's brother.

3 Q. Okay. And he actually resides at is
4 that correct?

5 A. Yes, he does.

6 Q. Would you please answer any questions defense
7 counsel may have for you?

8 A. Yes, sir.

9 THE COURT: Cross-examination?

10 MS. FORD: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. FORD:

13 Q. Detective Burckhardt, Mr. Smith he did -- he looked
14 at these pictures correct like he was trying to make an
15 I.D.?

16 A. He did.

17 Q. And one photo lineup that was just shown to you he
18 said I'm not sure let's go back to that correct?

19 A. I believe he did.

20 Q. And he ended up giving -- basically saying that he
21 was 65 percent sure that that person looked like the
22 shooter. Do you recall that conversation?

23 But he didn't want to sign the paper. You said
24 well, okay then you can't I.D. this person then. And he
25 said I don't want to sign the paper ---

1 A. -- that's correct ---

2 Q. --- saying I can't I.D. this person.

3 A. Yes. He stated -- I explained to him that 65

4 percent was not a positive identification.

5 Q. Okay. But y'all actually talked for like three or

6 four minutes about him wanting to still make an I.D. of

7 this person, correct?

8 A. No. I mean we weren't forcing an I.D. on him. I

9 don't know ---

10 Q. --- well no ---

11 A. --- he was dancing around a good bit to where none

12 of these lineups that were presented to him were of any

13 value that we knew of at the time. And mainly I say that

14 because as I explained to the jury earlier was that he

15 was hitting on fillers.

16 Q. Right.

17 A. People of no significance to this case at all.

18 Q. Okay.

19 A. So we had some issues there.

20 Q. All right. But I know -- okay, I'm not saying that

21 you were trying to get him to I.D. this person. I'm

22 saying you told him 65 percent is not going to cut it.

23 It's not good enough, right?

24 A. Right.

25 Q. But he actually -- he did not want to sign the sheet

1 saying that I cannot make a positive I.D.

2 A. I recall that, yes.

3 Q. Okay. Because he had a conversation with you
4 basically wanting to I.D. this person even though he said
5 he was only 65 percent sure.

6 A. He was saying that he was only 65 percent and we
7 were explaining to him that wasn't an identification.

8 Q. Right. But he said I'm 65 percent sure that is the
9 shooter?

10 A. If that's what he said, yes.

11 Q. And you explained to him that we can't just be
12 throwing random people in jail, correct?

13 A. Correct.

14 Q. Based on 65 percent sure.

15 A. Correct.

16 Q. Okay.

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

18 THE COURT: Yes, ma'am.

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

20 MS. FORD: No further questions.

21 THE COURT: Any redirect?

22 MR. DURANT: No redirect, Your Honor.

23 THE COURT: All right. You may step down. Thank
24 you very much.

25 [Whereupon, the witness is excused and exits the

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1 witness stand]

2 MR. DURANT: May we approach a moment, Your Honor?

3 THE COURT: Yes, sir.

4 [Whereupon, an off the record bench conference is
5 held]

6 THE COURT: All right. Madame Forelady and ladies
7 and gentlemen of the jury, we are going to take a lunch
8 break at this time. It's 12:30. If you will be back in
9 your jury room at 2 o'clock we will get started at that
10 time. And please leave your notepads in the chairs.
11 Don't discuss the case with anybody.

12 And as far as your cell phone you're welcome -- you
13 can take the cell phones with you at lunch. Use them as
14 you see fit. The only thing I'm telling you is don't
15 talk to anybody about this case. Have a good lunch.

16 [Whereupon, the jury exits the courtroom at 12:28
17 p.m.]

18 THE COURT: All right. We'll break until 2
19 o'clock.

20 MR. DURANT: Thank you, Your Honor.

21 THE COURT: All right.

22 [Whereupon, court is in recess from 12:29 p.m. to
23 2:00 p.m.]

24 THE COURT: Bring us the jury, please.

25 [Whereupon, the jury enters the courtroom at 2:04

1 p.m.]

2 THE BAILIFF: All jury is present, Your Honor.

3 THE COURT: Thank you very much. If the jury
4 would raise their hands -- who lives West of the Ashley
5 raise your hand. So we've got two. How many people live
6 on the Mount Pleasant side raise their hand. How about
7 the north area out towards Summerville? Nobody. Okay.
8 Thank you. Call your next witness, please.

9 MR. DURANT: The State would call Reginald Wescott.

10 [Whereupon, Mr. Wescott comes forward]

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

15 MR. WESCOTT: I do.

16 CLERK OF COURT: State your full name and spell
17 your last name.

18 MR. WESCOTT: Reginald -- Wescott.

19 [Whereupon, the witness takes the witness stand]

20 - - - - -

21 REGINALD WESCOTT,

22 Having been first duly sworn,

23 Was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. DURANT:

1 Q. Okay Mr. Wescott, I'm going to ask that you speak up
2 because these ladies and gentlemen have to hear what you
3 have to say, okay?

4 A. [No response]

5 Q. Will you do that for them?

6 A. You want me to repeat my name?

7 Q. No, I think we heard that. You may want to spell
8 your last name for the court reporter.

9 A. W-E-S-C-O-T-T.

10 Q. Okay. And your first name is Reginald, correct?

11 A. Yes.

12 Q. And if you would stay up close to that mic so we can
13 hear you, all right. Do you have a nickname?

14 A. Nasty.

15 Q. Nasty? And how old are you Mr. Wescott?

16 A. Twenty.

17 Q. And how far did you go in school?

18 A. Graduated.

19 Q. Where did you graduate from?

20 A. West Ashley High School.

21 Q. And you recall what year you graduated from high
22 school?

23 A. 2011.

24 Q. You're obviously in jail now, is that correct?

25 A. Yes, sir.

1 Q. Were you working before you got put in jail?
2 A. Yes, sir.
3 Q. Where were you working at that time?
4 A. Dunkin Donuts.
5 Q. Now you don't have any prior convictions, is that
6 correct?
7 A. No, sir.
8 Q. But you are in jail now?
9 A. Yes, sir.
10 Q. And -- but you're in jail for something unrelated to
11 this is that correct?
12 A. Yes, sir.
13 Q. And that's for a shooting of someone right?
14 A. Yes, sir.
15 Q. And you're charged with the shooting of someone and
16 Possession of a Firearm during the Commission of a
17 Violent Crime, and a drug charge is that correct?
18 A. Yes, sir.
19 Q. Okay. Have you been promised anything by me or
20 anyone else in exchange for your testimony here today?
21 A. No, sir.
22 Q. You are represented on those charges by an attorney
23 is that correct?
24 A. Yes, sir.
25 Q. And I believe your attorney is back here [indicates]

1 Mr. Scott Bischoff is that correct?
2 A. Yes, sir.
3 Q. Now I want to ask you some questions about some
4 folks you know. Did you know a fellow named Tiddy?
5 A. Not personally, but I know him.
6 Q. Okay. And how did you know him?
7 A. Around my neighborhood.
8 Q. Okay. So he's not a personal friend of yours?
9 A. No, sir.
10 Q. What did you know about Tiddy?
11 A. He sells drugs.
12 Q. Okay. And are you familiar with the area of
13 West of the Ashley?
14 A. Yes, sir.
15 Q. You hang out there some?
16 A. Yes, sir.
17 Q. Did you know him to sell drugs in that area?
18 A. Not necessarily in that area.
19 Q. Okay. But you just knew that he sold drugs is that
20 correct?
21 A. Yes, sir.
22 Q. Okay. You know this fellow over here [indicates]?
23 A. Yes, sir.
24 Q. What's his name?
25 A. Freddie.

- 1 Q. Okay. You know his full name?
- 2 A. Freddie Flowers.
- 3 Q. Okay. And how long have you known Freddie Flowers?
- 4 A. About seven years.
- 5 Q. And from where, from the neighborhood, school or
- 6 what?
- 7 A. From the neighborhood.
- 8 Q. Is he your friend?
- 9 A. Yes, sir.
- 10 Q. How about a fellow named Myhesa Wine?
- 11 A. Yes sir, I know him.
- 12 Q. What's your relationship with Myhesa Wine?
- 13 A. Family.
- 14 Q. What kind of family?
- 15 A. A cousin.
- 16 Q. Are y'all close cousins or distant cousins?
- 17 A. Distant.
- 18 Q. And what is your relationship with Myhesa?
- 19 A. Besides family?
- 20 Q. Yes, I mean are you friends with him?
- 21 A. He's a friend.
- 22 Q. And how would you describe your friendship with him?
- 23 Like lukewarm friendship or good friends?
- 24 A. All right.
- 25 Q. No, I'm asking ---

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- 1 A. --- as close.
- 2 Q. You would say close friends?
- 3 A. Yes.
- 4 Q. Okay. How about -- and you're from West Oak Forest
- 5 is that correct?
- 6 A. East Oak Forest.
- 7 Q. East Oak Forest. But you're from the area called
- 8 the Forest is that correct?
- 9 A. Yes, sir.
- 10 Q. How about Freddie is he from the Forest?
- 11 A. Yes, sir.
- 12 Q. And how about My?
- 13 A. Yes, sir.
- 14 Q. And when I say My who do you know as My?
- 15 A. Myhesa.
- 16 Q. Okay. Do you know a guy named Carlos Jones?
- 17 A. Yes, sir.
- 18 Q. And where do you know Carlos Jones from?
- 19 A. Neighborhood.
- 20 Q. The same neighborhood, the Forest?
- 21 A. Yes.
- 22 Q. And is he older or younger than you?
- 23 A. Older.
- 24 Q. Do you know a fellow named Cornelius Jenkins?
- 25 A. Yes, sir.

- 1 Q. First of all let me go back to Carlos a little bit.
2 Do you know what Carlos's nickname is?
3 A. Los.
4 Q. Los.
5 A. Yes. Have you ever heard anybody call him Butta?
6 A. Yes, I hear people call him that. I call him Los.
7 Q. So you call him Los just short for Carlos?
8 A. Yes, sir.
9 Q. But you've heard other people call him Butta?
10 A. Yes, sir.
11 Q. Okay. How about Cornelius Jenkins? Do you know a
12 fellow named Cornelius Jenkins?
13 A. Yes, sir.
14 Q. What do you know him by? What's his nickname?
15 A. C.J.
16 Q. And how do you know Cornelius Jenkins?
17 A. School, church, neighborhood.
18 Q. Okay. So he's a Forest guy too?
19 A. Yes, sir.
20 Q. Now I want to ask you about one other guy. Do you
21 know a guy named Michael Quarles or Little Mike?
22 A. Yes, sir.
23 Q. And where do you know him from?
24 A. From school.
25 Q. That would be West Ashley High School?

- 1 A. Yes, sir.
- 2 Q. Now is he a Forest guy or is he from somewhere else?
- 3 A. No, he's from Ashleyville..
- 4 Q. Okay. And Ashleyville is kind of close to the
- 5 Forest is that correct?
- 6 A. Yes, sir.
- 7 Q. Now, and these guys I just asked you about are --
- 8 what is their relationship with Freddie Flowers?
- 9 A. We all know each other from the neighborhood and
- 10 school.
- 11 Q. And are you friends?
- 12 A. Yes, I would say so.
- 13 Q. Okay. And of that group who do you think would be
- 14 the closest to Freddie?
- 15 A. Carlos and C.J.
- 16 Q. Carlos and C.J.; C.J. being Cornelius Jenkins?
- 17 A. Yes, sir.
- 18 Q. Now do you know what kind of phone Freddie used --
- 19 cell phone Freddie used?
- 20 A. A Cricket.
- 21 Q. Okay. And do you know what the -- I know you don't
- 22 remember the number but do you remember the prefix to
- 23 that phone; the first three numbers?
- 24 A. I think 735.
- 25 Q. And was there anything unusual about that phone that

1 you remember? Was it missing anything?

2 A. It was missing like the back piece.

3 Q. The back piece that holds like the battery in?

4 A. Yes, sir.

5 Q. Okay. Mr. Wescott, I want to show you what's

6 previously been marked as State's exhibit number 40 and

7 ask if you recognize -- and you can hold it if you want

8 and ask if you recognize that telephone?

9 [Whereupon, the witness is shown exhibit]

10 A. It looks similar to the one he had.

11 Q. To the one that who had?

12 A. Freddie.

13 Q. Okay. And this phone does it have a battery cover

14 to it?

15 A. Not that I know of.

16 Q. Not that you see is that correct?

17 A. Yes.

18 Q. Does it appear to be the same color as Freddie's

19 phone?

20 A. It's looks a little darker.

21 Q. Okay. But it looks like the phone Freddie used to

22 use.

23 A. Yes, sir.

24 Q. Now I want to talk to you about March the 1st of 2011

25 the day Tiddy was killed. You remember that correct?

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- 1 A. Yes, sir.
- 2 Q. And were you over at that afternoon?
- 3 A. Yes, sir.
- 4 Q. And do you remember what time it was when you got
5 over there?
- 6 A. Between 3:30 and 4 o'clock.
- 7 Q. So it was kind of late in the afternoon?
- 8 A. Going on evening time.
- 9 Q. Okay. And who lives at
- 10 A. Homer.
- 11 Q. Do you know Homer's real name?
- 12 A. I think Brandon Singleton.
- 13 Q. Okay.
- 14 A. Or Singletary.
- 15 Q. Okay. Do you know who else lives there?
- 16 A. His mom and sister.
- 17 Q. Okay. His sister is Tracy is that correct?
- 18 A. Yes, sir.
- 19 Q. Why were y'all over at
- 20 A. We hang out there sometime.
- 21 Q. Okay. Is that kind of a neighborhood hangout for
22 y'all?
- 23 A. You could say that.
- 24 Q. Okay. Did you go over there by yourself or with
25 someone?

- 1 A. By myself.
- 2 Q. And were you walking or how did you get over there?
- 3 A. Riding a bicycle.
- 4 Q. Now when you got over there do you remember who was
- 5 there?
- 6 A. Yes, sir.
- 7 Q. And if you would tell me who was there?
- 8 A. Myhesa, Carlos, Little Mike and Freddie, and Homer.
- 9 Q. Okay. Where was Homer?
- 10 A. Homer was in the house.
- 11 Q. How about C.J.? Was C.J. over there?
- 12 A. Yes, C.J. was there.
- 13 Q. Okay. So the five of y'all kind of hanging around
- 14 outside the house is that correct?
- 15 A. Yes, sir.
- 16 Q. And where were y'all outside of Homer's house?
- 17 A. At the front, the front yard.
- 18 Q. Okay. Now at some point while you were out there
- 19 why did you go over to the side of the house?
- 20 A. To roll us some marijuana.
- 21 Q. Okay. And you called it what?
- 22 A. Weed.
- 23 Q. I know, but what do you call it when you roll it up?
- 24 A blunt, is that what you call it?
- 25 A. Yes, rolling up.

1 Q. And when you walked -- went over there to -- where
2 did you go -- if you're standing there looking at St.
3 Clair from the road did you walk over to the left side of
4 the house or the right side of the house?
5 A. Left.
6 Q. Okay. So I think this is referring you to State's
7 exhibit 31 in evidence. So it would be over to this side
8 [indicates] of the house as opposed to that side
9 [indicates] of the house is that correct? On this side
10 [indicates]?
11 A. Uh huh.
12 Q. Okay. And where were the other four guys?
13 A. In the yard.
14 Q. Was there a car out there in the driveway?
15 A. Yes, a green car.
16 Q. Anybody hanging around the car?
17 A. Freddie and My.
18 Q. Okay. And where were Carlos and C.J. and Little
19 Mike?
20 A. They were like in the middle of the yard.
21 Q. Now when you went over to roll the blunt what drew
22 your attention back to the roadway?
23 A. A car.
24 Q. Okay. And what did the car look like?
25 A. Like an old -- looked like a convertible.

1 Q. What color?
2 A. Red.
3 Q. And looked like that car [indicates]?
4 A. It looked like it had a sunroof.
5 Q. Okay. Or a trunk missing maybe?
6 A. I don't know.
7 Q. Okay. But it was a red car is that correct?
8 A. Yes, sir.
9 Q. And where did that red car stop?
10 A. Like in front of the driveway.
11 Q. Had you ever seen that car before?
12 A. No, sir.
13 Q. Have you ever seen that car since?
14 A. No, sir.
15 Q. Could you see who was in the car?
16 A. I see an older man but I couldn't see the passenger.
17 Q. Why couldn't you see the passenger?
18 A. They were leaning back in the seat.
19 Q. Leaning back in the seat?
20 A. Yes.
21 Q. And what did the driver look like?
22 A. And older black man.
23 Q. Okay. Now when you first saw the car pull up where
24 was Freddie?
25 A. He was -- when the car first pulled up he was like

- 1 close by but -- not by the roadway but like in the front
2 of the car that was in the driveway.
- 3 Q. So there was a car in the driveway?
- 4 A. Yes.
- 5 Q. And Freddie was by that car in the driveway. And
6 who was Freddie with?
- 7 A. It was him and Myhesa and Carlos.
- 8 Q. And what did you see Freddie do?
- 9 A. I mean he just been standing there.
- 10 Q. I understand that, but what did Freddie do when the
11 car pulled up?
- 12 A. I mean it looked like he was talking to them I
13 guess.
- 14 Q. Talking to who?
- 15 A. I couldn't see a passenger.
- 16 Q. But I mean who was at the car Mr. Wescott is who I'm
17 asking. Who walked up to the car?
- 18 A. Freddie.
- 19 Q. Was he the only person who walked up to the car?
- 20 A. All I could see.
- 21 Q. Okay. So you saw one person standing by the car?
- 22 A. Yes, sir.
- 23 Q. And that person was who?
- 24 A. Freddie.
- 25 Q. And then what happened?

- 1 A. I mean I gone back to doing what I was doing.
- 2 Q. Which was?
- 3 A. Rolling up a blunt.
- 4 Q. And then what happened?
- 5 A. I hear shots.
- 6 Q. Okay. And when you heard the shot what did you do?
- 7 A. I look up.
- 8 Q. And you looked over in what direction?
- 9 A. In front of me.
- 10 Q. Toward the roadway? Where did the shot come from?
- 11 A. It came from like by the car.
- 12 Q. And what did you see when you looked over after that
- 13 first gun shot?
- 14 A. I see smoke.
- 15 Q. Okay. And what else did you see? Was Freddie
- 16 still there?
- 17 A. He was still close by the car.
- 18 Q. Okay. By which door; the driver's door or the
- 19 passenger door?
- 20 A. Passenger.
- 21 Q. He was still the only person by the car is that
- 22 correct?
- 23 A. Yes, sir.
- 24 Q. What was Freddie doing?
- 25 A. He ain't really do nothing.

1 Q. Okay.

2 A. I couldn't see if he had anything in his hand or
3 anything. I never seen him present a gun or nothing.

4 Q. Okay. But you heard a gunshot and what was he
5 doing? What -- was his front to you or his back to you?

6 A. His back.

7 Q. Okay. And what was he doing just standing stock
8 still or was he moving?

9 A. He moving a little bit. I mean I couldn't really
10 see what was going on.

11 Q. Okay. And after that first gunshot did you hear
12 other gunshots?

13 A. Like one or two.

14 Q. Okay. And were the shots all together or was there
15 a shot and a pause between them and more shots?

16 A. It was kind of close I think. I can't really...

17 Q. You can't remember?

18 A. Yes.

19 Q. Okay. Now what happened to the red car?

20 A. It pulled off.

21 Q. Okay. So who shot the guy in the car?

22 A. I'm not sure, sir.

23 Q. Come on Mr. Wescott, who shot the guy in the car?

24 A. I can't positively say who shot him because ---

25 Q. --- who else was at the car?

1 A. I mean Freddie been close by the car but I ain't
2 never seen him.
3 Q. There was nobody at the car correct?
4 A. Yes, sir.
5 Q. Except for Freddie?
6 A. Yes, sir. But I ain't seen him with a firearm.
7 Q. Okay. But you saw -- when you turned after that
8 first shot you saw Freddie standing at the passenger
9 window right?
10 A. I mean he ain't been directly over the window. He
11 went a little like a distance from me to you.
12 Q. About who -- that's not what you just said. You
13 said he was by the passenger window.
14 A. I mean he was by it but not as far a distance as you
15 is now.
16 Q. He was right by the window wasn't he ---
17 A. --- not by ---
18 Q. --- Mr. Wescott -- oh, I'm sorry, I didn't mean to
19 cut you off. Now, you remember talking to my
20 investigator, Matt Casey and Detective Osborne on August
21 22, 2012; it was basically last week.
22 A. Yes, sir.
23 Q. Okay. Do you remember telling them that when you
24 first heard the gunshots you looked up and you saw
25 Freddie kind of jumping around?

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- 1 A. Well, he been moving.
- 2 Q. Do you deny that you told them that?
- 3 A. I mean I ain't used them choice of words.
- 4 Q. Do you remember telling them Freddie was right by
- 5 the car?
- 6 A. I say he was by the car. I ain't say he was up on
- 7 the car.
- 8 Q. And do you remember telling them then you heard two
- 9 more shots?
- 10 A. One or two.
- 11 Q. And that you didn't see anyone else around the car.
- 12 Do you remember telling them that?
- 13 A. Yes, sir.
- 14 Q. And you didn't see anybody else with a gun?
- 15 A. I never saw anyone else -- I never saw Mr. Flowers
- 16 with a gun.
- 17 Q. And do you remember telling them that the gunshots
- 18 came from the direction of the red car?
- 19 A. Yes.
- 20 Q. And that Freddie was standing beside the red car?
- 21 A. Standing by the car.
- 22 Q. And so you see Freddie standing by the car, gun
- 23 smoke around Freddie. And then what did Freddie do?
- 24 A. I mean the car pulled off.
- 25 Q. And then what did Freddie do?

1. A. He run.

2. Q. Okay. Now after Freddie ran who came out of the
3. house?

4. A. Homer.

5. Q. Homer? And what was Homer doing?

6. A. He basically asked what happened. I mean I guess he
7. had hear gun shots. He asked what happened.

8. Q. Okay. And what was Carlos Jones doing?

9. A. Yelling.

10. Q. Yelling at who?

11. A. He was yelling at Freddie.

12. Q. Yelling at Freddie for what?

13. A. He say why you did it ---

14. MS. FORD: --- objection, hearsay.

15. Q. [Mr. DuRant] Let me ask you this. What was Carlos's
16. state of mind at the time?

17. MS. FORD: Objection.

18. THE COURT: Overruled. Go ahead.

19. Q. [Mr. DuRant] What was Carlos's state of mind at the
20. time?

21. A. I don't know.

22. Q. I mean was he calm, was he excited, was he angry?
23. What was going on with Carlos?

24. A. I mean I guess he been I wouldn't say excited. I
25. wouldn't really say angry, but he just been...

1 Q. Was he agitated or was he just as calm as you are
2 now?

3 A. No, he been like emotional.

4 Q. Okay. He was emotional. What did he say to
5 Freddie?

6 MS. FORD: Objection, hearsay.

7 THE COURT: Overruled. Go ahead.

8 MR. DURANT: Excited utterance, Your Honor.

9 Q. [Mr. DuRant] What did he say?

10 A. He said why you did that? Why you did that?

11 Q. He didn't use those words probably but is that what
12 he said?

13 A. I mean he had cursed.

14 Q. And he said that to who?

15 A. Freddie.

16 Q. And what did Freddie say?

17 A. He didn't say nothing.

18 Q. And where did Freddie -- did you see where Freddie
19 ran off to?

20 A. He ran down opposite side of the street.

21 Q. Okay. What did you do?

22 A. Run.

23 Q. Why?

24 A. I didn't really know what happened. I mean I didn't
25 know shots ---

- 1 Q. --- you didn't do anything. Why did you run?
- 2 A. I mean I know when the police come they might not
- 3 have seen it like that.
- 4 Q. Okay. So you ran. Where did you go to?
- 5 A. I gone the opposite direction toward --
- 6 Q. Toward what?
- 7 A. Whitmore [phonetic] Street.
- 8 Q. Okay. And where did you end up going?
- 9 A. I go in my apartment.
- 10 Q. Did you end up going back home later on that day?
- 11 A. Yes, I go home.
- 12 Q. Now can you recall when you went home that day did
- 13 anybody come by to see you?
- 14 A. Myhesa.
- 15 Q. Myhesa? Okay. So he came over to your house that
- 16 day is that correct?
- 17 A. Yes.
- 18 Q. After the shooting?
- 19 A. Yes, sir.
- 20 Q. Now you previously talked to Detective Osborne on
- 21 June the 6th of 2011 is that correct?
- 22 A. Yes, sir.
- 23 Q. And do you remember what you told him?
- 24 A. That I hadn't been out there.
- 25 Q. Okay. You told him you hadn't been out there is

1 that correct?

2 A. Yes, sir.

3 Q. Was that the truth?

4 A. No.

5 Q. You did tell him about My coming over to your house

6 is that correct?

7 A. Yes, I tell him that part.

8 Q. Okay. But you just left out everything before that

9 is that correct?

10 A. Yes, sir.

11 Q. And I think you told him that you didn't know about

12 the guy -- who the guy that got shot was until you heard

13 it on the news. That wasn't true was it?

14 A. No. I mean I ain't know when the incident happened.

15 I tell you I couldn't see who it been so I still ain't

16 really know who it been.

17 Q. I know that. But you talked to My. You knew

18 exactly who it was before you heard it on the news didn't

19 you?

20 A. I mean he ain't never really said.

21 Q. So he comes over to your house right after the

22 shooting. You and him watch this man shoot somebody and

23 y'all never talked about it.

24 A. I mean I ain't seen him shoot him.

25 Q. Okay. Getting back to what you told detective

1 Casey -- Investigator Casey and Detective Osborne on
2 August the 22nd toward the end of your statement. Did you
3 remember telling them at that time that Freddie was the
4 closest person to the car?

5 A. Yes.

6 Q. Do you remember telling them that Freddie was the
7 only person by the car?

8 A. Yes, sir.

9 Q. Do you remember telling them that Freddie was
10 blocking the window?

11 A. Yes, sir.

12 Q. And do you remember telling them that Freddie was
13 the only person that could have done the shooting?

14 A. I mean from that perspective. But like I also told
15 them I ain't never seen ---

16 Q. --- I know what -- I know you say that you never saw
17 the gun. But based upon what you told us there was
18 nobody else that could have shot him. They would have
19 had to shoot right through Freddie wouldn't they?

20 A. I mean I guess.

21 Q. And there was nobody else out there with a gun was
22 there?

23 A. Not that I know of.

24 Q. Please answer any questions that defense counsel may
25 have for you.

1 THE COURT: Cross-examination?

2 MS. FORD: Thank you, Your Honor. May it please
3 the court?

4 CROSS-EXAMINATION

5 BY MS. FORD:

6 Q. Hello.

7 A. Hey, how you doing.

8 Q. You talked to police several times about this
9 shooting incident correct?

10 A. Yes, ma'am.

11 Q. And I think it's important just to go over all those
12 times that you spoke to police, okay?

13 A. Yes, ma'am.

14 Q. So I'm going to ask you what you told police at the
15 time that you talked to them, okay?

16 A. Yes, ma'am.

17 Q. All right. So initially you met with Detective
18 Osborne last year correct?

19 A. Yes, ma'am.

20 Q. And you were at the police station with him.

21 A. Yes, ma'am.

22 Q. And you were there for a while.

23 A. Yes, ma'am.

24 Q. You told him that you weren't there at all correct?

25 A. Yes, ma'am.

1 Q. That's what -- Mr. DuRant asked you about that too.
2 And he asked you how you found out about the shooting
3 right?

4 A. Yes, ma'am.

5 Q. And you just told him that Myhesa told you that Do
6 Nasty told him about it.

7 A. Yes, ma'am.

8 Q. But -- you just go by Nasty correct?

9 A. Yes, ma'am.

10 Q. So Do Nasty that's a different person right?

11 A. Yes, ma'am.

12 Q. And older gentleman?

13 A. Yes, ma'am.

14 Q. But Myhesa he never actually even said who got shot
15 correct?

16 A. Yes, ma'am.

17 Q. And you found out about it when you saw it on the
18 news.

19 A. Yes, ma'am.

20 Q. And you were shocked when you heard it was Freddie.

21 A. When I heard it was Freddie?

22 Q. When Freddie was arrested.

23 A. Oh, yes ma'am.

24 Q. And the detectives -- Detective Osborne he kept
25 asking you if Myhesa told you Freddie did it right?

1 A. Yes, ma'am.

2 Q. So -- and you told him no Myhesa didn't tell me that
3 right?

4 A. Yes, ma'am.

5 Q. So he just -- he wasn't even really asking you if
6 you were there right?

7 A. No.

8 Q. He was wanting to know if Myhesa ---

9 A. --- I mean no, ma'am.

10 Q. I'm sorry?

11 A. I said no, ma'am.

12 Q. Right. He just wanted to know if Myhesa told you
13 that Freddie did it?

14 A. Yes, ma'am.

15 Q. He didn't ask you if Myhesa did it or anything like
16 that right?

17 A. No, ma'am.

18 Q. Before we get to your next story I want to talk a
19 little about what has been going on with you in the past
20 year and a half since this has happened okay? You told
21 us that you were arrested for some charges recently.

22 A. Yes, ma'am.

23 Q. And that's why you're in jail right now right?

24 A. Yes, ma'am.

25 Q. Okay. So you haven't been charged with anything in

1 connection with this shooting correct?

2 A. No, ma'am.

3 Q. So the charges you are in jail on; one is Conspiracy
4 to break the drug laws correct?

5 A. Yes, ma'am.

6 Q. And that carries up to five years in prison.

7 A. Yes, ma'am.

8 Q. And you're also charged with possessing a crime --
9 Possessing a gun during a Crime of Violence correct?

10 A. Yes, ma'am.

11 Q. And that carries a mandatory five years right?

12 A. Yes, ma'am.

13 Q. Day for day correct?

14 A. I think. I'm not too sure.

15 Q. But you're also charged with Attempted Murder
16 correct?

17 A. Yes, ma'am.

18 Q. And that's pretty serious right?

19 A. Yes, ma'am.

20 Q. It carries up to 30 years in prison right?

21 A. Yes, ma'am.

22 Q. And any time you get it you would have to serve at
23 least 85 percent of that time right?

24 A. I think so.

25 Q. So you're facing a lot of time in prison?

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- 1 A. Yes, ma'am.
- 2 Q. And the -- Attempted Murder that is a violent crime
3 correct?
- 4 A. Yes, ma'am.
- 5 Q. So you would be in like a maximum security prison
6 don't you think if you were found guilty of that?
- 7 A. I think so, yes.
- 8 Q. So Detective Osborne he was not the police officer
9 on that case right?
- 10 A. No.
- 11 Q. Okay. But when you were arrested on these charges
12 he is the one who took you to speak to the detectives
13 involved in that case correct?
- 14 A. I can't remember, but I think so.
- 15 Q. You think so? And that was March of this year
16 right?
- 17 A. March 22nd.
- 18 Q. So you think but you're not sure you spoke to
19 Detective Osborne earlier this year when he transported
20 you?
- 21 A. I think. I can't remember if it was him or another
22 Officer.
- 23 Q. Now Mr. DuRant asked you -- they haven't promised
24 you anything with your Attempted Murder charge correct?
- 25 A. No, ma'am.

- 1 Q. They haven't told you that they are going to drop
2 the charges or reduce the charges correct?
- 3 A. No, ma'am.
- 4 Q. But they are the ones prosecuting your case right?
- 5 A. [No response]
- 6 Q. Their office?
- 7 A. Oh, yes their office.
- 8 Q. And Mr. DuRant he is actually second in charge of
9 the Solicitor's office right?
- 10 A. I don't know.
- 11 Q. He's not directly prosecuting your case is he or do
12 you not know?
- 13 A. No, I don't think so.
- 14 Q. But he works with the people who are prosecuting
15 your case?
- 16 A. From what I know, yes.
- 17 Q. And the Solicitor's office you know that they can
18 sometimes make deals for people correct?
- 19 A. I guess. I don't really know how that works.
- 20 Q. Okay. Well they can agree to reduce a charge
21 right?
- 22 A. I guess.
- 23 Q. You've been in jail since March right?
- 24 A. Yes, ma'am.
- 25 Q. You haven't heard people talking about making a plea

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1 deal, getting a plea offer?

2 A. I heard you know pleading guilty or something. But
3 I mean I don't know how much of a deal you really are
4 getting.

5 Q. So no one in jail -- no one -- do you talk to people
6 while you are in jail?

7 A. Not really. I talk maybe to my roommate or
8 something but it ain't really too deep a conversation.

9 Q. Okay. So people don't talk about their charges
10 when they are in jail?

11 A. No. It's mostly through the advice of your lawyer
12 not to really talk about your cases and stuff you know.

13 Q. Is that what your lawyer told you?

14 A. Yes. I mean I don't -- mostly everyone that I talk
15 to say their lawyer tell them don't talk about your
16 charges or your case.

17 Q. Okay. So you don't know if the Solicitor can agree
18 to reduce your charges is that what you are saying?

19 A. Yes. I don't really know how it works -- the idea
20 of it.

21 Q. Okay. It's all or nothing? You plead guilty or go
22 to trial?

23 A. From what I understand about it, yes.

24 Q. Okay.

25 MR. DURANT: Your Honor, I believe this is in the

1 asked and answered part.

2 MS. FORD: And I'll move on, Your Honor.

3 THE COURT: Okay. At this point I'll say
4 overruled but move on, okay?

5 MS. FORD: Okay.

6 Q. [Ms. Ford] But just making sure you are concerned
7 about those charges right?

8 A. Yes, ma'am.

9 Q. Okay. So next time you spoke to the Solicitor or
10 the State, you know Detective Osborne and Mr. Casey that
11 was just last week right?

12 A. Yes ma'am, the 22nd.

13 Q. All right. So at that point that's the first time
14 you told anybody that you were actually -- or told
15 anybody for the State that you were at that day
16 correct?

17 A. Yes, ma'am.

18 Q. So August, 2012 is the first time you spoke up?

19 A. Yes, ma'am.

20 Q. And you told us that -- or you weren't involved in
21 it though correct?

22 A. No, ma'am.

23 Q. Okay. You didn't hear anybody talking about a
24 robbery that day?

25 A. No, ma'am.

1 Q. Are you denying that you had a gun?
2 A. I did not have a gun out there.
3 Q. Okay. You didn't show Carlos a gun like inside
4 your shirt, like inside your waist or something?
5 A. No, ma'am.
6 Q. Okay. You didn't see Myhesa with a gun?
7 A. No, ma'am. I ain't seen nobody out there with a gun.
8 Q. Okay. So no guns at all?
9 A. Including Freddie.
10 Q. Okay. Until there was -- somebody was shot.
11 A. I still ain't never seen nobody with a gun in their
12 hand.
13 Q. Okay. So you definitely didn't see Myhesa give
14 Freddie a gun?
15 A. No, ma'am.
16 Q. Okay. Are you -- Myhesa is -- he's your cousin?
17 A. Yes, ma'am.
18 Q. You said he was a distant cousin but y'all are close
19 friends right?
20 A. Yes, ma'am.
21 Q. So in the past year and a half you've talked to
22 Myhesa right?
23 A. [inaudible]
24 Q. You talked to him when you were on the street up
25 until March right?

1 A. [No response]
2 Q. You've talked to him while you have been in jail
3 right?
4 A. A few times.
5 Q. Are you aware that some people are saying that
6 Myhesa gave Freddie the gun?
7 A. I just recently heard this like this week.
8 Q. Okay. So just to make it clear those stories that
9 you gave the police you didn't do anything involved in
10 some kind of robbery or shooting or anything like that?
11 A. Yes, ma'am.
12 Q. So in both stories you're innocent of anything?
13 A. Yes, ma'am.
14 Q. Okay. You were just there right?
15 A. Yes, ma'am.
16 Q. When you originally -- now you know that certain
17 people have been charged with Obstruction of Justice
18 related to this charge right?
19 A. Yes, ma'am.
20 Q. For example, C.J. has been locked up correct?
21 A. Yes, ma'am.
22 Q. And Brandon Smalls?
23 A. Yes, ma'am.
24 Q. And even Tiddy's dad correct? Did you know that?
25 A. No, I didn't know about that one.

1 Q. Well, when you spoke to Detective Osborne last year
2 he told you he had charged some people with Obstruction
3 of Justice right?
4 A. Yes, ma'am.
5 Q. He was letting you know that -- he wanted you to
6 know that so you would know that he could charge you if
7 he felt you were lying correct?
8 A. Yes, ma'am.
9 Q. He didn't charge you then correct?
10 A. No.
11 Q. But you've not admitted that you lied to him -- or
12 you're saying that you lied to him back then?
13 A. Yes, ma'am.
14 Q. So it's possible that you could -- if you were
15 found to have been involved with anybody out there that
16 day have you heard that you can be charged with Murder?
17 A. Yes, ma'am.
18 Q. Okay. You don't want that.
19 A. No.
20 MS. FORD: Beg the court's indulgence.
21 THE COURT: Yes, ma'am.
22 [Whereupon, Ms. Ford and Mr. Butler confer]
23 MS. FORD: No further questions.
24 THE COURT: Any redirect?
25 MR. DURANT: Just a couple, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. DURANT:

3 Q. Just to be clear Mr. Wescott Detective Osborne
4 interviewed you on June the 6th of 2011 and then you were
5 interviewed again last week is that correct?

6 A. Yes, sir.

7 Q. Has anybody from the police department or my office
8 or anybody else ever talk to you about what happened on
9 Drive other than on those two occasions?

10 A. No, sir.

11 Q. So when you were arrested for your unrelated charges
12 back in March nobody tried to talk to you about it is
13 that correct?

14 A. No.

15 Q. Okay. And secondly did anyone -- did he -- did Mr.
16 Casey, did anyone last week tell you that if you came in
17 and lied about Freddie Flowers that you would get a break
18 on your charges?

19 A. No. They ain't tell me nothing like that.

20 Q. That's because it didn't happen did it?

21 A. No, sir.

22 Q. Thank you.

23 THE COURT: Recross?

24 - - -

25 - - -

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1 A. Yes, sir.
2 Q. For what?
3 A. Drug charge.
4 Q. I believe you were convicted in Magistrate's Court
5 in 2011 were you not for providing false information to
6 police?
7 A. Yes, sir.
8 Q. And then in 2012 you went to serve a youthful
9 offender sentence at Trenton for Possession of Cocaine,
10 Possession with Intent to Distribute Cocaine times two is
11 that correct?
12 A. Yes, sir.
13 Q. And who was your lawyer during that?
14 A. Peter McCoy.
15 Q. That's Peter McCoy sitting right there [indicates]
16 in the back of the courtroom is that correct?
17 A. Yes, sir.
18 Q. Okay. And how much time you got to do in Trenton?
19 A. Ten months.
20 Q. You got another month to go?
21 A. Seven more months ---
22 Q. Oh, seven months to go. I'm sorry I misunderstood
23 you. You haven't been charged in this shooting is that
24 correct?
25 A. No, sir.

1 Q. I want to ask has anyone promised you anything to
2 get you to testify here today?

3 A. No, sir.

4 Q. Now I want to ask you if you know some folks. Did
5 you know a fellow named Tiddy?

6 A. No, sir.

7 Q. Okay. Or James Javon Smith is his real name. Did
8 you know him at all?

9 A. No, sir.

10 Q. Had you ever met him before?

11 A. No, sir.

12 Q. Okay. And -- but you know he's the guy that got
13 shot in this case right?

14 A. Yes, sir.

15 Q. Who is Frederick Flowers?

16 [Whereupon, the witness points to an individual]

17 Q. Who are you pointing to?

18 A. Frederick Flowers.

19 Q. And if you would describe what he is wearing.

20 A. Black suit with a black tie.

21 Q. Okay. A dark suit with a dark tie sitting over by
22 the gentleman with the red tie on is that correct?

23 A. Yes, sir.

24 Q. Okay. How long have you known Freddie Flowers?

25 A. A little over a year.

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- 1 Q. Okay. And how did you get to know Freddie?
2 A. From school and from being around the same area.
3 Q. Okay. You hang out in the Forest some? West Oak
4 Forest?
5 A. Somewhat, yes sir.
6 Q. Okay. But you're not from there are you?
7 A. No, sir.
8 Q. Where are you from?
9 A. I be in Ashleyville.
10 Q. Okay. And where is Ashleyville?
11 A. Across the highway.
12 Q. So what is your relationship with Freddie Flowers,
13 friends, acquaintances, associates?
14 A. Friend and associate.
15 Q. Okay. How about a fellow named Myhesa Wine? Do
16 you know him?
17 A. Yes, sir.
18 Q. What do you know -- what name do you know Myhesa by?
19 What do you call him?
20 A. My.
21 Q. And how do you know My?
22 A. From school.
23 Q. And do you know how long you've known My?
24 A. Around the same time, about two years.
25 Q. Are you closer to My or Freddie?

1 A. Closer to My.
2 Q. How about a fellow named Cornelius Jenkins or C.J.
3 do you know him?
4 A. Yes, sir.
5 Q. Where do you know him from?
6 A. School and around the area.
7 Q. And is he from the Forest?
8 A. Yes, sir.
9 Q. How about Freddie, is he from the Forest?
10 A. Yes, sir.
11 Q. How about My is he from the Forest?
12 A. Yes, sir.
13 Q. You know a fellow named Carlos Jones, he also goes
14 by Butta or some people call him Los do you know him?
15 A. Yes, sir.
16 Q. And finally a fellow named Reginald Wescott. Do you
17 know a fellow named Reginald Wescott?
18 A. Yes, sir.
19 Q. What do you call Reggie?
20 A. Reggie.
21 Q. Okay. And how do -- you know all these guys from
22 where?
23 A. School, high school, and growing up.
24 Q. Okay. But most of them you hung out with -- when
25 did you become a part of this group?

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- 1 A. I'm not part of that group.
- 2 Q. Okay. You're not from the Forest, but you hung
3 around with these guys some is that correct?
- 4 A. From time to time, yes sir.
- 5 Q. Okay. And one of those times was March the 1st of
6 2011 wasn't it?
- 7 A. Yes, sir.
- 8 Q. The day that Tiddy was murdered in this case?
- 9 A. Yes, sir.
- 10 Q. Let's talk about that day. Were you over at St.
11 Clair that day?
- 12 A. Yes, sir.
- 13 Q. is that correct -- who lives at that address?
- 14 A. Homer.
- 15 Q. Do you know Homer's real name?
- 16 A. No, sir.
- 17 Q. You've just always known him as Homer?
- 18 A. Yes, sir.
- 19 Q. Who else lives in that house do you know; if you
20 know?
- 21 A. No sir, not really.
- 22 Q. Okay. And you remember how you got over there that
23 day?
- 24 A. Yes, sir.
- 25 Q. How did you get over there?

1 A. Got dropped off.
2 Q. Now who all was hanging out over at Homer's house
3 when you went over there that day?
4 A. Me, Myhesa, Reggie, Nasty.
5 Q. Nasty is who, Reggie Wescott?
6 A. Yes, sir. And Freddie and Homer, Mike.
7 Q. Okay. Homer is the guy that lives there right?
8 A. Yes, sir.
9 Q. And Mike is Mike Deas?
10 A. Yes, sir.
11 Q. Okay. Was Cornelius Jenkins over there?
12 A. Yes, sir.
13 Q. And how about Carlos Jones was he over there that
14 day?
15 A. Yes, sir.
16 Q. Now who all was hanging out inside the house?
17 A. I can't really recall.
18 Q. Okay. Well you know who was out there at the time
19 the shooting place right?
20 A. Yes, sir.
21 Q. And was Homer out there when the shooting took
22 place?
23 A. I don't -- I don't think so. I think he was in the
24 house --
25 Q. Okay. You don't remember Homer being out there

1 when the shooting took place do you?
2 A. No, sir.
3 Q. Now -- and was Mike Deas inside the house or outside
4 the house?
5 A. I believe outside.
6 Q. Okay. Now where were y'all all hanging out at
7
8 A. Close to -- in the driveway.
9 Q. In the driveway part? Up close to the house or out
10 closer to the street?
11 A. I believe closer to the house.
12 Q. Okay. Now while y'all were out there was there any
13 discussion between any of these people about robbing
14 anybody?
15 A. No, sir.
16 Q. Not that you heard right?
17 A. No, sir.
18 Q. Now what were y'all all doing out there?
19 A. Just hanging out, conversing, joking around.
20 Q. Okay. Talking?
21 A. Yes, sir.
22 Q. Smoking any weed?
23 A. No, sir.
24 Q. Anybody drinking?
25 A. No, sir.

- 1 Q. Now tell us about the red car that showed up.
- 2 A. We were hanging in the driveway and see a red car
3 coming down a street.
- 4 Q. Which way was he coming from? Was he coming from
5 the Wantoot side or Whitmore side?
- 6 A. I think Wantoot side. I'm not really sure.
- 7 Q. Okay. Which side of the car was facing y'all, the
8 passenger side or the driver's side?
- 9 A. The passenger side.
- 10 Q. Okay. This is [indicates], this is
11 Homer's house [indicates], the car was coming this way
12 [indicates] is that correct?
- 13 A. Yes sir, from Wantoot.
- 14 Q. Okay. Had you ever seen that car before?
- 15 A. No, sir.
- 16 Q. Could you see who was in that car?
- 17 A. Two suspects.
- 18 Q. Two suspects?
- 19 A. I mean two people.
- 20 Q. There were two people? Were they black or white?
- 21 A. Two black people.
- 22 Q. Okay. Did you know either one of them?
- 23 A. No, sir.
- 24 Q. And where did the car stop?
- 25 A. Like in front of the driveway.

- 1 Q. Okay. Where Homer's driveway meets out
2 in that area?
- 3 A. Yes, sir.
- 4 Q. And what happened after the car stopped?
- 5 A. The car stopped. I seen Freddie approaching the
6 car. And I guess it was somebody -- but not nothing
7 unusual so I mean...
- 8 Q. I'm sorry. I couldn't understand what you said.
9 You said Freddie approached the car and I couldn't hear
10 what you said next.
- 11 A. I said I saw Freddie approaching the car as if the
12 car was -- so as he was approaching the car it wasn't
13 nothing unusual. And then he get to the window I guess
14 to have a conversation and I hear like two gunshots going
15 off.
- 16 Q. Okay. And who had the gun?
- 17 A. I didn't see no gun.
- 18 Q. Okay. Where were the shots coming from?
- 19 A. In the area of the red car.
- 20 Q. Who else was over by the red car besides Freddie?
- 21 A. The two people that was sitting in the car.
- 22 Q. The two people that were in the car never got out of
23 the car is that correct?
- 24 A. No, sir.
- 25 Q. Okay. And do you remember how many shots you heard

1 in all?

2 A. After the two shots I remember running towards
3 Homer's front door. And as I was heading towards
4 Homer's front door I hear about three more gunshots after
5 that.

6 Q. Okay. Now who came out of the house after the
7 gunshots?

8 A. I believe Homer.

9 Q. Okay. Do you believe Homer or did Homer come out
10 of the house.

11 A. Homer came out of the house.

12 Q. Okay. And what did Homer say?

13 A. He asked what was going on or whatever like that.
14 And everybody was looking shocked. Then he just told
15 everybody to clean out of his yard.

16 Q. Okay. Was Carlos out there?

17 A. Yes, sir.

18 Q. Do you remember if Carlos said anything to Freddie?

19 A. Not that I believe, no sir.

20 Q. Okay. Had you run into the house?

21 A. Yes, sir.

22 Q. So Homer basically was telling everybody to get --
23 to go to do what?

24 A. Exit his yard.

25 Q. Okay. So you went where?

1 A. I still was -- I was still was in there and when I
2 came back outside I saw everybody going their separate
3 ways and I was trying to caught me a ride to leave.

4 Q. Okay. But you went inside Homer's house is that
5 correct?

6 A. Yes, sir.

7 Q. And where were you when the police got there later?

8 A. I believe I was -- I went on in the house and I
9 stepped outside on the back porch.

10 Q. Okay. So you were -- stayed at Homer's house and
11 you were there when the police got there is that correct?

12 A. Yes, sir.

13 Q. Did the police ask -- when they got there did they
14 ask you if you had seen anything?

15 A. Yes, sir.

16 Q. What did you tell them?

17 A. I tell them no, no sir.

18 Q. Was that the truth?

19 A. I also did it because I mean I didn't know what
20 happened. I mean I was not involved.

21 Q. Come on Mr. Quarles, was that the truth you hadn't
22 seen nothing?

23 A. No, sir.

24 Q. Because you had seen something correct?

25 A. Yes, sir.

1 Q. Now later on on March the 15th do you remember
2 talking to Detective Osborne at the Charleston Police
3 Department with another detective, Detective Sabarco
4 [phonetic]?

5 A. Yes, sir.

6 Q. Okay. And do you remember what you told them that
7 day?

8 A. Yes, sir.

9 Q. What did you tell them?

10 A. They asked me who all been over there when I was
11 over there?

12 Q. Uh huh.

13 A. I tell them I wasn't out there.

14 Q. You told him you weren't out there at the time of
15 the shooting is that correct?

16 A. Yes, sir.

17 Q. Where did you tell him that you were?

18 A. Inside the house.

19 Q. Okay. You told him you had been inside the house
20 for how long?

21 A. About an hour -- an hour it probably been.

22 Q. Okay. And what did you tell them after when you
23 heard the gunshots?

24 A. I can't remember.

25 Q. You can't remember because it wasn't the truth isn't

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1 it?
2 A. [No response]
3 Q. Correct?
4 A. Yes, sir.
5 Q. Okay. So you basically told them you never even
6 went outside or looked outside when you heard the
7 gunshots. Didn't you tell them that?
8 A. Yes, sir.
9 Q. And that wasn't the truth was it?
10 A. No, sir.
11 MR. DURANT: Court's indulgence for just a moment.
12 Q. [Mr. DuRant] Could you please answer any questions
13 that Ms. Ford may have for you?
14 THE COURT: Cross-examination?
15 CROSS-EXAMINATION
16 BY MS. FORD:
17 Q. Hello. You told us today that you've given several
18 different accounts of what happened that day correct?
19 A. Yes, sir. I mean yes, ma'am.
20 Q. I want to go over those different stories all right?
21 Okay?
22 A. [No response]
23 Q. So we'll start with story one. And that's when the
24 police talked to you the day of the shooting -- they
25 talked to you that day, right is what you told us?

- 1 A. Yes, ma'am.
- 2 Q. And you said you didn't see anything.
- 3 A. Yes, ma'am.
- 4 Q. And then the second time you spoke to police was
- 5 March 15th. Does that sound about right?
- 6 A. Yes, ma'am.
- 7 Q. Well, that day -- that interview might stand out for
- 8 a different reason because you had been shot just that
- 9 day right?
- 10 A. Not that day but a couple days before that.
- 11 Q. Okay. You were shot in the ankle?
- 12 A. Yes, ma'am.
- 13 Q. Okay. So some different detective, Detective
- 14 Sabarco I believe, he talked to you about what happened
- 15 on that day; about when you were shot?
- 16 A. Yes, ma'am.
- 17 Q. And then after he finished Detective Osborne came in
- 18 and talked to you?
- 19 A. Yes, ma'am.
- 20 Q. And pretty much the first thing he said he threw out
- 21 that he could charge you for lying if he wanted to?
- 22 A. Yes, ma'am.
- 23 Q. But you told him what you did that day.
- 24 A. Yes, ma'am.
- 25 Q. You mentioned that you went by the house earlier in

- 1 the day but nobody was out front.
- 2 A. Huh?
- 3 Q. Your sister dropped you off at around 12 correct?
- 4 That's what you told the police.
- 5 A. Yes, ma'am.
- 6 Q. Okay. And you went to Homer's house but no one was
- 7 in the front of the house when you first got there.
- 8 That's what you told Detective Osborne.
- 9 A. No, I said when I got dropped off over there a crowd
- 10 of people were outside.
- 11 Q. That a crowd of people were or were not outside?
- 12 A. Were outside, across the street.
- 13 Q. Yes, across the street; you remember. And you told
- 14 him you did not see C.J. or Freddie there at that point?
- 15 A. No, ma'am.
- 16 Q. So you did go inside the house correct?
- 17 A. [No response]
- 18 Q. That's what you told Detective Osborne you went
- 19 inside the house.
- 20 A. Yes, ma'am.
- 21 Q. And you were there for an hour or two before you
- 22 heard the gunshot?
- 23 A. Yes, ma'am.
- 24 Q. And you looked outside and saw nothing correct?
- 25 A. Yes, ma'am.

1 Q. And Detective Osborne asked you about your phone
2 number.

3 A. Yes, ma'am.

4 Q. He tried to call the phone number that he gave you
5 -- or you gave him right?

6 A. Yes, ma'am.

7 Q. It didn't ring correct?

8 A. Yes, ma'am.

9 Q. So he thought you were lying about your phone
10 number?

11 A. Yes, ma'am.

12 Q. You got upset during that interview didn't you
13 because they were questioning you about this when you had
14 just been shot?

15 A. Yes, ma'am.

16 Q. You asked to leave.

17 A. Yes, ma'am.

18 Q. But they kept talking to you.

19 A. Yes, ma'am.

20 Q. And so before this you had originally said Freddie
21 and C.J. weren't outside when you got there correct?

22 A. I said they weren't outside?

23 Q. Yes. You said they were not outside when you first
24 got there. That's what you said initially.

25 A. Yes, ma'am.

1 Q. But then you did change and say that they were
2 outside.
3 A. Yes, after all those other --
4 Q. After you were upset and wanted to leave you said
5 that.
6 A. No, ma'am.
7 Q. You don't remember how everything...
8 A. I been on my medicine. I don't recall all of it.
9 Q. You were on medicine?
10 A. Yes, ma'am.
11 Q. You told Detective Osborne that you really didn't
12 know Freddie all that well?
13 A. Yes, ma'am.
14 Q. And Detective Osborne was pretty much calling you a
15 liar wasn't he?
16 A. Yes, ma'am.
17 Q. And that upset you right?
18 A. Yes, ma'am.
19 Q. So that's all you really told Detective Osborne that
20 day right?
21 A. Yes, ma'am.
22 Q. Pretty simple, right?
23 A. [No response]
24 Q. You've been in jail since -- how long have you been
25 in jail -- or prison right now?

1 A. In prison like two to three months.

2 Q. And back in July, July 17th you had a phone interview
3 with somebody from my office do you remember that, Mr.
4 Novac [phonetic]; Keith Novac?

5 A. Yes, ma'am.

6 Q. And on that date you said that you never told the
7 police that Freddie was at the house correct?

8 A. Yes, ma'am.

9 Q. And you again said you were in the house for about
10 two hours when you heard the gunshot?

11 A. Yes, ma'am.

12 Q. You thought they were like firecrackers or
13 something.

14 A. Yes, ma'am.

15 Q. And then you end up talking to the Solicitor earlier
16 this month on August 3rd right?

17 A. Yes, ma'am.

18 Q. So this is story four, okay. And Investigator Casey
19 was there correct?

20 A. Yes, ma'am.

21 Q. And your lawyer, Peter McCoy was there.

22 A. Yes, ma'am.

23 Q. And you still said that your sister, Whitney dropped
24 you off at Homer's house at about 12 or so?

25 A. Yes, ma'am.

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1 Q. And you said when you got out there that C.J. and
2 Freddie were outside right?

3 A. Yes, ma'am.

4 Q. But then you also added that Myhesa and Carlos were
5 there too.

6 A. Yes, ma'am.

7 Q. You didn't mention Reggie at that point.

8 A. Yes, ma'am.

9 Q. But you said there was a large group of people
10 outside.

11 A. Yes, ma'am.

12 Q. But you maintained that you were inside the house
13 when the shooting happened.

14 A. Yes, ma'am. I said we were back and forth through
15 the yards.

16 Q. Okay. Well you said -- initially you told
17 Detective Osborne you had not been outside for an hour or
18 two before the shooting right?

19 A. Yes, ma'am. Yes ma'am; about an hour.

20 Q. But on this interview on August 3rd you told them
21 only about 15 or 20 minutes since you had last been
22 outside.

23 A. Yes, ma'am.

24 Q. And at that point C.J. and Myhesa were outside
25 correct?

1 A. Yes, ma'am.

2 Q. And you think Carlos was there right? And you said

3 I think Freddie.

4 A. Yes, ma'am.

5 Q. And then you came outside and you saw a man walking

6 -- running away.

7 A. Yes, ma'am.

8 Q. And you said that was Freddie running away?

9 A. Yes, ma'am.

10 Q. And he was wearing a white shirt?

11 A. Yes, ma'am.

12 Q. And people were kind of out there saying that

13 Frederick did it right ---

14 A. --- yes, ma'am ---

15 Q. --- that's what you told them earlier this month,

16 right?

17 A. Yes, ma'am.

18 Q. And then you said to be honest I really don't know

19 if this guy shot someone, I don't to be honest. That's

20 what you told them.

21 A. Yes ma'am, that's what I tell.

22 Q. Okay. That was on August 3rd of this year; so just

23 a few weeks ago right?

24 A. Yes, ma'am.

25 Q. And then they brought you back to their office just

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1 last week right?
2 A. Yes, ma'am.
3 Q. On the 23rd right? Does that sound right?
4 A. Yes, ma'am.
5 Q. So that would be Thursday, about Thursday?
6 A. [No response]
7 Q. And so this time you were there with Mr. McCoy
8 again, right?
9 A. Yes, ma'am.
10 Q. And pretty much you said what you told us today
11 correct?
12 A. Yes, ma'am.
13 Q. So you didn't hear anything said between Teddy --
14 Tiddy and Freddie right?
15 A. Yes, ma'am.
16 Q. That's what you told them last week.
17 A. [No response]
18 Q. They even asked you like they said hey, before you
19 didn't mention Reggie. And was Reggie out there and you
20 said yes he was. So you admitted you hadn't been
21 truthful about that correct?
22 A. [Indicates affirmatively]
23 Q. You have to say it for the record.
24 A. Yes, ma'am.
25 Q. Okay. So you've given various stories about what

1 happened right?

2 A. Yes, ma'am.

3 Q. Are you telling us today that you did not have a gun
4 that day?

5 A. No ma'am, I did not have a gun.

6 Q. You didn't have a gun?

7 A. No, ma'am.

8 Q. You did not see Nasty with a gun?

9 A. No, ma'am.

10 Q. You did not see Myhesa with a gun?

11 A. No, ma'am.

12 Q. Are you aware that some people are saying you had a
13 gun?

14 A. I stopped -- when I went down to them I started
15 saying that I had a gun and you hadn't mentioned it until
16 now.

17 Q. Okay. So you knew that people were saying that you
18 had a gun.

19 A. Yes ma'am, but that's not true.

20 Q. Okay. But you also know that there could be
21 charges if they believed that you were out there with a
22 gun as part of some armed robbery or something right?

23 A. I mean yes, ma'am.

24 Q. But you could even be charged with Murder yourself.

25 A. Yes ma'am. But I mean I ain't had no gun so I got

1 nothing to worry about.

2 Q. Okay. You don't want to be charged right, with
3 something else correct?

4 A. No, ma'am.

5 Q. Because you know that they can charge people right?

6 A. Yes, ma'am.

7 Q. They charged C.J. with Obstruction of Justice right?

8 A. Yes ma'am, but --

9 Q. You're currently in prison at Trenton right?

10 A. Yes, ma'am.

11 Q. Now you told us that you have a sentence of like ten
12 months correct?

13 A. Yes, ma'am.

14 Q. But that's not actually set in stone is it?

15 A. [No response]

16 Q. The Youthful Offender Act is not a regular prison
17 sentence right?

18 A. No, ma'am.

19 Q. So you actually do -- is this your understanding
20 that you do about 10 to 13 months and then you get out on
21 parole, correct?

22 A. Yes, ma'am.

23 Q. And some people don't even get out after 10 or 13
24 months right?

25 A. Yes, ma'am.

1 Q. Sometimes there may be issues of having a place to
2 live when they get out.
3 A. Yes, ma'am.
4 Q. Or sometimes they may be acting up and so they won't
5 release them correct?
6 A. Yes, ma'am.
7 Q. Or sometimes they have other pending charges and
8 they don't want to release them right?
9 A. Yes, ma'am.
10 Q. So when people do get out then they are on parole
11 correct?
12 A. Yes, ma'am.
13 Q. And if they mess up on parole then they can be sent
14 back to the Y prison correct?
15 A. Yes, ma'am.
16 Q. And they can keep doing that to you for up to six
17 years can't they?
18 A. Yes, ma'am.
19 Q. So they have a lot over your head, don't they?
20 A. Yes, ma'am.
21 Q. And prison is not a fun place right?
22 A. No, ma'am.
23 Q. So you can't eat the kind of food you want right?
24 A. No, ma'am.
25 Q. You can't watch what you want to watch on T.V.

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1 A. No, ma'am.

2 Q. You can't go chat and hook up with girls right?

3 A. No, ma'am.

4 Q. It's not a place you want to stay?

5 A. No, ma'am.

6 Q. It's not a place you want to go back to.

7 A. No, ma'am.

8 Q. You came and talked to the Solicitors -- to the

9 Solicitor because you didn't want to get in any more

10 trouble correct?

11 A. How do you mean?

12 Q. You were worried that you might get in trouble if

13 you went and testified correct?

14 A. No, ma'am.

15 Q. You weren't worried about that?

16 A. No, ma'am.

17 Q. You just changed your story because...

18 A. That's what happened that day.

19 Q. Okay. And so you've lied before correct?

20 A. Yes, ma'am.

21 Q. But you're saying you're telling the truth now?

22 A. Yes, ma'am.

23 Q. And so if other people are saying something

24 different they are lying.

25 MR. DURANT: Pitting, Your Honor.

1 MS. FORD: Withdrawn.
2 THE COURT: Okay.
3 MS. FORD: Beg the court's indulgence.
4 THE COURT: Yes, ma'am.
5 MS. FORD: No further questions.
6 THE COURT: Redirect?
7 MR. DURANT: Just a couple.
8 REDIRECT EXAMINATION
9 BY MR. DURANT:
10 Q. You actually were one of the two that didn't run
11 away is that correct, after the shooting?
12 A. You say I was one of the two?
13 Q. You didn't run away after the shooting did you? You
14 went into Homer's house is that correct?
15 A. Yes, sir.
16 Q. And Carlos Jones stayed there too right?
17 A. Yes, sir.
18 Q. And I ask you has anybody; me, him, Mr. Casey, ever
19 said hey man you come in and you lie about Freddie
20 Flowers and we'll get you out of prison early. Did that
21 conversation ever take place?
22 A. No, sir.
23 Q. Thank you.
24 THE COURT: Recross?
25 - - -

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RECROSS-EXAMINATION

BY MS. FORD:

Q. Mr. Quarles, they didn't ask you if someone else did it did they? They didn't say hey, did you see Myhesa shoot anyone? Did they ask you that?

A. No, ma'am.

Q. Did they ask you if you saw Carlos shoot anyone?

A. No, ma'am.

Q. Did they ask you if you saw Nasty shoot anyone?

A. No, ma'am.

Q. Did they ask you if you saw Homer shoot anyone?

A. No, ma'am.

Q. So they just asked you about Freddie?

A. No, ma'am. He didn't really ask me if Freddie had shoot someone.

Q. They didn't ask you if Freddie shot someone?

A. No, ma'am. They asked me to tell the story about what happened that day.

Q. Okay. They didn't ask about the other people?

A. I mean they asked me why I was out there, yes ma'am.

Q. All right. No further questions.

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

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

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

2 THE COURT: Yes, sir.

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

5 [Whereupon, the jury exits the courtroom]

6 [Whereupon, court takes a brief recess]

7 THE COURT: Is the State ready to proceed?

8 MR. DURANT: Yes, Your Honor.

9 THE COURT: The defense ready to proceed?

10 MS. FORD: Yes, Your Honor.

11 THE COURT: Bring us the jury please?

12 [Whereupon, the jury enters the courtroom at 3:47
13 p.m.]

14 THE BAILIFF: All jurors present, Your Honor.

15 THE COURT: Thank you very much. Call your next
16 witness please?

17 MR. DURANT: The State would call Myhesa Wine.

18 [Whereupon, Mr. Wine comes forward]

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

23 MR. WINE: Yes, ma'am.

24 CLERK OF COURT: State your full name and spell
25 your last name.

1 MR. WINE: Myhesa Wine W-I-N-E.

2 [Whereupon, the witness takes the witness stand]

3 THE COURT: Solicitor, hold on just a second, okay?

4 MR. DURANT: Yes, sir.

5 [Off the record momentarily]

6 THE COURT: All right. Ladies and gentlemen of
7 the jury, as y'all well know there has been a heavy rain
8 and most of downtown Charleston is flooded. The traffic
9 is extremely heavy. The Clerks had some people out
10 driving.

11 And so what we are going to do is close court down
12 now. Apparently when you come out of the Wentworth
13 Street garage you are better off going down Meeting
14 Street to Calhoun and out if you're going across the
15 Ashley or go over to East Cooper on Calhoun and then go
16 across the Cooper River Bridge. It appears that's the
17 best -- any way you go the traffic is extremely heavy.
18 It's better than it was two hours ago.

19 We are not going to reconvene until 10 o'clock in
20 the morning because the high tide comes in at 7:30; that
21 will be about two and a half hours after high tide and
22 hopefully the water has receded by then.

23 So we are going to adjourn and reconvene in the
24 morning at 10 o'clock. Please be careful. And they say
25 any way you go the traffic is very, very heavy primarily

1 because the limited routes people can get off the
2 peninsula and a lot of your smaller roads in town are
3 flooded, so be careful. See you in the morning at 10
4 o'clock. Please don't discuss the case with anyone else.

5 [Whereupon, the jury exits the courtroom at 3:51
6 p.m.]

7 THE COURT: Anything from the State before we
8 adjourn?

9 MR. DURANT: No, sir.

10 THE COURT: How about the defense, anything from
11 the defense?

12 MS. FORD: No, Your Honor.

13 THE COURT: All right. We'll adjourn until 10
14 o'clock in the morning. Be careful traveling.

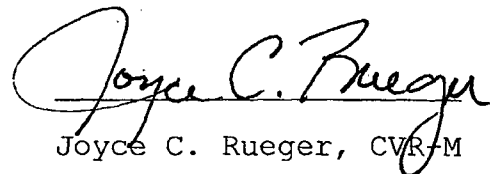
15 [Whereupon, court adjourns at 3:54 p.m.]
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C E R T I F I C A T E

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 28th 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
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
INDICTMENT #: 2011-GS-10-4314

STATE OF SOUTH CAROLINA)

vs.)

FREDERICK FLOWERS)

Defendant)

JURY TRIAL

VOLUME 3 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 29, 2012, Commencing at 10:00 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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1 PROCEEDINGS

2 THE COURT: Is the State ready to proceed?

3 MR. DURANT: Yes sir, Your Honor.

4 THE COURT: Is the defense ready?

5 MS. FORD: Yes, Your Honor.

6 THE COURT: Is Mr. Wine here?

7 MR. DURANT: He's out in the hallway, Your Honor.

8 THE COURT: Bring us the jury please?

9 MR. DURANT: Should I go ahead and put him on or

10 just wait until ---

11 THE COURT: --- we'll wait until the jury gets

12 here.

13 [Whereupon, the jury enters the courtroom at 10:07

14 a.m.]

15 THE BAILIFF: All jury present, Your Honor.

16 THE COURT: Okay. Thank you, very much. You can

17 call your next witness please?

18 MR. DURANT: The State would call Myhesa Wine.

19 [Whereupon, Mr. Wine comes forward]

20 [Whereupon, the witness is duly sworn by the Clerk

21 of Court as follows: do you swear or affirm your

22 testimony will be the truth, the whole truth, and nothing

23 but the truth so help you God]

24 MR. WINE: I do.

25 CLERK OF COURT: State your full name and spell

1 your last name.

2 MR. WINE: Myhesa Wine, W-I-N-E.

3 [Whereupon, the witness takes the witness stand]

4 THE COURT: Please proceed.

5 MR. DURANT: Thank you, Your Honor.

6 - - - - -

7 MYHESA WINE,

8 Having been first duly sworn,

9 Was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DURANT:

12 Q. Mr. Wine, what do most people call you?

13 A. My.

14 Q. And how old are you Mr. Wine?

15 A. 29.

16 Q. How far did you go in school?

17 A. I graduated.

18 Q. And where did you graduate from?

19 A. Clark.

20 Q. And what year did you graduate?

21 A. 2010.

22 Q. Are you currently working?

23 A. Yes, sir.

24 Q. Where do you work?

25 A. Pizza Hut.

1 Q. And what do you do for Pizza Hut?
2 A. Production.
3 Q. And are you married?
4 A. Yes, sir.
5 Q. And do you have any children?
6 A. One.
7 Q. And is it a boy or girl?
8 A. Boy.
9 Q. You are here today pursuant to a subpoena are you
10 not?
11 A. Yes, sir.
12 Q. Do you want to be here?
13 A. No, sir.
14 Q. I'm going to ask you about some people that you know
15 okay. Did you know the guy that was murdered in this
16 case James Smith that people called Tiddy? Did you know
17 him?
18 A. Yes, sir.
19 Q. And did you know him well?
20 A. No, sir.
21 Q. How did you know him?
22 A. Just a guy -- go around the neighborhood.
23 Q. Okay. A guy that came around the neighborhood
24 doing what?
25 A. He was selling drugs.

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- 1 Q. Okay. So he wasn't a friend of yours right?
- 2 A. Yes.
- 3 Q. Did you know what he looked like?
- 4 A. Yes, sir.
- 5 Q. How do you know -- you're from what neighborhood?
- 6 A. The Forest.
- 7 Q. Okay. So you live in the Forest?
- 8 A. Yes.
- 9 Q. Do you know Frederick Flowers?
- 10 A. Yes, sir.
- 11 Q. And could you point out Frederick Flowers to the
- 12 jury?
- 13 A. Straight across [indicates].
- 14 Q. The fellow with the grey suit on with a grey tie?
- 15 A. Yes, sir.
- 16 Q. How long have you known Mr. Flowers?
- 17 A. About five or six years.
- 18 Q. And what is your relationship with him?
- 19 A. Just a friend playing ball and stuff.
- 20 Q. He's a friend and y'all hang out together a good
- 21 bit?
- 22 A. Yes, sir.
- 23 Q. Now do you know somebody named Cornelius Jenkins?
- 24 A. Yes, sir.
- 25 Q. And what do you call Cornelius?

- 1 A. C.J.
- 2 Q. How do you know Cornelius?
- 3 A. A guy that is around the neighborhood.
- 4 Q. Is he from the Forest too?
- 5 A. Yes, sir.
- 6 Q. And Freddie is from the Forest as well?
- 7 A. Yes, sir.
- 8 Q. Is Cornelius a friend of yours?
- 9 A. No, not really.
- 10 Q. Not as much as Freddie?
- 11 A. No.
- 12 Q. What is Cornelius's relationship with Freddie
- 13 Flowers?
- 14 A. Friend.
- 15 Q. Are they good friends?
- 16 A. Just a friend.
- 17 Q. Okay. You know a fellow named Reginald Wescott?
- 18 A. Yes, sir.
- 19 Q. And what is his nickname?
- 20 A. Nasty.
- 21 Q. And what is your relationship with Mr. Wescott?
- 22 A. A -- down line -- cousin.
- 23 Q. Pardon?
- 24 A. A down line cousin.
- 25 Q. Down the line cousin? In addition to being related

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1 to him do you also have a personal relationship with him?
2 A. Yes.
3 Q. Okay. He's a friend of yours?
4 A. Yes..
5 Q. Would you consider him a close friend?
6 A. Yes, sir.
7 Q. And what is his relationship with Freddie Flowers?
8 A. A friend.
9 Q. You know a fellow named Michael Quarles?
10 A. Yes, sir.
11 Q. And what is his nickname?
12 A. Little Mike.
13 Q. Now is Little Mike from the Forest?
14 A. No, sir.
15 Q. How well do you know Little Mike?
16 A. We were in high school together.
17 Q. Where did y'all go to high school together?
18 A. At West Ashley High School.
19 Q. Okay. And you were at West Ashley before you went
20 to Clark, is that correct?
21 A. Yes, sir.
22 Q. And what area is Mr. Quarles from?
23 A. Ashleyville.
24 Q. And lastly I'd like to ask you about a fellow named
25 Carlos Jones. Do you know Carlos?

- 1 A. Yes, sir.
- 2 Q. And what's his nickname?
- 3 A. Butta.
- 4 Q. And you've known Carlos for how long?
- 5 A. A long time.
- 6 Q. Is he -- where is he from?
- 7 A. The Forest.
- 8 Q. Okay. You were pretty much raised up in the same
- 9 area?
- 10 A. Uh huh.
- 11 Q. Is he older or younger than you?
- 12 A. Older.
- 13 Q. How much older?
- 14 A. About six or five years.
- 15 Q. Okay. What is his relationship with Freddie
- 16 Flowers?
- 17 A. A friend.
- 18 Q. Okay. I want to talk about the day that Tiddy got
- 19 murdered. Where did you wake up that day?
- 20 A. My home.
- 21 Q. And during the day did you go over to
- 22 Drive?
- 23 A. Yes, sir.
- 24 Q. And what did you do over there earlier in the day?
- 25 A. I went over there to ask Homer is he had a

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1 cigarette.
2 Q. Okay. And Homer lives where?
3 A. On Drive.
4 Q.
5 A. Yes, sir.
6 Q. And what is Homer's real name?
7 A. Brandon.
8 Q. Was anybody else over there at that time when you
9 went over there?
10 A. No, sir.
11 Q. And do you recall about what time of day this was?
12 A. It was like around 1:00.
13 Q. And where did you go from Homer's house?
14 A. The Amoco.
15 Q. The Amoco where?
16 A. In the Forest on Savannah Highway.
17 Q. Right there at Savannah Highway and Wappoo?
18 A. Yes, sir.
19 Q. And what did you go there for?
20 A. To get an Arizona and a blunt.
21 Q. And after you went to B.P. -- or the Amoco or
22 whichever it is, who called you on the phone?
23 A. Frederick.
24 Q. And when you say Frederick you mean Frederick
25 Flowers?

1 A. Yes, sir.
2 Q. And after Freddie called you on the phone where did
3 you go?
4 A. Frederick's house.
5 Q. And where does Frederick live?
6 A. On Wemby.
7 Q. Wemby?
8 A. Yes, sir.
9 Q. Okay. And where is Wemby in relation to St.
10 Clair?
11 A. Down the street like on the other side of the
12 Forest.
13 Q. How many -- two or three blocks away?
14 A. Yes.
15 Q. Okay. And do you know which direction?
16 A. Yes.
17 Q. Back toward ---
18 A. --- more towards Savannah Highway.
19 Q. Back towards Savannah Highway?
20 A. Yes.
21 Q. So this is State's exhibit 32. This has previously
22 been identified as -- this would be
23 Savannah Highway on this [indicates]. Can you see Wemby
24 on this map?
25 [Whereupon, the witness is shown exhibit]

1 Q. About here [indicates] would that be Wemby?
2 A. Yes, sir.
3 Q. Okay. So that's where he lives? This is is
4 that correct?
5 A. Yes, sir.
6 Q. Now when you went over to Freddie's house on Wemby
7 where was Freddie?
8 A. In the garage.
9 Q. And do you know if anybody else was there at the
10 time?
11 A. No, sir.
12 Q. Did somebody show up later?
13 A. Carlos.
14 Q. And when you say Carlos you mean Carlos Jones?
15 A. Yes, sir.
16 Q. He also goes by Butta?
17 A. Butta.
18 Q. Do you remember how he got there?
19 A. He got dropped off.
20 Q. Do you know who dropped him off?
21 A. No, sir.
22 Q. Now while you were at Freddie's house that day that
23 afternoon what was he talking about doing?
24 A. Hitting a lick.
25 Q. What is hitting a lick?

- 1 A. Robbing somebody.
- 2 Q. Was he talking about robbing anybody in particular?
- 3 A. No, sir.
- 4 Q. What type of person was he talking about robbing?
- 5 A. A drug dealer.
- 6 Q. Why did he want to rob a drug dealer?
- 7 A. Just to get a reputation.
- 8 Q. Now before going to Freddie's house you said he
- 9 called you. Do you know what kind of cell phone he had?
- 10 A. A blue Cricket phone.
- 11 Q. Okay. And do you know what -- I know you probably
- 12 don't remember the number but do you remember the prefix
- 13 to that telephone?
- 14 A. The first ---
- 15 Q. --- the first three numbers?
- 16 A. The first one was 640 -- 90 --
- 17 Q. So he had two phones?
- 18 A. Yes, sir.
- 19 Q. Okay. And do you know which one of those phones
- 20 the 735 number belonged to?
- 21 A. The blue Cricket.
- 22 Q. Okay. And was there anything unusual about the
- 23 blue Cricket Kyocera that he had?
- 24 A. It had a missing piece in the back.
- 25 Q. Okay. Mr. Wine, I'm going to ask you to when I'm

1 talking to you could you get a little closer to the
2 microphone because I understand the jury may be having
3 some difficulty hearing you.
4 A. Okay.
5 Q. You're kind of soft spoken. I'm going to show you
6 what's previously been marked as State's exhibit number
7 40 and ask if you recognize that telephone?
8 [Whereupon, the witness is shown exhibit]
9 A. Yes, sir.
10 Q. And where do you recognize that telephone from?
11 A. Frederick ---
12 Q. --- as being -- belonging to who?
13 A. Freddie Flowers.
14 Q. That's the kind of telephone you saw him using is
15 that correct?
16 A. Yes, sir.
17 Q. Did you see that phone that day when you were over
18 there a little after 1 o'clock in the afternoon?
19 A. Yes, sir.
20 Q. Where did you see it?
21 A. At Frederick's house.
22 Q. Where at Frederick's house?
23 A. On --
24 Q. Where?
25 A. On Wemby Drive.

- 1 Q. I know, but did he have it out? Was he talking on
2 it? Where did you actually physically see him with it?
3 A. I see it like laying on the table.
4 Q. How long were you over at Wemby that day?
5 A. About 30 or 35 minutes.
6 Q. And where did you go when you left Wemby?
7 A. Home.
8 Q. Now later on that afternoon did you end up back over
9 at
10 A. Yes, sir.
11 Q. And who did you go over there with?
12 A. Michael Quarles.
13 Q. That would be Little Mike?
14 A. Yes, sir.
15 Q. Y'all just happened to hook up and walk over there
16 or what?
17 A. Yes, sir.
18 Q. Now when y'all got over to that
19 afternoon who was there?
20 A. Carlos and Freddie.
21 Q. Okay. And when you say Freddie you mean Freddie
22 Flowers is that correct?
23 A. Yes, sir.
24 Q. How about Cornelius Jenkins, was he there?
25 A. Yes, sir.

1 Q. And the three of them were already there when you
2 and Michael got there is that correct?

3 A. Yes, sir.

4 Q. Was Reggie Wescott there when you got there?

5 A. He came right behind us.

6 Q. Okay. So he came after you?

7 A. Yes, sir.

8 Q. He came by himself?

9 A. Yes, sir.

10 Q. Now where were y'all hanging out at

11 A. In Brandon's yard.

12 Q. Okay. So y'all weren't in the house is that
13 correct?

14 A. No, sir.

15 Q. Do you know who was in the house?

16 A. Brandon.

17 Q. Okay. And why were y'all hanging out at

18 A. Just a spot to hang out.

19 Q. Okay. Was that pretty -- was that a spot y'all
20 went to frequently to hang out?

21 A. Yes, sir.

22 Q. And what did y'all do when you were hanging out at

23

24 A. Just hanging around talking.

25 Q. Okay. And while y'all were hanging around talking

1 was there any discussion of anybody robbing a drug
2 dealer?
3 A. Yes, sir.
4 Q. Pardon?
5 A. Yes, sir.
6 Q. Who was talking about that?
7 A. Freddie.
8 Q. And was he talking about robbing any specific drug
9 dealer at that time?
10 A. The name Tiddy came up.
11 Q. The name Tiddy came up?
12 A. Yes, sir.
13 Q. Do you know how Tiddy came to be over there?
14 A. No, sir.
15 Q. In other words do you know who called Tiddy?
16 A. Freddie.
17 Q. And who was supposed to be doing the lick on Tiddy?
18 A. Freddie.
19 Q. And I think a lick you've already explained is a
20 robbery is that correct?
21 A. Yes, sir.
22 Q. Now -- okay tell us what happened after Freddie
23 called Tiddy?
24 A. Freddie was about to leave. His uncle called him.
25 As soon as he leave he was going down Wemby way. And

1 after he see the red car coming down the street he made a
2 U-turn and come back down and dropped his bike in the
3 yard and I see him at the car.
4 Q. Okay. So let's slow down a little bit. So Freddie
5 was going to go where?
6 A. He was going back to his house on Wemby.
7 Q. Okay. And why was he going back there?
8 A. To drop him back off to his home.
9 Q. And what happened? So he rode off on a bike?
10 A. Yes, sir.
11 Q. And how far did he ride?
12 A. Down to the end of the street at Wantoot and St.
13 Clair.
14 Q. Okay. And referring to State's exhibit number 31,
15 this is He rode off this way [indicates] on a
16 bike?
17 [Whereupon, the witness is shown exhibit]
18 A. Yes, sir.
19 Q. And how far down did he get and what did he do when
20 he got there?
21 A. He made a U-turn and come back down.
22 Q. Came back? And where did he drop the bike?
23 A. Right here [indicates].
24 Q. And this would be?
25 A. Freddie.

1 Q. Okay. And where were y'all hanging out in front of
2 Brandon's?

3 A. In the driveway closer to the house.

4 Q. Okay. And what did you see coming down the road
5 after Freddie -- when Freddie came back?

6 A. A red car.

7 Q. And could you see who was in the red car?

8 A. Not at the moment.

9 Q. Where did the red car come to? Or where did the red
10 car stop?

11 A. In front of Homer's house.

12 Q. Did you recognize the car? Had you ever seen it
13 before?

14 A. No, sir.

15 Q. When this car stopped in front of Homer's house did
16 you see who was in the car then?

17 A. Yes, sir.

18 Q. And who was in the car?

19 A. Tiddy.

20 Q. And could you see who was driving the car?

21 A. Yes, sir.

22 Q. And what did the guy driving the car look like?

23 A. An older guy.

24 Q. Okay. Had you ever seen him before?

25 A. No, sir.

- 1 Q. Okay. But it was an older guy?
- 2 A. Yes, sir.
- 3 Q. And what side of the car was Tiddy on; the driver's
- 4 side or the passenger side?
- 5 A. Passenger.
- 6 Q. And which side of the car was facing
- 7 A. Towards the --
- 8 Q. I mean which side of the car was facing the house?
- 9 Y'all were on the driver's side or the passenger side?
- 10 A. The passenger side.
- 11 Q. Okay. Now after Freddie dropped the bike what did
- 12 he do?
- 13 A. He went to the car.
- 14 Q. He walked up to the car?
- 15 A. Yes, sir.
- 16 Q. Who else approached the car?
- 17 A. No one else.
- 18 Q. And if you would tell me what happened.
- 19 A. I was in my phone.
- 20 Q. What do you mean you were in your phone?
- 21 A. Like this [indicates] like just random in my phone;
- 22 like texting or something. And I just hear this tumbling
- 23 sound.
- 24 Q. Tumbling sound?
- 25 A. Like people fighting over the gun or something.

1 Then I looked up.
2 Q. Okay. And what did you see when you looked up?
3 A. I see shots -- I heard shots.
4 Q. Okay. Do you remember how many shots you heard?
5 A. About three or four.
6 Q. Were they all together or was there a pause between
7 them?
8 A. A pause between them.
9 Q. Okay. Between one and the rest of them?
10 A. Yes, sir.
11 Q. Did you see a gun?
12 A. I --
13 Q. And where did you see the gun?
14 A. Aiming at Tiddy.
15 Q. In whose hand was the gun?
16 A. Freddie.
17 Q. And where was he firing the gun; in which direction?
18 A. In the car.
19 Q. Where Tiddy was sitting?
20 A. Yes, sir.
21 Q. Do you remember what the gun looked like?
22 A. It was black.
23 Q. Do you know if it was a revolver or an automatic --
24 semi-automatic?
25 A. Semi-automatic.

- 1 Q. Did you see what Freddie did with the gun after the
2 shooting?
- 3 A. No, sir.
- 4 Q. Did he have the gun with him still or in his hand
5 still when he came back up to where y'all were?
- 6 A. No, sir.
- 7 Q. Did you see him throw away the gun anywhere?
- 8 A. No, sir.
- 9 Q. So, did you see him put it in his pocket or anything
10 like that?
- 11 A. He had it in his pocket, yes.
- 12 Q. Now who came out of the house after the shooting?
- 13 A. Brandon.
- 14 Q. Also known as Homer, correct?
- 15 A. Yes, sir.
- 16 Q. And what was Homer saying?
- 17 A. Yelling and cursing at everybody telling them to get
18 out the yard.
- 19 Q. Did you say anything to Freddie then?
- 20 A. No, sir.
- 21 Q. Did you remember anybody else saying anything to
22 Freddie then?
- 23 A. C.J.
- 24 Q. And what did C.J. say?
- 25 A. Just cursing him and saying he's dumb.

- 1 Q. Pardon?
- 2 A. Just cursing him and saying he was dumb.
- 3 Q. Saying who is dumb?
- 4 A. Freddie.
- 5 Q. So did you take off?
- 6 A. Yes, sir.
- 7 Q. Who else took off?
- 8 A. Everyone else besides Carlos and Little Mike.
- 9 Q. And where did you go?
- 10 A. I was on my way getting the bike.
- 11 Q. And when you went to the bike where did you go to
- 12 get the bike?
- 13 A. From Freddie's house.
- 14 Q. On Wemby?
- 15 A. Yes, sir.
- 16 Q. And when you got back to Wemby was Freddie there?
- 17 A. Yes, sir.
- 18 Q. What did you say to him?
- 19 A. Why he did that. It was dumb and like -- I thought
- 20 I talked you out of it.
- 21 Q. And what do you mean you thought you had talked him
- 22 out of it?
- 23 A. I thought I had talked him out of the robbery.
- 24 Q. And when did you try to talk him out of the robbery?
- 25 A. Since early that day.

1 Q. Okay. I mean even if you hadn't talked him out of
2 the robbery did you ask him why he shot the guy?

3 A. Yes, sir.

4 Q. And what did he say?

5 A. He was scared because they was fighting over the
6 gun.

7 Q. And how many times did you hear him shoot?

8 A. About three or four times.

9 Q. Okay. What did he say about his phone when you
10 were over there?

11 A. That he lose his phone.

12 Q. Did he know where he had lost his phone?

13 A. No, sir.

14 Q. And when he said he lost his phone what phone was he
15 talking about?

16 A. The blue Cricket.

17 Q. Where did he say he was going?

18 A. Goose Creek.

19 Q. Who lives in Goose Creek?

20 A. Freddie's auntie.

21 Q. And why was he going to Goose Creek?

22 A. Because the neighborhood was hot and he needed to
23 get out from around there.

24 Q. So after you talked to Freddie did you borrow a
25 bike?

1 A. Yes, sir.

2 Q. And where did you go?

3 A. To Reggie's house.

4 Q. Reginald Wescott's house, is that correct?

5 A. Yes, sir.

6 Q. And was Reggie back home when you got back to his
7 house?

8 A. Yes, sir.

9 THE COURT: Okay, lean further into the microphone
10 if you would Mr. Wine so everybody can hear you please.

11 Q. [Mr. DuRant] And just to repeat was Reggie there
12 when you got to his house?

13 A. Yes, sir.

14 Q. Okay. That's much better. And of course the first
15 thing you did is go to the police right?

16 A. No, sir.

17 Q. You need to speak up.

18 A. No, sir.

19 Q. Okay. You didn't go to the police did you?

20 A. No, sir.

21 Q. Nobody went to the police did they?

22 A. No, sir.

23 Q. But they came and talked to you right?

24 A. Yes, sir.

25 Q. Do you remember talking to Detective Osborne on

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1 March the 8th?
2 A. Yes, sir.
3 Q. Of 2011?
4 A. Yes, sir.
5 Q. Do you remember what you told him?
6 A. No, sir.
7 Q. Okay. Do you remember telling him that you weren't
8 out there at the time of the shooting?
9 A. Yes sir; and I apologize.
10 Q. Do you remember telling him that the only time that
11 you saw Freddie that day was when you went over there to
12 his house at 5 or 5:30 to borrow that bicycle?
13 A. Yes, sir.
14 Q. And then do you recall talking to Detective Osborne
15 briefly again on May the 12th of 2011?
16 A. Yes, sir.
17 Q. And you told him pretty much the same story, is that
18 correct?
19 A. Yes sir; and I apologize.
20 Q. Okay. Were those two stories the truth?
21 A. No, sir.
22 Q. Okay. And then he brought you back to headquarters
23 and interviewed you again on June the 1st of 2011, is that
24 correct?
25 A. Yes, sir.

- 1 Q. What did he tell you after he -- while he was
2 talking to you?
- 3 A. I can't remember really too much.
- 4 Q. He didn't believe you did he?
- 5 A. Yes, sir. He did not believe me.
- 6 Q. And your story kind of changed when you talked to
7 Detective Osborne on June 1st is that correct?
- 8 A. Yes, sir. I started coming out and telling the
9 truth.
- 10 Q. Okay. You started to get better, correct?
- 11 A. Yes, sir.
- 12 Q. You originally told him the same story?
- 13 A. Yes, sir.
- 14 Q. And isn't it true that you then told him that well
15 you had been at Freddie's house earlier in the day too?
- 16 A. Yes, sir.
- 17 Q. And is it true that you told him that you later
18 talked to Freddie on the phone and he admitted to you on
19 the phone that he had shot -- you talked to Freddie on
20 the phone I should say and he admitted to you that he had
21 shot Tiddy?
- 22 A. No, sir. That is not true.
- 23 Q. You don't remember telling him that?
- 24 A. I did tell him but that's not the truth.
- 25 Q. Oh, okay you did tell him that but that wasn't the

1 truth either?
2 A. Yes, sir.
3 Q. And that wasn't the truth because he didn't have to
4 tell you that did he?
5 A. No, sir.
6 Q. And why didn't he have to tell you that?
7 A. Because I was out there.
8 Q. Okay. And then on the 1st you told him that you
9 were out there right?
10 A. Yes, sir.
11 Q. But you didn't tell him you were in the front yard?
12 A. No, sir.
13 Q. Where did you tell him that you were?
14 A. I was down the street in Big Man's yard.
15 Q. Okay. Tell me where you told him you were.
16 A. I was down here [indicates] at Big Man's yard.
17 Q. Okay. And you told him that you basically saw the
18 shooting from there correct?
19 A. Yes sir; and I apologize.
20 Q. Okay. And you told him you were with who when you
21 saw the shooting?
22 A. C.J. and Little Mike.
23 Q. And that wasn't the truth either was it
24 A. No, sir.
25 Q. An when did you tell the truth?

- 1 A. On July 16th of this year.
- 2 Q. Okay. That's when you met with Investigator Casey
3 and Detective Osborne in my office is that correct?
- 4 A. Yes, sir.
- 5 Q. And again on August the 20th of this year is that
6 correct?
- 7 A. Yes, sir.
- 8 Q. And on those occasions is where we got this version
9 correct?
- 10 A. Yes, sir.
- 11 Q. Why didn't you just tell the truth to begin with?
- 12 A. I was scared because retaliation might come back to
13 my family.
- 14 Q. That's understandable. How about your relationship
15 with Freddie? Did that enter into it?
- 16 A. Yes, sir.
- 17 Q. And how did that enter into it?
- 18 A. Because I didn't want to be labeled as a snitch.
- 19 Q. And what is the problem with being a snitch?
- 20 A. To be honest nothing.
- 21 Q. But it's not accepted in that community is it?
- 22 A. Yes, sir.
- 23 Q. It is accepted?
- 24 A. Oh, no sir. I'm sorry.
- 25 Q. And you wanted to save yourself didn't you?

1 A. Yes, sir.

2 Q. You didn't want to put yourself in the middle of it?

3 A. Yes, sir.

4 MR. DURANT: Court's indulgence.

5 [Whereupon, Mr. DuRant and Investigator Osborne
6 confer]

7 Q. [Mr. DuRant] I just want to reiterate one question
8 I'd asked because I understood maybe some of the jurors
9 didn't hear it.

10 You had testified that you were over at Freddie's
11 earlier in the day and he was talking about wanting to
12 rob a drug dealer. Why did he want to rob a drug dealer?

13 A. To get a reputation.

14 Q. Okay.

15 MR. DURANT: Court's indulgence one more second.

16 [Whereupon, Mr. DuRant and Investigator Osborne
17 confer]

18 Q. [Mr. DuRant] Could you please answer any questions
19 defense counsel might have for you?

20 THE COURT: Cross-examination?

21 MS. FORD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. FORD:

24 Q. Hello Mr. Wine. Myhesa you told us that you changed
25 your story a few times, correct?

1 A. Yes ma'am; and I apologize.

2 Q. But in your testimony today you left out a few
3 things and so I want to go over those okay?

4 So originally when you talked to Detective Osborne
5 on March 8th that's when you said I wasn't there but you
6 saw Freddie in the garage that day, correct?

7 A. Yes, sir.

8 Q. And you found out someone was shot when your Mom
9 called you?

10 A. Yes, ma'am.

11 Q. So that's basically story one, right?

12 A. Yes, ma'am.

13 Q. Then again on May 12th you talked about that a
14 little, right?

15 A. Yes, ma'am.

16 Q. And that's when you still said that you weren't
17 there, correct?

18 A. Yes, ma'am.

19 Q. But Brandon, Carlos, and Michael all were there --
20 that they told you they were there?

21 A. Yes, ma'am.

22 Q. And Carlos and C.J. both told you that Freddie
23 dropped his phone in the car?

24 A. Just C.J.

25 Q. Just C.J. told you that?

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- 1 A. Uh huh.
- 2 Q. Now when you met with Detective Osborne on June 1st
- 3 that's when -- you met with him for quite a while that
- 4 day, right?
- 5 A. Yes, ma'am.
- 6 Q. And that's when in that one meeting you changed your
- 7 story multiple times, correct?
- 8 A. Yes, ma'am.
- 9 Q. And Detective Osborne that day asked you a lot of
- 10 questions about a gun, right?
- 11 A. No, ma'am.
- 12 Q. Well he was really concerned -- he wanted to know if
- 13 you knew where Freddie had put the gun. You don't
- 14 remember him asking you about the gun?
- 15 A. He didn't ask that until like the end of the
- 16 interview.
- 17 Q. Okay. Well he was asking if you got rid of the
- 18 gun.
- 19 A. No, ma'am.
- 20 Q. You don't remember him asking you that?
- 21 A. No, ma'am.
- 22 Q. You deny that you helped Freddie get rid of the gun,
- 23 correct?
- 24 A. Yes, ma'am.
- 25 Q. I'm trying not to be too repetitive so I'm just

1 going over the highlights of these interviews okay? So
2 during this interview this is when you changed your story
3 from I wasn't there at all to I was on Street,
4 right?

5 A. Yes, ma'am.

6 Q. And this is after Detective Osborne told you there
7 is nothing you can do to help Freddie. He's already
8 going to prison. Do you remember him telling you that?

9 A. Yes, ma'am.

10 Q. And that's right before you changed your story?

11 A. Yes, ma'am.

12 Q. You actually asked if you could leave after he said
13 that but he ignored you and just kept going, correct?

14 A. No, ma'am.

15 Q. You didn't want to leave during that interview at
16 any point?

17 A. I did want to leave.

18 Q. And this today -- okay you told us several people --
19 the people who were out there. And one of those people
20 is Carlos, correct?

21 A. Yes, ma'am.

22 Q. All right. But other than telling us today that
23 Carlos was there you didn't really tell us much more
24 about Carlos, right?

25 A. Yes, ma'am.

- 1 Q. Okay. Why don't we talk about Carlos because you
2 did speak about Carlos a little more when you talked to
3 the police before, correct?
- 4 A. Yes, ma'am.
- 5 Q. You said you thought Carlos was influencing Freddie.
- 6 A. Yes, ma'am.
- 7 Q. You maintained initially that you didn't know
8 anything about a robbery; you never heard anyone speak
9 about a robbery, correct?
- 10 A. Yes, ma'am.
- 11 Q. But then you did change that and you said that
12 that's when you started to say that Freddie did mention
13 robbing someone?
- 14 A. Yes, ma'am.
- 15 Q. And you actually said that Carlos was actually
16 encouraging him to rob somebody.
- 17 A. Yes, ma'am.
- 18 Q. And you went to that day not knowing that
19 anything was going to happen; that's what you told the
20 detective, right?
- 21 A. Yes, ma'am.
- 22 Q. And you talked about how C.J. had been calling --
23 C.J. was the one calling Tiddy, correct?
- 24 A. That's something I just found out --
- 25 Q. Well, you actually told Detective Osborne that on

1 June 1st, right?

2 A. Yes.

3 Q. Okay. And so you thought maybe he knew something
4 about the robbery too but you weren't sure.

5 A. Yes, ma'am.

6 Q. And you still talked about how Freddie called you
7 that night and was talking about yeah, I did that shit.
8 That's what you told Detective Osborne that day?

9 A. Yes, ma'am.

10 Q. And that the gun just went off?

11 A. Yes, ma'am.

12 Q. Okay. Then let's jump to a year later when you
13 spoke to the Solicitor at his office okay. You remember
14 the date July 15th right?

15 A. Yes, ma'am.

16 Q. And at this time you actually told the Solicitor --
17 you still maintained that you were down the street,
18 correct?

19 A. Yes, ma'am.

20 Q. And not at

21 A. Yes, ma'am.

22 Q. Or at But you told him that you saw
23 Freddie with a gun earlier in the day, correct?

24 A. Yes, ma'am.

25 Q. However, when you met with him a week or two ago in

1 August you told him, you told us you met with him then
2 you admitted that you lied about that?

3 A. Yes, ma'am.

4 Q. And that you actually didn't see Freddie with a gun
5 earlier in the day?

6 A. Yes, ma'am.

7 Q. So you changed your story about that?

8 A. Yes, ma'am.

9 Q. And August 20th is the first time you admitted that
10 you were actually there?

11 A. Yes, ma'am.

12 Q. So these last two times July 16th and August 20th you
13 didn't really mention Carlos so much. You mentioned he
14 was there but you didn't talk about him encouraging
15 Freddie.

16 A. Yes, ma'am.

17 Q. And today you didn't really tell us how Carlos
18 encouraged Freddie.

19 A. Yes, ma'am.

20 Q. Myhesa, you -- did you have a gun that day?

21 A. No, ma'am.

22 Q. Did you see Michael Quarles with a gun that day?

23 A. No, ma'am.

24 Q. Did you see Reggie Wescott with a gun that day?

25 A. No, ma'am.

1 Q. So are you denying that you handed Freddie a gun?

2 A. No, ma'am.

3 Q. You're not denying it or you did or didn't hand ---

4 A. --- I didn't.

5 Q. Okay. But you're aware that Carlos is saying that
6 you handed Freddie a gun?

7 MR. DURANT: Your Honor, we're getting to the
8 pitting area again.

9 MS. FORD: Your Honor, it goes to motive and bias.

10 THE COURT: I'm going to allow it. Go ahead.
11 Overruled.

12 Q. [Ms. Ford] You're aware that Carlos -- I mean --
13 yes, Carlos is saying that you gave Freddie the gun
14 before the shooting.

15 A. That's not true.

16 Q. That's not true? But you've -- and you have a
17 lawyer correct?

18 A. Yes, ma'am.

19 Q. Mr. Davis?

20 A. Yes, ma'am.

21 Q. And you're aware that there have been talks about
22 you being charged with murder?

23 A. No, ma'am.

24 THE COURT: That's far enough. Unless there is
25 some substance to that, okay.

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1 MS. FORD: There -- Your Honor, may we approach?

2 THE COURT: Yes, ma'am.

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

5 THE COURT: Please disregard that last statement
6 concerning a possible charge of murder. It's not
7 relevant and it doesn't have anything to do with this
8 case. Please proceed.

9 Q. [Ms. Ford] Myhesa, you told us that you are aware
10 someone -- Carlos saying that you gave Freddie the gun?

11 A. Yes, ma'am.

12 Q. Okay. Are you concerned that you could be charged
13 because of that -- if that were true, if the State -- if
14 that was to be believed that you handed Freddie the gun
15 are you concerned that you could be charged?

16 A. No ma'am because it's not true.

17 Q. Okay. Well, if it were true, if somebody were to
18 say that you handed someone a gun before they killed
19 someone don't you think you could be charged with
20 something?

21 A. I didn't know that, no.

22 Q. Okay. So you're not concerned. You don't think
23 you could be charged with anything?

24 A. No, ma'am.

25 Q. When -- but you do know that some people have been

1 charged besides Freddie in relation to this murder,
2 correct?
3 A. Yes, ma'am.
4 Q. Okay. You know that C.J. for example was charged
5 with Obstruction of Justice?
6 A. Yes, ma'am.
7 Q. And you know that Brandon Smalls was charged with
8 Obstruction of Justice?
9 A. Yes, ma'am.
10 Q. Do you know Brandon Smalls?
11 A. Yes, ma'am.
12 Q. Okay. He goes by Nubby?
13 A. Yes, ma'am.
14 Q. Okay. And when you met with Detective Osborne
15 originally -- he -- that was on the table from the
16 beginning he was talking about how he can charge people
17 with things like Obstruction of Justice, correct?
18 A. Yes, ma'am.
19 Q. And y'all also had discussed a time when you had
20 recently been arrested, correct?
21 A. No, ma'am.
22 Q. That first time with -- Detective Osborne told you
23 that you were probably arrested because you didn't talk
24 to the police. There was a time that you spent a few
25 months in jail and then the charge was dropped, correct?

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- 1 A. Yes, ma'am.
- 2 Q. Okay. And Detective Osborne told you that that's
3 probably because you didn't talk to the police, correct?
- 4 A. No, ma'am.
- 5 Q. You don't remember that?
- 6 A. No, ma'am.
- 7 Q. Myhesa, you told us that you are friends with a lot
8 of these boys mentioned, correct?
- 9 A. Yes, ma'am.
- 10 Q. And you've been out of jail this past year and a
11 half, correct?
- 12 A. Yes, ma'am.
- 13 Q. You talked to these boys - some of these boys since
14 the shooting, correct?
- 15 A. Yes, ma'am.
- 16 Q. You talked to Carlos for example.
- 17 A. No, ma'am.
- 18 Q. You haven't talked to Carlos?
- 19 A. No, ma'am. He just recently started texting me.
- 20 Q. Okay. Both of y'all are outside though, right?
- 21 A. Yes, ma'am.
- 22 Q. When you originally talked to Detective Osborne in
23 June of 2011 y'all talked about the phone a little, the
24 Cricket phone right?
- 25 A. Yes, ma'am.

1 Q. That phone that we were all talking about on your
2 direct with Mr. DuRant, correct?

3 A. Yes, ma'am.

4 Q. And you mentioned that Carlos had already told you
5 that people were saying that Freddie dropped the phone in
6 the car.

7 A. Yes, ma'am.

8 Q. Correct. And Michael Quarles had told you that
9 Detective Osborne showed him a picture of the phone,
10 correct?

11 A. Yes, ma'am.

12 Q. So you knew this phone was a possible issue in the
13 case, correct?

14 A. Yes, ma'am.

15 Q. And so you told the Detective Osborne that you had
16 seen Freddie with the phone that day?

17 A. Yes, ma'am.

18 Q. You and Detective Osborne y'all actually talked
19 about calling people and things like that and who you
20 called and who you didn't call, correct?

21 A. Yes, ma'am.

22 Q. And you denied that you had talked to Freddie much
23 that day, correct?

24 A. Yes, ma'am.

25 Q. And -- but the detective was able to point to some

1 records showing differently correct?
2 A. Yes, ma'am.
3 Q. Because you told us earlier that Freddie actually
4 had two phones?
5 A. Yes, ma'am.
6 Q. And the one phone -- there is a black phone he had
7 too?
8 A. Yes, ma'am.
9 Q. A 640 number?
10 A. Yes, ma'am.
11 Q. And Detective Osborne pointed out how many times
12 that number had called you, correct?
13 A. Yes, ma'am --
14 Q. And you've actually said that that was Carlos
15 calling.
16 A. Yes, ma'am.
17 Q. Because you said that Carlos was using Freddie's
18 phone.
19 A. Yes, ma'am.
20 Q. But Carlos actually also called you on his own phone
21 number that day too, correct?
22 A. Not that I remember.
23 Q. His number is does that sound familiar?
24 Carlos's number?
25 A. 730-0...

1 Q. 100.
2 A. No, that's not Carlos's number.
3 Q. That's not Carlos's number?
4 A. No, ma'am.
5 Q. What was Carlos's number do you remember?
6 A. No, ma'am.
7 Q. You don't remember? So you only remember Carlos
8 calling you from one phone that day?
9 A. Yes, ma'am.
10 Q. And it was Freddie's phone?
11 A. Yes, ma'am.
12 Q. You told us that Carlos is older than you, right?
13 A. Yes, ma'am.
14 Q. But you're about the same age as Freddie, right?
15 A. Yes, ma'am.
16 Q. And all the other boys mentioned y'all are all about
17 the same age, right?
18 A. Yes, ma'am.
19 Q. Just Carlos is the one who is older?
20 A. Yes, ma'am.
21 Q. And he's an influential person, right?
22 A. Yes, ma'am.
23 Q. Carlos is not happy with you right now, correct?
24 A. No, he ain't.
25 Q. Okay. And that's because you originally mentioned

1 him as encouraging Freddie to commit the armed robbery?
2 A. Yes, ma'am.
3 MS. FORD: Beg the court's indulgence.
4 THE COURT: Yes, ma'am.
5 [Whereupon, Ms. Ford and Mr. Butler confer]
6 MS. FORD: No further questions, Your Honor.
7 THE COURT: Okay. Any redirect?
8 MR. DURANT: Just a couple on follow up.
9 REDIRECT EXAMINATION
10 BY MR. DURANT:
11 Q. You had mentioned Mr. Wine that you believe Carlos
12 was influencing Freddie. And I just want to be clear up
13 when that was. Was that when you were over at Freddie's
14 house earlier in the day or was that over at
15 ?
16 A. At Freddie's house.
17 Q. Okay. So that was earlier in the day?
18 A. Yes, ma'am -- yes, sir.
19 Q. And that's when you were -- told us you were trying
20 to talk Freddie out of it?
21 A. Yes, sir.
22 Q. But over at that didn't happen between
23 Carlos and Freddie that you saw?
24 A. Yes, sir.
25 Q. Just to be clear she had mentioned a fellow named

1 Brandon Smalls that had been charged with Obstruction.
2 Brandon Smalls wasn't out there was he?
3 A. No, sir.
4 Q. I have nothing further. Thank you.
5 THE COURT: Any re-cross?
6 MS. FORD: No, Your Honor.
7 THE COURT: Okay. Mr. Wine you may step down.
8 Thank you very much.
9 MR. DURANT: I would ask that Mr. Wine be excused
10 if there are no objections?
11 THE COURT: Any objection?
12 MS. FORD: No, Your Honor.
13 THE COURT: All right. Mr. Wine, you may be
14 excused. Thank you very much. You are released from
15 your subpoena.
16 [Whereupon, the witness is excused and exits the
17 witness stand]
18 THE COURT: Call your next witness, please?
19 MR. DURANT: The State would call Cornelius
20 Jenkins.
21 [Whereupon, Mr. Andrew Grimes enters the courtroom]
22 MR. GRIMES: May I approach while my client
23 testifies?
24 THE COURT: Yes, sir.
25 [Whereupon, an off the record bench conference is

1 held]

2 THE COURT: Madame Forelady, ladies and gentlemen
3 of the jury, I'm going to ask you to go to the jury room.
4 And the reason I'm going to ask you to go to the jury
5 room is during a trial I'm not permitted to comment on
6 the facts of the case.

7 And some issues are going to come up prior to this
8 next witness's testimony, legal issues that I have to
9 rule on. And I want to be free to comment on the facts
10 so that's why I ask you to leave the courtroom so I can
11 listen to it and be free to comment and make a decision
12 on what is admissible and what is not admissible.

13 Please don't discuss the case amongst yourselves.
14 And I don't know how long this is going to take but we'll
15 probably take a 10 or 15 minute break after we finish
16 this.

17 Mr. Bailiff, let them go ahead and take a break
18 okay. Please leave your notepads in your chairs.

19 [Whereupon, the jury exits the courtroom at 11:03
20 a.m.]

21 [Whereupon, an off the record bench conference is
22 held]

23 [Whereupon, Mr. Jenkins comes forward to the witness
24 stand]

25 THE COURT: Would you swear the witness please?

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

5 MR. JENKINS: I'm not --

6 THE COURT: I'm sorry, what did you say? Lean up
7 to the microphone so I can hear you please, sir?

8 MR. JENKINS: I ain't --

9 THE COURT: Pardon?

10 MR. JENKINS: I ain't got no answer.

11 THE COURT: All right. Do you swear to tell the
12 truth, and nothing but the truth so help you God?

13 MR. JENKINS: I ain't going to answer.

14 THE COURT: You're not going to answer? Okay, put
15 your hand down. Lean into the microphone and answer his
16 questions.

17 - - - - -

18 CORNELIUS JENKINS,

19 Was called as a proffered witness

20 PROFFER

21 BY MR. DURANT:

22 Q. Do you know Tiddy?

23 A. I ain't got no answer.

24 Q. Do you know Frederick Flowers?

25 A. I ain't got no answer.

1 Q. Do you know Myhesa Wine?
2 A. No answer.
3 Q. Do you know Michael Quarles?
4 A. Let's put it like this. I ain't got no answer to no
5 questions about that, sir.
6 Q. Okay. Do you know Carlos Jones or Butta?
7 A. I got no answer.
8 Q. Do you know Reginald Wescott?
9 A. No answer.
10 Q. Were you out on on the ---
11 A. --- I ain't got no answer. I ain't got no answers
12 for no questions you're going to ask me, okay.
13 Q. Is it true that you met with us last week?
14 A. [No response]
15 Q. Did you meet with us last week?
16 A. No answer.
17 Q. Do you deny that you told us that -- that you were
18 out on
19 A. No answer.
20 Q. Do you deny that you met with Detectives Casey and
21 Osborne and your attorney at my office on August the 22nd,
22 2012?
23 A. No answer.
24 Q. Do you deny that you told them Tiddy is your friend;
25 that you've known him since kids -- y'all were kids

1 together at Forest Park school?

2 A. No answer.

3 Q. Do you deny telling them that your adult
4 relationship with him was -- were as criminal partners?

5 A. No answer.

6 Q. Do you deny telling them Tiddy sold drugs for a
7 living?

8 A. No answer.

9 Q. Do you deny telling them you know Freddie from
10 Forest Park and you've known him for 5 or 6 years and are
11 friends?

12 A. No answer.

13 Q. Do you deny Michael Quarles or Little Mike knows you
14 through the rest of the neighborhood?

15 A. No answer.

16 Q. Do you deny telling them that Mike is from
17 Ashleyville?

18 A. No answer.

19 Q. Do you deny Carlos Jones or Butta known -- you've
20 known him since you were a kid and you also grew up with
21 Reggie Wescott?

22 A. No answer.

23 MR. DURANT: Your Honor, we can continue to do this
24 through this whole thing.

25 THE COURT: There's no since in it. He's not going

1 to answer the questions.

2 MR. DURANT: He's not going to answer the questions
3 but you know -- comes can I impeach him with his prior
4 testimony and play this tape that he gave ---

5 MR. BUTLER: --- and he can't answer that for the
6 reason I said. We can't then cross him on that. If he
7 -- you can't introduce the inconsistent statement because
8 we can't then cross him. That's the point I've been
9 trying to make since yesterday in my talks with Mr.
10 DuRant.

11 You can't use a witness as a vehicle to introduce
12 otherwise inadmissible evidence. I'm getting a list of
13 cases now. But what they want to do now is introduce his
14 prior statement and then I can't -- we can't cross him on
15 anything because he's going to say the same thing to us.
16 There is no way ---

17 THE COURT: --- the problem that I have is he's not
18 going to say yes or no to anything. He's just going to
19 sit there and say no answer. So how are you going to
20 impeach him? He's got to at least deny he made the
21 statement and he's not going to do that.

22 I mean he's just going to sit there. The only
23 avenue I have is put him in jail for contempt and he's in
24 jail now looking at Armed Robbery so what's that going to
25 do ---

1 MR. DURANT: --- I've got no problem with that at
2 all ---

3 THE COURT: --- what's that going to do?

4 MR. DURANT: I mean I think you should direct him
5 to answer the questions.

6 THE COURT: Well, what's that going to do? What's
7 he looking at Armed Robbery ---

8 MR. DURANT: --- it's a very simple ---

9 THE COURT: --- Obstruction of Justice?

10 MR. DURANT: It's a very simple question. He
11 either made the statement or he didn't.

12 THE COURT: Let me say this Mr. Jenkins.
13 Apparently you gave a statement last week, okay. You've
14 got charges pending.

15 I'm not going to allow them to ask you any questions
16 about your charges or about any facts that would
17 substantiate and give them creditability for your
18 questions. But I do think you need to -- unless you want
19 to take the Fifth Amendment and not testify at all, okay.

20 MR. JENKINS: I ain't going to testify. I don't
21 want to be in here ---

22 THE COURT: --- pardon? Do you want to take the
23 Fifth Amendment and not testify at all?

24 MR. JENKINS: Yes.

25 THE COURT: Pardon?

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1 MR. JENKINS: Yes.

2 THE COURT: Do you understand -- did your attorney
3 explain the Fifth Amendment to you?

4 MR. JENKINS: Yes.

5 THE COURT: Do you understand it?

6 MR. JENKINS: Yes.

7 THE COURT: Do you want to talk to him for a few
8 minutes about the Fifth Amendment?

9 MR. JENKINS: Ain't no need to talk to him.

10 THE COURT: Pardon? Talk to your attorney for a
11 few minutes about the Fifth Amendment. My problem,
12 Solicitor is I think he's entitled to charges pending
13 even if you drop them. I think he's entitled to take the
14 Fifth Amendment under these circumstances.

15 MR. DURANT: He hasn't taken the Fifth Amendment,
16 Your Honor. He just says ---

17 THE COURT: --- I know but I think I'm entitled to
18 ---

19 MR. DURANT: --- he just says he doesn't want to
20 answer. I think his position is -- regarding what you
21 said I think his refusal to answer my questions is a
22 denial that he made the statement.

23 THE COURT: I understand.

24 MR. GRIMES: It is all right if we talk in the room
25 over here, Your Honor.

1 THE COURT: Pardon?

2 MR. GRIMES: It is all right for me and Mr. Jenkins
3 to talk in a room?

4 THE COURT: No, just talk right there. We'll turn
5 the microphone off.

6 [Whereupon, Mr. Grimes and Mr. Jenkins confer]

7 THE COURT: Let me see the attorneys up here a
8 second while he's talking to him.

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

11 THE COURT: All right. Mr. Jenkins, the Solicitor
12 has called you as a witness. And I understand that if
13 the Solicitor is going to nol pros the charge against you
14 related to this case -- what was the charge list I don't
15 remember, I'm sorry.

16 MR. DURANT: He's charged with Obstruction of
17 Justice ---

18 THE COURT: --- Obstruction of Justice in relation
19 to this case and declare with prejudice they could not
20 re-indict you. He's asked you some very mundane
21 questions which you have refused to answer.

22 Now I am going to order you to answer those
23 questions, do you understand?

24 MR. JENKINS: [No response]

25 THE COURT: You can follow that order or you can

1 refuse to follow that order. If you refuse to follow the
2 order, I am going to find you in contempt of court and
3 schedule a hearing for your sentencing for contempt?
4 MR. JENKINS: [No response]
5 MR. GRIMES: Your Honor?
6 THE COURT: I asked him -- if he doesn't want to
7 answer that's his privilege. Do you understand?
8 MR. JENKINS: [No response]
9 THE COURT: Yes or no?
10 MR. JENKINS: [Indicates affirmatively]
11 THE COURT: Okay. Please answer ---
12 MR. GRIMES: --- did you say the Solicitor had
13 dismissed the charge or was ---
14 MR. DURANT: --- no I said I would ---
15 THE COURT: --- he said he would dismiss the charge
16 if the man would testify ---
17 MR. DURANT: --- if he cooperates.
18 THE COURT: And I had always said I was not going
19 to allow him to go into anything concerning the
20 obstruction charge.
21 MR. GRIMES: So at this time the charge is still
22 pending?
23 THE COURT: Yes, the charge is still pending. All
24 right. Solicitor, ask him some questions.
25 Q. [Mr. DuRant] Could you tell us your name?

1 THE COURT: Please answer the question.
2 A. Fifth.
3 Q. [Mr. DuRant] Pardon?
4 A. Fifth.
5 MR. DURANT: I can't understand what he said.
6 THE COURT: What did he say Andrew?
7 MR. GRIMES: He said Fifth.
8 THE COURT: Okay. Go ahead.
9 Q. [Mr. DuRant] How old are you?
10 A. The Fifth.
11 Q. How far did you go in school?
12 A. Fifth.
13 MR. DURANT: Your Honor, I don't think he is ---
14 THE COURT: --- All right. Mr. Jenkins, I am going
15 to find you in contempt of court and at a later time
16 we'll schedule a hearing for your sentencing on your
17 contempt. Would y'all please take him back to the
18 Charleston County jail?
19 [Whereupon, Mr. Jenkins exits the witness stand]
20 THE COURT: We'll take about a 10 minute break.
21 [Whereupon, court is in recess from 11:34 a.m. until
22 11:47 a.m.]
23 THE COURT: Are you ready to call your next
24 witness?
25 MR. DURANT: I believe so, Your Honor.

1 THE COURT: Bring us the jury, please. Who is your
2 next witness, Solicitor?

3 MR. DURANT: Carlos Jones, Your Honor.

4 THE COURT: Okay.

5 [Whereupon, the jury enters the courtroom at 11:50
6 a.m.]

7 THE BAILIFF: All jurors present, Your Honor.

8 THE COURT: All right. Thank you very much.
9 Madame Forelady, as to your question I will be better
10 able to answer that question later okay?

11 MADAME FORELADY: Yes, sir. Thank you.

12 THE COURT: Call your next witness please?

13 MR. DURANT: Thank you, Your Honor. The State
14 would call Carlos Jones.

15 [Whereupon, Mr. Jones comes forward]

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

20 MR. JONES: I do.

21 CLERK OF COURT: State your full name and spell
22 your last name.

23 MR. JONES: Carlos Jones, J-O-N-E-S.

24 [Whereupon, the witness takes the witness stand]

25 MR. DURANT: Mr. Jones, I'm going to ask you to sit

1 up and speak into that microphone so everybody can hear
2 you, okay?

3 THE WITNESS: Okay.

4 MR. DURANT: Speak up, please?

5 THE WITNESS: Can you hear me now?

6 MR. DURANT: I can hear you now, yes sir.

7 - - - - -

8 CARLOS JONES,

9 Having been first duly sworn,

10 Was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. DURANT:

13 Q. Your name is Carlos Jones, correct?

14 A. Yes, sir.

15 Q. And what is your nickname? What do people call you?

16 A. Chucky or Butta.

17 Q. What's the other one?

18 A. Butta.

19 Q. Butta like B-U-T-T-A?

20 A. Yes, sir.

21 Q. How old are you Mr. Jones?

22 A. 26.

23 Q. And how far did you go in school?

24 A. My last -- I had completed the ninth grade but I got
25 a G-E-D.

- 1 Q. Okay. And when did you get your G-E-D?
- 2 A. In '08.
- 3 Q. Are you currently working?
- 4 A. No, sir.
- 5 Q. And you have been in trouble with the law before,
- 6 correct?
- 7 A. Yes, sir.
- 8 Q. And I believe in 2008 you were convicted of
- 9 Contributing to the Delinquency of a Minor and Burglary
- 10 3rd degree is that correct?
- 11 A. Yes, sir.
- 12 Q. And received a Y-O-A sentence?
- 13 A. Yes, sir.
- 14 Q. Suspended Y-O-A sentence?
- 15 A. Yes, sir.
- 16 Q. You are here today pursuant to a subpoena?
- 17 A. Yes, sir.
- 18 Q. Do you want to be here?
- 19 A. Sir?
- 20 Q. Do you want to be here?
- 21 A. Not really, but I...
- 22 Q. Didn't have any choice in the matter did you?
- 23 A. No, sir.
- 24 Q. Did you know the guy that got killed in this case?
- 25 A. Yes, sir.

- 1 Q. And what name did you know him by?
2 A. Tiddy.
3 Q. And did you know his real name too?
4 A. Yes, sir.
5 Q. What was his real name?
6 A. James.
7 Q. And how long have you known James or Tiddy?
8 A. I been to C.E. with him. I been to school with him.
9 Q. That would be C.E. Williams?
10 A. Yes, sir.
11 Q. That's a what? Middle school?
12 A. Yes, sir.
13 Q. And so you've known him for several years I guess?
14 A. Yes, sir.
15 Q. You know Freddie Flowers?
16 A. Yes, sir.
17 Q. And would you point out Freddie Flowers to the jury?
18 A. He's right there. [indicates]
19 Q. And what is he wearing?
20 A. A suit.
21 Q. Okay. A grey suit?
22 A. Yes, sir.
23 Q. Sitting beside the other side with a grey suit --
24 correct?
25 A. Yes, sir.

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- 1 Q. You've known Freddie for how long?
- 2 A. A long time.
- 3 Q. And you've known him a long time and you've known
- 4 him a long time because of what?
- 5 A. He's from around my way.
- 6 Q. Okay. And your way is where?
- 7 A. The Forest.
- 8 Q. The Forest?
- 9 A. Yes, sir.
- 10 Q. And that would be West Oak Forest?
- 11 A. East Oak, West Oak.
- 12 Q. It's all the Forest, is that correct?
- 13 A. Yes, sir.
- 14 Q. And what is your relationship with Freddie?
- 15 A. A friend.
- 16 Q. And are you good friends?
- 17 A. Yes, sir.
- 18 Q. And are you good friends with another fellow named
- 19 Cornelius Jenkins?
- 20 A. Yes.
- 21 Q. What is Cornelius Jenkins called?
- 22 A. Like what's his name?
- 23 Q. What's his nickname? What do y'all call him?
- 24 A. C.J.
- 25 Q. And how long have you know C.J.?

- 1 A. Since he was young.
- 2 Q. And how did you get to know him?
- 3 A. I helped raise C.J.
- 4 Q. You helped raise C.J.?
- 5 A. Yes, sir.
- 6 Q. Okay. And that was in the Forest too?
- 7 A. Yes, sir.
- 8 Q. So obviously he's a friend of yours as well?
- 9 A. Yes, sir.
- 10 Q. Do you know Myhesa Wine?
- 11 A. Yes, sir.
- 12 Q. And what do people call Myhesa?
- 13 A. B.A. or My.
- 14 Q. Okay. And how did you come to know him?
- 15 A. From around my way.
- 16 Q. Okay. He's from the Forest as well?
- 17 A. Yes.
- 18 Q. And how long have you known My?
- 19 A. A little minute.
- 20 Q. A little minute?
- 21 A. Yes, sir.
- 22 Q. How much is a little minute?
- 23 A. About 7 to 10 years.
- 24 Q. Okay. And he's a friend of yours as well?
- 25 A. Something like that.

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1 Q. Okay. How about Reggie Wescott, how do you know
2 him?
3 A. From around my way.
4 Q. He's a Forest guy too?
5 A. Yes, sir.
6 Q. An how long have you known him?
7 A. About 17 years.
8 Q. Is he a friend of yours?
9 A. Yes.
10 Q. Now I'm going to ask you about another guy Michael
11 Quarles, do you know him?
12 A. No, I don't know him like that.
13 Q. What do you mean you don't know him like that?
14 A. I didn't know him.
15 Q. Okay. So he's not a real friend of yours?
16 A. No.
17 Q. Why is that?
18 A. Because he ain't from around my way.
19 Q. Do you know where he is from?
20 A. Ashleyville.
21 Q. Do you know what his nickname is?
22 A. Little Mike.
23 Q. And how did you get to know Little Mike?
24 A. I didn't know him like -- I didn't know him last
25 year.

- 1 Q. Okay. But I mean who introduced you to him?
- 2 A. My.
- 3 Q. Who?
- 4 A. My.
- 5 Q. Myhesa?
- 6 A. [No response]
- 7 Q. So he's not a friend of yours but you knew him
- 8 because -- through Myhesa is that correct?
- 9 A. Yes, sir.
- 10 Q. Let's talk about Who lives
- 11 there?
- 12 A. My home boy Brandon Singletary and his Mom, Ms. Pam
- 13 and Tracy?
- 14 Q. Pardon?
- 15 A. Ms. Pam and Tracy.
- 16 Q. Ms. Pam is who?
- 17 A. Brandon's Mom.
- 18 Q. Okay. And Tracy is who?
- 19 A. Brandon's sister.
- 20 Q. And they live at in the Forest
- 21 correct?
- 22 A. Yes, sir.
- 23 Q. You spend a good bit of time there?
- 24 A. Yes, sir.
- 25 Q. How long have you known Brandon and Tracy?

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- 1 A. A long time.
- 2 Q. Now at that time was kind of a neighborhood
3 hangout?
- 4 A. Yes, you could say that. Yes.
- 5 Q. Lots of people hung around there?
- 6 A. Yes.
- 7 Q. And was one of those people you?
- 8 A. Yes.
- 9 Q. Now I want to talk to you about not the day that
10 Tiddy was killed but the day before Tiddy was killed,
11 February 28th. Were you over at that day?
- 12 A. Yes.
- 13 Q. And do you recall who else was there?
- 14 A. Me and C.J.
- 15 Q. Okay. How about Freddie Flowers, was he there?
- 16 A. Yes.
- 17 Q. And did y'all see Tiddy that day while y'all were
18 over there?
- 19 A. Yes.
- 20 Q. Okay. Well tell us about that. How did Tiddy get
21 there?
- 22 A. He been in the car.
- 23 Q. And who else was in the car with him?
- 24 A. His baby Momma.
- 25 Q. Do you know her name?

1 A. Yes.

2 Q. What's her name?

3 A. Jennifer.

4 Q. Okay. And they came over to that day?

5 A. Yes.

6 Q. And who did Tiddy talk to?

7 A. He been negotiating with Freddie.

8 Q. What was he negotiating with Freddie about?

9 A. About some drugs.

10 Q. And what was the nature of their negotiations? What

11 were they negotiating about? What did Freddie -- had

12 Freddie accused him of doing?

13 A. Shorting him.

14 Q. Shorting him on what?

15 A. Some weed.

16 Q. And how much had he claimed that he had been

17 shorted?

18 A. About 3 grams point something. 3 grams; something

19 like that.

20 Q. Okay. So Freddie was arguing with Tiddy about

21 that?

22 A. Yes. No, they ain't really been arguing, they been

23 talking.

24 Q. Okay. But they were talking, but I mean they

25 didn't fight or anything like that?

- 1 A. No.
- 2 Q. But Freddie was claiming that he had been shorted.
- 3 A. Yes.
- 4 Q. What were you doing while this was going on?
- 5 A. I think I been talking to Jennifer at the time. And
- 6 then I left and I was talking to them and I thought
- 7 everything was dead at the time.
- 8 Q. Why did you think everything was dead?
- 9 A. We -- after Tiddy dapped us out. Tiddy had dapped
- 10 me up -- Tiddy dapped him up.
- 11 Q. Okay. And when you say dap that's kind of hands --
- 12 everybody shaking hands before they left is that correct?
- 13 A. Yes.
- 14 Q. So how did you think they resolved the issue?.
- 15 A. They -- Tiddy give him --
- 16 Q. What did you believe?
- 17 A. Everything be good.
- 18 Q. And why did you believe that?
- 19 A. Because Tiddy dapped him up.
- 20 Q. I know, but what did y'all do after Tiddy left?
- 21 A. Oh, smoked a blunt.
- 22 Q. Did y'all have any marijuana before Tiddy got over
- 23 there?
- 24 A. No.
- 25 Q. Okay. So what did you figure had happened?

1 A. That Tiddy straightened it out.
2 Q. Okay. By giving Freddie some marijuana is that
3 correct?
4 A. Yes.
5 Q. So in any event everybody seemed to be okay?
6 A. Uh huh.
7 Q. Okay. Let's talk about the next day, March the
8 1st, the day that Tiddy was murdered. Were you over on
9 that day?
10 A. Yes.
11 Q. Okay. And do you remember -- did you go directly
12 over there or did you go somewhere on the way over to St.
13 Clair?
14 A. I been to Wendy's first. And then I got dropped
15 off.
16 Q. Okay. Who were you riding with?
17 A. My ex.
18 Q. Okay. And she was the one that was driving you?
19 A. Yes.
20 Q. Had you been over to Freddie's before that?
21 A. Yes.
22 Q. Did you stay very long?
23 A. No.
24 Q. Okay. And y'all -- you left Freddie's? And when I
25 say Freddie's where is Freddie located -- where was

- 1 Freddie staying?
- 2 A. Freddie been on Wemby.
- 3 Q. Okay. And Wemby is like 2 or 3 blocks away from
- 4 is that right?
- 5 A. Yes.
- 6 Q. And you left with your girl to go where?
- 7 A. Wendy's.
- 8 Q. And after y'all went to Wendy's where did you go?
- 9 A. I got dropped off.
- 10 Q. Okay. Now and this was in the afternoon of March
- 11 the 1st is that correct?
- 12 A. Yes.
- 13 Q. Do you know who was inside that day when
- 14 you got over there?
- 15 A. How you mean?
- 16 Q. Who was staying inside the house?
- 17 A. Who been in the house?
- 18 Q. Inside the house because there were people inside
- 19 the house and people outside the house?
- 20 A. My home boy.
- 21 Q. Okay. So home boy was inside that day?
- 22 A. Yes, with his sister.
- 23 Q. Okay. Tracy was inside too?
- 24 A. Yes.
- 25 Q. And who all was hanging around outside the house?

- 1 A. Me, My, and Little Nasty.
- 2 Q. Little Nasty would be Reginald Westcott?
- 3 A. Yes..
- 4 Q. Okay. Who else?
- 5 A. C.J.
- 6 Q. Okay. Who else?
- 7 A. And Freddie.
- 8 Q. Okay. How about Little Mike, was Little Mike ---
- 9 A. --- oh, yes.
- 10 Q. Was Little Mike over there?
- 11 A. Yes..
- 12 Q. Now where were y'all hanging out outside?
- 13 A. On the porch beside the garage -- I mean by the beat
- 14 up car.
- 15 Q. Okay. There was a beat up car where?
- 16 A. In the parking lot -- I mean the driveway.
- 17 Q. The driveway of
- 18 A. Yes.
- 19 Q. And so where were you?
- 20 A. On the porch.
- 21 Q. And the other guys were around the car?
- 22 A. Yes.
- 23 Q. How close were they to you?
- 24 A. They were close by.
- 25 Q. Okay. It's all kind of close there, correct?

- 1 A. Yes.
- 2 Q. And referring you to State's exhibit number 31 this
3 is Homer's house correct?
- 4 [Whereupon, the witness is shown photo]
- 5 Q. 4th house down on the right?
- 6 A. Yes.
- 7 Q. Okay. This is the porch [indicates] correct?
- 8 A. Yes.
- 9 Q. And this is the driveway [indicates]?
- 10 A. Yes.
- 11 Q. So you were on the porch right here [indicates] and
12 they were all hanging around out here [indicates] right?
- 13 A. Yes.
- 14 Q. Is that true?
- 15 A. Yes.
- 16 Q. All right. Who was talking about robbing somebody
17 out there?
- 18 A. Myhesa.
- 19 Q. Myhesa and who?
- 20 A. Freddie.
- 21 Q. And who were they talking about robbing?
- 22 A. My home boy.
- 23 Q. What home boy is that?
- 24 A. Jungle.
- 25 Q. What's Jungle's real name?

1 A. Josh.
2 Q. Josh what?
3 A. Wilder.
4 Q. And what does Josh Wilder do?
5 A. Do his thing.
6 Q. Huh?
7 A. Do his thing.
8 Q. What does do his thing mean?
9 A. Sell.
10 Q. Sell what?
11 A. Drugs.
12 Q. How were they going to get Josh over there?
13 A. The only way they could have; called.
14 Q. Okay. And was he called?
15 A. I can't -- I don't know.
16 Q. You can't remember who called him?
17 A. No.
18 Q. But somebody called him.
19 A. Yes, but he didn't come.
20 Q. He didn't come over?
21 A. No.
22 Q. And what happened after he didn't come over?
23 A. Tiddy come.
24 Q. Let's talk about that. Was there any talk about
25 getting Tiddy over there?

- 1 A. Yes.
- 2 Q. By who?
- 3 A. Myhesa and Freddie.
- 4 Q. Okay. And who called Tiddy?
- 5 A. Myhesa.
- 6 Q. Was it Myhesa or Freddie?
- 7 A. Freddie. I mean Freddie.
- 8 Q. Now after Freddie called Tiddy did Tiddy show up?
- 9 A. Yes.
- 10 Q. How did Tiddy get over to the Forest? What was he
- 11 in?
- 12 A. A red car.
- 13 Q. Had you ever seen him in that red car before?
- 14 A. No.
- 15 Q. I'm showing you what has previously been marked as
- 16 State's exhibit number 1.
- 17 [Whereupon, the witness is shown photo]
- 18 Q. Does that appear to be the car that Tiddy arrived
- 19 there in?
- 20 A. It's been a red car.
- 21 Q. Okay. Does it look like that one in State's
- 22 exhibit 2?
- 23 [Whereupon, the witness is shown photo]
- 24 A. Yes, sir.
- 25 Q. Okay. And it was missing the trunk is that

1 correct?
2 A. Uh huh.
3 Q. The trunk lid?
4 A. [No response]
5 Q. Getting back to Freddie's calling Tiddy. How many
6 phones did Freddie have?
7 A. Three.
8 Q. And do you know what kind of phones?
9 A. A Sprint phone.
10 Q. Do you know what other kind of phone he had?
11 A. A cheap phone.
12 Q. And do you know what kind it was?
13 A. It starts with a K.
14 Q. A what?
15 A. It starts with K.
16 Q. It started with K?
17 A. Yes.
18 Q. And do you know what the name of it was?
19 A. Ker --
20 Q. Ker what?
21 A. I don't know how it's pronounced.
22 Q. Kyocera?
23 A. Yes, something like that.
24 Q. Okay. Did you see Freddie with that Kyocera phone?
25 A. Yes, I seen him with it before.

1 Q. Did you see him with that phone that day?

2 A. Yes.

3 Q. And what was unusual about that phone?

4 A. The back.

5 Q. What was unusual about the back?

6 A. He ain't had a back for the phone.

7 Q. Okay. What happened because he didn't have a back

8 to the phone?

9 A. His battery fell out.

10 Q. The battery always fell out?

11 A. Yes.

12 Q. Do you remember the number to that phone?

13 A. No, but it was something -- I don't remember the

14 number.

15 Q. Do you remember the first 3 numbers?

16 A. Yes.

17 Q. What were the first 3 numbers of that phone?

18 A. 843.

19 Q. I know the area code. But how about the prefix, do

20 you remember the prefix?

21 A. 735.

22 Q. 735. I'm going to show you what has been marked,

23 previously marked as State's exhibit number 4 and ask you

24 if you recognize that telephone?

25 [Whereupon, the witness is shown exhibit]

- 1 A. Yes.
- 2 Q. And whose telephone is that?
- 3 A. Freddie's.
- 4 Q. That's the one with the 735 number?
- 5 A. Yes.
- 6 Q. Is that the phone he used to call Tiddy that day?
- 7 A. Huh?
- 8 Q. Is that the phone he used to call Tiddy that day?
- 9 A. Yes.
- 10 Q. Now when this car showed up which way was it coming
- 11 down the street?
- 12 A. It was coming off of Wantoot.
- 13 Q. Okay. So what side of the car was facing y'all at
- 14 the driver's side or the passenger side?
- 15 A. Passenger.
- 16 Q. And could you see who was in the car?
- 17 A. No, not at the time.
- 18 Q. Okay. When did you realize who was in the car?
- 19 A. When I saw the necklace.
- 20 Q. Okay. And when you saw what necklace?
- 21 A. Tiddy's necklace.
- 22 Q. And where was Tiddy sitting?
- 23 A. In the passenger.
- 24 Q. And did you get a look at the driver?
- 25 A. No.

- 1 Q. Okay. So somebody else was driving. You just knew
2 it was Tiddy in the passenger seat?
- 3 A. Yes.
- 4 Q. Where did the car stop?
- 5 A. By the driveway.
- 6 Q. Whereabouts? Did it pull into the driveway?
- 7 A. No, past the driveway.
- 8 Q. Okay. So it stopped just past the driveway?
- 9 A. Yes.
- 10 Q. And pulled over where, to the side of the road or
11 stayed out in the middle of the road?
- 12 A. On the side.
- 13 Q. Okay. Referring back to State's exhibit number 31.
14 we see at -- you've already said where you were and
15 the other guys were. Where did the car stop?
- 16 A. Right there [indicates].
- 17 Q. Right in this area here [indicates]?
- 18 A. [No response]
- 19 Q. And what is that right there [indicates]?
- 20 A. A mailbox.
- 21 Q. And what is that right there [indicates]?
- 22 A. A car.
- 23 Q. No, I don't think that is a car but do you remember
24 what that is?
- 25 A. No.

- 1 Q. What is this line [indicates] that goes ---
2 A. --- that's a ditch.
3 Q. There is a ditch there? Okay. And do you know
4 which direction Freddie lives from there?
5 A. [No response]
6 Q. Is it this way [indicates] or that way [indicates]
7 ---
8 A. --- this way [indicates].
9 Q. So it would be down?
10 A. Uh huh.
11 Q. Okay. What happened when the car stopped at the
12 end of the driveway?
13 A. Myhesa passed him a gun.
14 Q. Passed who a gun?
15 A. Freddie.
16 Q. Okay. And where were they when Myhesa passed him
17 the gun?
18 A. By the yard -- in the driveway.
19 Q. By the car that was parked in the driveway?
20 A. Yes.
21 Q. And what happened after Myhesa passed Freddie the
22 gun?
23 A. He gone to the car.
24 Q. And which side of the car did he go to?
25 A. Passenger.

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1 Q. The side that Tiddy was in is that correct?
2 A. Uh huh.
3 Q. Now when he was walking up to the car where does he
4 have the gun?
5 A. In his back -- behind his back.
6 Q. And what did he have in the other phone -- I mean
7 the other hand?
8 A. A phone.
9 Q. And when you say phone you're talking about this
10 phone [indicates]?
11 A. Yes.
12 Q. The one I just showed you, State's exhibit 40?
13 A. Yes.
14 Q. What was he doing with that phone?
15 A. He was on it.
16 Q. Okay. Was he on it or -- why do you say he was on
17 it?
18 A. He had it to his ear.
19 Q. Okay. So he had it to his ear when he walked up to
20 the car? Do you remember which hand he had the phone in?
21 A. No.
22 Q. Do you remember which hand he had the gun in?
23 A. No.
24 Q. Okay. What did Freddie do when he got up to the
25 passenger side of the car?

1 A. I couldn't see -- I couldn't see nothing. I
2 couldn't like hear what anybody has been saying.
3 Q. So do you know if anything was said or you just
4 can't -- don't know -- I guess what my question is you
5 just didn't hear anything or you don't know?
6 A. Something was said but I don't know what.
7 Q. And then what happened?
8 A. Huh?
9 Q. Then what happened?
10 A. He get shot.
11 Q. Who got shot?
12 A. James.
13 Q. By whom?
14 A. Freddie.
15 Q. Stand up and show me what he did when he got to the
16 car?
17 A. Huh?
18 Q. Stand up and show me what he did when he got in the
19 car.
20 A. How you mean stand up and tell you what he did?
21 Q. Just stand up and show me what Freddie did when he
22 got up to the car.
23 A. Like how you mean -- you want me to stand up?
24 Q. Yes. Stand up right now. You said he had a phone
25 in one hand correct?

- 1 A. I don't know what hand he got it in.
- 2 Q. I know, but just tell me -- I know you don't
- 3 remember which is which but what did he -- where did he
- 4 have the hand with the gun?
- 5 A. Behind his back.
- 6 Q. So he had a hand behind his back?
- 7 A. Yes.
- 8 Q. And the other hand was like this [indicates]?
- 9 A. Yes.
- 10 Q. When he approached the car?
- 11 A. [No response]
- 12 Q. Anybody else up there by the car?
- 13 A. No.
- 14 Q. When did he bring the gun around?
- 15 A. How you mean when did he bring the gun around?
- 16 Q. Well, he didn't shoot him with the gun behind his
- 17 back, Mr. Jones.
- 18 A. Oh ---
- 19 Q. --- when did he bring the gun around and shoot him?
- 20 A. When Tiddy -- I ain't know what they been talking
- 21 about but I hear the gunshot that's what I'm saying.
- 22 Q. Okay. And you hear the gunshot and you saw him
- 23 shoot, correct?
- 24 A. [No response]
- 25 Q. You saw him shoot Tiddy, right?

- 1 A. Yes.
- 2 Q. Okay. Were all the shots together or was there a
3 pause between the shots?
- 4 A. Pause.
- 5 Q. There was a pause?
- 6 A. [No response]
- 7 Q. And do you remember how many shots you heard all
8 together?
- 9 A. Probably about 4 or 5.
- 10 Q. Okay. Did you ever hear Freddie say anything?
- 11 A. [No response]
- 12 Q. I'm talking about while he was up at the car?
- 13 A. No I couldn't hear nothing.
- 14 Q. Okay. Did you hear Javon say anything -- Tiddy?
- 15 A. Yes.
- 16 Q. What did you hear?
- 17 A. A scream.
- 18 Q. Now was the car -- do you remember if the car had
19 been turned off or was it running at the time it
20 happened?
- 21 A. It had to be turned off.
- 22 Q. Okay. Why do you say that?
- 23 A. Because he would have hit the gas when he hear that
24 first shot.
- 25 Q. Okay. So the car didn't take off immediately, is

- 1 that correct?
- 2 A. Uh Uh.
- 3 Q. But the car did end up taking off is that correct?
- 4 A. Uh huh.
- 5 Q. And what happened when the car took off did it take
- 6 off fast, slow?
- 7 A. It take off as fast as it could go.
- 8 Q. Okay. And could you see where the car went?
- 9 A. No.
- 10 Q. What did you say to Freddie?
- 11 A. Huh?
- 12 Q. What did you say to Freddie?
- 13 A. Why the fuck you did that.
- 14 Q. Were you surprised?
- 15 A. I was shocked.
- 16 Q. And what did he say?
- 17 A. I don't know.
- 18 Q. You didn't know?
- 19 A. [No response]
- 20 Q. He never gave you a reason?
- 21 A. [Indicates negatively]
- 22 Q. And who came out of the house?
- 23 A. Homer.
- 24 Q. What did Homer say?
- 25 A. What the hell's going on or something like that.

- 1 Q. And did y'all tell him what was going on?
- 2 A. He hear the gunshots. He knows something is going
- 3 on.
- 4 Q. And what was his state of mind like?
- 5 A. Everybody leave.
- 6 Q. Okay. And did everybody leave?
- 7 A. No.
- 8 Q. Who stayed there?
- 9 A. Me.
- 10 Q. Who else stayed there?
- 11 A. Nobody; that's it.
- 12 Q. Okay. Who all took off?
- 13 A. Everybody who been out there.
- 14 Q. Okay. Except you and Little Mike?
- 15 A. Uh huh.
- 16 Q. Who -- did Freddie run off immediately or did he
- 17 stay around there for a while?
- 18 A. Stayed around.
- 19 Q. And what was he doing while he was there?
- 20 A. He was looking for his phone.
- 21 Q. Pardon?
- 22 A. Looking for the phone.
- 23 Q. Where was he looking for his phone?
- 24 A. By the ditch.
- 25 Q. And was he able to find the phone?

- 1 A. No.
- 2 Q. Did he try to call the phone?
- 3 A. Yes.
- 4 Q. With what, his other phone?
- 5 A. Yes.
- 6 Q. Was there a ring?
- 7 A. No.
- 8 Q. So what happened when he couldn't find his phone?
- 9 A. He take off.
- 10 Q. Do you remember which way he took off?
- 11 A. No.
- 12 Q. Why didn't you run?
- 13 A. Because I hadn't done nothing.
- 14 Q. Do you know what Freddie did with the gun?
- 15 A. No.
- 16 Q. Did he still have the gun in his hand when he was
- 17 out there looking for the phone?
- 18 A. I ain't seen no gun.
- 19 Q. You saw the gun when it was in his hand.
- 20 A. Yes. I'm talking about after.
- 21 Q. Okay. What did the gun look like?
- 22 A. It been a black one.
- 23 Q. A revolver or a semi-auto?
- 24 A. A semi-auto.
- 25 Q. Do you remember how long it took for the cops to get

1 there?

2 A. About 5 minutes.

3 Q. And you were there when the cops got there?

4 A. Uh huh.

5 Q. What did you tell them?

6 A. I didn't see nothing.

7 Q. You didn't see anything?

8 A. I ain't been out there.

9 Q. Huh?

10 A. I told them I ain't been out there.

11 Q. Okay. That wasn't the truth was it?

12 A. No.

13 Q. That's a no?

14 A. That's a no.

15 Q. Why didn't you just tell them the truth?

16 A. I didn't want to have nothing to do with that. I
17 didn't want to be involved.

18 Q. Okay. Freddie's your friend too, isn't he?

19 A. Uh huh.

20 Q. You didn't want to get Freddie in trouble did you?

21 A. Right.

22 Q. You sure didn't want to get yourself in trouble
23 right?

24 A. Right.

25 Q. So you told them when they first got there you

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1 didn't see anything. Do you remember him calling you on
2 the phone?
3 A. Uh huh.
4 Q. What did he want to do?
5 A. To meet with me.
6 Q. And where did he want to meet with you at?
7 A. Downtown.
8 Q. Whereabouts downtown?
9 A. Huh?
10 Q. Where downtown?
11 A. Piggly Wiggly.
12 Q. Okay. And did you show up?
13 A. No. I tell him I showed up.
14 Q. Okay. But you didn't did you?
15 A. No, I didn't.
16 Q. You called him?
17 A. I called him and tell him I see him.
18 Q. Okay. But that wasn't true was it?
19 A. It wasn't true.
20 Q. Because you weren't there..
21 A. I wasn't there.
22 Q. Okay. Then you didn't hear anything and you moved
23 after that right? Not immediately but sometime after
24 that?
25 A. Yes.

1 Q. And it was a long time and nobody ever tried to get
2 in touch with you right?
3 A. Not at all.
4 Q. You thinking you had it good?
5 A. Uh huh.
6 Q. But they did get in touch with you didn't they?
7 A. Yes.
8 Q. That was when?
9 A. That was last...
10 Q. Just this month wasn't it?
11 A. That was this month.
12 Q. And who found you?
13 A. How you mean?
14 Q. Who got in touch with you?
15 A. Osborne.
16 Q. Detective Osborne there?
17 A. Uh huh.
18 Q. But you found out he was looking for you right?
19 A. Yes.
20 Q. Did you call him or did he call you if you remember?
21 A. I don't remember. As a matter of fact I called --
22 no, he called me.
23 Q. Okay. And I believe if I'm not mistaken that you
24 agreed to meet with him right?
25 A. Yes.

1 Q. And where did you meet with him?
2 A. By Ryan's.
3 Q. Ryan's over on Highway 61?
4 A. Yes.
5 Q. Who were you with at the time?
6 A. My girlfriend.
7 Q. And who else?
8 A. With Little Man.
9 Q. An old man?
10 A. My little boy.
11 Q. Oh, your little boy. I'm sorry, I couldn't hear
12 you. So you showed up with your girlfriend and your
13 child is that correct?
14 A. Yes.
15 Q. And you talked to Detective Osborne is that correct?
16 A. Yes, sir.
17 Q. Where?
18 A. By Ryan's.
19 Q. And were those other 2 folks around when he was
20 talking to him?
21 A. Yes.
22 Q. And what did you tell him?
23 A. I tell him I been on Wantoot and I almost get hit by
24 the police. And they came out there after the fact.
25 Q. And so you told him you were on Wantoot when the

1 shooting took place and you didn't get out until after
2 the fact?

3 A. Yes.

4 Q. Okay. And what did he do when you told him that?

5 A. How you mean what did he do?

6 A. What did he do? Did he say okay see you later?

7 A. No.

8 Q. What did he do?

9 A. He was like if I know something call him.

10 Q. He got you a ---

11 A. --- no, he give me a subpoena. He give me a
12 subpoena.

13 Q. He gave you a subpoena, I know that. Did you talk
14 to -- did he talk ---

15 A. --- he tell me to call -- he tell me to call the
16 number.

17 Q. Okay. Did he get you in the car alone without your
18 -- what ---

19 A. --- yes ---

20 Q. --- I'm asking you is did he get you in the car?

21 A. Yes. He get me in the car.

22 Q. Without your girlfriend and your child around is
23 that correct?

24 A. Yes.

25 Q. What did he tell you?

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- 1 A. [No response]
- 2 Q. Who did he tell you to -- did he tell you he
3 believed you?
- 4 A. He ain't said none of that.
- 5 Q. He didn't leave did he?
- 6 A. Uh uh.
- 7 Q. What did he do? Who did he tell you call?
- 8 A. Matt Casey.
- 9 Q. My investigator is that right?
- 10 A. Yes.
- 11 Q. And did you call Mr. Casey?
- 12 A. Yes.
- 13 Q. And did you come down to the Solicitor's office?
- 14 A. Yes.
- 15 Q. And that was on August the 14th
- 16 A. Yes.
- 17 Q. Of this year?
- 18 A. Uh huh.
- 19 Q. And you provided a statement at that time is that
20 correct?
- 21 A. Yes.
- 22 Q. Now have you actually seen Freddie since the
23 shooting?
- 24 A. No.
- 25 Q. Face to face I mean?

1 A. No.
2 Q. Okay. Have you talked to him?
3 A. Yes.
4 Q. On the phone?
5 A. Yes.
6 Q. And how come you didn't see him after this? Was he
7 -- where was he?
8 A. Somewhere.
9 Q. Pardon?
10 A. He ain't been West Ashley.
11 Q. He hasn't been West Ashley? Do you know where he
12 was?
13 A. Up the road.
14 Q. Up the road where?
15 A. At his Momma or Granny -- I mean Momma or Aunt
16 house.
17 Q. And where does his Momma and Aunt live if you know?
18 A. Goose Creek.
19 Q. You said you talked to him on the phone is that
20 correct?
21 A. Uh huh.
22 Q. Have you ever talked to him about what you were
23 going to tell the cops if they ever got in touch with
24 you?
25 A. Yes.

1 Q. What did you tell him -- or what did he tell you?
2 A. The one I give him. The statement I give them.
3 Q. What? That you were just on Wantoot and didn't get
4 over to until after the shooting?
5 A. Yes.
6 MR. DURANT: Court's indulgence.
7 THE COURT: Yes, sir.
8 [Whereupon, Mr. DuRant and Investigator Casey
9 confer]s
10 Q. [Mr. DuRant] Could you please answer any questions
11 defense counsel may have for you?
12 THE COURT: Cross-examination?
13 MS. FORD: Thank you, Your Honor.
14 CROSS-EXAMINATION
15 BY MS. FORD:
16 Q. Hello, Mr. Jones.
17 A. Hello.
18 Q. I want to go over a little of what you saw that day
19 when Tiddy was shot okay. So you're telling us that you
20 were on the porch of the house?
21 A. Yes.
22 Q. Okay. So everybody else they were at the car but
23 you were by yourself on the porch?
24 A. No, everybody -- what car are you talking about?
25 Q. Oh sorry, the car in the driveway; not the red car?

1 A. Yes. Uh huh.
2 Q. So everyone was hanging around the old car in the
3 driveway, correct?
4 A. Uh huh.
5 Q. But you were on the porch?
6 A. Yes.
7 Q. So when the car drove up and you -- Tiddy got shot
8 the shooter, his back was to you right?
9 A. Right.
10 Q. So you couldn't get a clear view of everything could
11 you?
12 A. Yes.
13 Q. You couldn't see Tiddy though right, at that point?
14 A. I had seen Tiddy.
15 Q. No, I mean at the point that he was shot?
16 A. No, I had seen Tiddy. I couldn't -- I see him and
17 Freddie had been right there.
18 Q. Well wasn't -- wouldn't the shooter's back have been
19 covering Tiddy?
20 A. He ain't that big.
21 Q. He ain't that big? Freddie's not that big?
22 A. No, Freddie ain't that big.
23 Q. Freddie's really tall right?
24 A. Yes, he's tall but he ain't that big. He ain't that
25 wide.

1 Q. But he's really tall. He's a lot taller than you
2 isn't he?

3 A. Yes.

4 Q. Okay. Freddie -- his uncle lives on Wemby Street
5 right?

6 A. Yes.

7 Q. Okay. But Freddie doesn't actually live there
8 right?

9 A. No.

10 Q. He used to live in the area right?

11 A. [No response]

12 Q. But he would just go to his uncle's to hang out in
13 the area, correct?

14 Q. But he didn't actually live there, right?

15 A. He ain't -- yes, he had lived there.

16 Q. He lived with his uncle?

17 A. Yes.

18 Q. You're saying he stayed there every night?

19 A. No, I ain't going to say he stayed there every
20 night. He used to lay his head there.

21 Q. Okay. He would be there a lot, correct?

22 A. Right.

23 Q. But that's not the only place he lived, is that fair
24 to say?

25 A. Yes.

1 Q. So he would frequently be in Goose Creek at his
2 Aunt's?

3 A. Yes.

4 Q. After the shooting you went inside the house,
5 Homer's house?

6 A. I ain't never went in the house. I stayed outside
7 on the porch.

8 Q. Okay. So you -- when the police came you were on
9 the porch?

10 A. Yes, when the police came I been on the porch.

11 Q. Okay. So you never went inside Homer's house after
12 the shooting?

13 A. No.

14 Q. Okay. Michael Quarles was with you?

15 A. No, he run in the house.

16 Q. Okay. So Little Mike ran in the house but you
17 stayed on the porch?

18 A. Yes.

19 Q. Okay. I want to talk about the day before the
20 shooting a little bit. You were at Homer's house in the
21 yard?

22 A. Yes.

23 Q. Okay. And Freddie and C.J. were there too?

24 A. Uh huh.

25 Q. And Tiddy came over to the house?

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1 A. Yes.
2 Q. And his girlfriend Jennifer was with him right?
3 A. Yes.
4 Q. He came over there because C.J. kept calling him
5 right?
6 A. Wrong.
7 Q. Wrong? You're saying C.J. wasn't the one who ---
8 A. --- wrong ---
9 Q. --- kept calling him ---
10 A. --- I ain't know who called. But I know he came
11 over there -- Freddie and Tiddy been talking.
12 Q. So who approached the car when they got there that
13 day?
14 A. Ain't nobody approached no car. I approached the
15 car.
16 Q. Okay. You approached the car with C.J. right?
17 A. No. C.J. was not by me when I approached the car.
18 Q. Okay. So C.J. wasn't there when you approached the
19 car?
20 A. No.
21 Q. Okay. So did you go inside the house that day with
22 Tiddy?
23 A. Go in the house?
24 Q. Yes ---
25 A. --- Tiddy wasn't in the house.

1 Q. No, the day before the shooting.
2 A. He wasn't in the house.
3 Q. That's all I'm asking. I'm just asking if he went
4 in the house.
5 A. He wasn't in the house.
6 Q. Okay. So you're denying he went in the house that
7 day?
8 A. He wasn't in the house.
9 Q. Okay. You told us that you helped raise C.J.
10 right? Didn't you say I helped raise C.J.?
11 A. Right.
12 Q. So you and he are really close then?
13 A. Yes.
14 Q. Okay. He's been in the jail for the past year or
15 so?
16 A. Who are you talking about?
17 Q. C.J.
18 A. Yes.
19 Q. Okay. So y'all talk a lot on the phone right?
20 A. What phone?
21 Q. You talked to him when he was at the jail, correct?
22 A. Wrong.
23 Q. So you've never talked to C.J. since ---
24 A. --- I talk to his brother. I talk to his brother;
25 that's who I talk to.

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1 Q. Okay. So you're -- the jail tapes are recorded,
2 you understand that?
3 A. Yes, I understand.
4 Q. Okay. So you are denying that you talked to C.J.
5 last week?
6 A. Oh, I did talk to C.J. but I talk with his brother
7 too.
8 Q. Okay. But ---
9 A. --- that's what I'm talking about.
10 Q. But C.J. was on the phone?
11 A. Yes.
12 Q. That's all I'm asking. And C.J. has been charged
13 with Obstruction of Justice right?
14 A. Right.
15 Q. Okay. So he and you have talked about the case,
16 about this case?
17 A. Yes. We talked about the case saying that Freddie
18 should have take a plea.
19 Q. Okay.
20 A. That's what we talk about.
21 Q. Okay. But C.J. he gets all the police -- since
22 he's charged he's talked about the police reports that
23 he's gotten about the case, right?
24 A. No.
25 Q. You and he never talked about what's in the police

1 report?
2 A. No.
3 Q. Okay. You knew from early on last year that the
4 police had found a phone in the car, right?
5 A. What do you mean?
6 Q. You knew that there was a phone in that red car,
7 correct?
8 A. [No response]
9 Q. The police found a phone.
10 A. Actually I didn't know. He had been looking for his
11 phone.
12 Q. You knew the police were saying that the shooter
13 dropped a phone in the car.
14 A. No, I know that he dropped his phone in the car.
15 Q. Okay. So you're saying you saw that?
16 A. No, I can't actually say. I -- when he called his
17 phone he said that he had to drop his phone in the car.
18 That's what he said.
19 Q. Okay. So you didn't actually see anyone drop the
20 phone in the car?
21 A. Uh uh.
22 Q. You didn't see anyone throw the phone in the car?
23 A. No.
24 Q. Okay. You heard that police were saying Freddie or
25 someone dropped a phone in the car.

- 1 A. No.
- 2 Q. So you didn't know about that, that's what you're
3 saying?
- 4 A. No ---
- 5 Q. --- you never told Myhesa that?
- 6 A. No.
- 7 Q. Okay. That phone -- you told us that Freddie had
8 several phones?
- 9 A. Yes.
- 10 Q. And one was that blue Cricket phone, correct?
- 11 A. Correct.
- 12 Q. Okay. Another was a 640 number. Do you remember
13 that phone, a black phone?
- 14 A. Yes.
- 15 Q. Okay. And you and he would often exchange phones
16 wouldn't you?
- 17 A. No.
- 18 Q. Okay. Would you ever use his 640 number?
- 19 A. If my phone is dead and we're by each other.
- 20 Q. Okay. On the day of the shooting were you calling
21 Myhesa from Freddie's phone?
- 22 A. On the day of the shooting was I calling Myhesa?
- 23 Q. Right. From Freddie's phone, the black phone,
24 before the shooting?
- 25 A. No, I had my own phone out there. My phone wasn't

1 dead.

2 Q. Okay. So I'm just -- you did not call Myhesa from
3 Freddie's phone that's what you're saying?

4 A. No, I didn't.

5 Q. Okay. Now the day of the shooting okay, you told
6 us a little how you went to Freddie's uncle's house on
7 Wemby Street?

8 A. Yes.

9 Q. Okay. But you never got out of the car that day,
10 correct?

11 A. No.

12 Q. Okay. Because your girlfriend took you, right; she
13 was driving.

14 A. My ex.

15 Q. Your ex-girlfriend. And when you got there she said
16 I'm hungry.

17 A. Yes, and we go to Wendy's.

18 Q. Okay. So you didn't get out and hang out with the
19 boys?

20 A. No.

21 Q. Okay. Instead you went to Wendy's?

22 A. And came on

23 Q. Okay. So you didn't go back to Freddie's house.
24 You went to instead?

25 A. Yes.

1 Q. Mr. Jones, at the time of the shooting you were on
2 parole, right? Is that correct? On -- parole?
3 A. Actually I had max out.
4 Q. Okay. So you're no longer on parole?
5 A. At all.
6 Q. Okay. But you've been to prison before?
7 A. Yes.
8 Q. Okay. It's not a fun place is it?
9 A. No.
10 Q. So you don't want to go back to prison?
11 A. No.
12 Q. Okay. You did not tell anyone, the police, the
13 Solicitor about Freddie shooting someone until just
14 August of this year, correct?
15 A. Correct.
16 Q. Okay. So about a year and a half after the
17 shooting?
18 A. [No response]
19 Q. Correct?
20 A. Right.
21 Q. Okay. You found out that Myhesa was saying that
22 you encouraged Freddie to arm rob somebody?
23 A. Wrong.
24 Q. You didn't find out about that?
25 A. Wrong.

1 Q. So you weren't furious at Myhesa about that?
2 A. Huh?
3 Q. You weren't mad at Myhesa about that?
4 A. Mad at Myhesa for what?
5 Q. For telling the police that you were encouraging
6 Freddie to rob a drug dealer?
7 A. I ain't encouraged nobody to rob nobody.
8 Q. Okay. While I understand you're saying that I'm
9 asking didn't you find out that Myhesa had said that to
10 the police? I'm not saying it's true.
11 A. No.
12 Q. So you're ---
13 A. --- my name didn't get brought up..
14 Q. It didn't get brought up.
15 A. My name didn't get brought up.
16 Q. Okay. We'll find out about that later. You didn't
17 know that Myhesa back last year told Detective Osborne
18 that you encouraged Freddie to rob somebody?
19 A. No, I did know it.
20 Q. Well ---
21 MR. DURANT: --- Your Honor, that's -- pardon me
22 but that's misstating the evidence. That didn't happen.
23 THE COURT: Okay.
24 MR. DURANT: Not last year.
25 MS. FORD: Pardon me.

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1 THE COURT: Okay.
2 [Whereupon, Ms. Ford and Mr. Butler confer]
3 Q. [Ms. Ford] All right. This didn't come into light
4 until this year in July, around July of this year,
5 correct?
6 A. No, August.
7 Q. Okay, August. That's when you found out about how
8 Myhesa told someone last year.
9 A. No, not really because my name been had get called
10 but I wasn't around. I wasn't getting in trouble but
11 they been had want to talk to me.
12 Q. So C.J. didn't tell you?
13 A. [No response]
14 Q. Are you denying that C.J. told you that he got a
15 report -- he got a report this year but it said that last
16 year Myhesa told him that you were encouraging Freddie?
17 A. You're mixing me up. You're trying to confuse me.
18 Q. No, I'm really not ---
19 A. --- yes you was ---
20 Q. --- I'm simply asking ---
21 A. --- no you ain't. You're confusing me..
22 Q. Okay. Well then let's try to clear this up.
23 Myhesa gave a statement to police that you were
24 encouraging Freddie to rob somebody. When -- and I
25 understand that you're denying this but I'm asking are

1 you aware that Myhesa told police that you were
2 encouraging Freddie ---

3 A. --- I don't know what you're talking about.

4 Q. Okay. So C.J. -- that's all I'm asking. C.J.
5 never told you ---

6 A. --- I don't know what you're talking about.

7 Q. Okay. So you're denying that you found ---

8 A. --- yes ---

9 Q. --- that out?

10 A. Yes.

11 Q. Okay. That's all I'm asking.

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

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

14 MS. FORD: No further questions.

15 THE COURT: Redirect?

16 MR. DURANT: I think I just have one, Your Honor.

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 BY MR. DURANT:

20 Q. You, of course, was not arrested in this case,
21 correct?

22 A. Sir?

23 Q. You have not been arrested, correct?

24 A. At all.

25 Q. And you don't -- you know what discovery is, right?

- 1 A. Yes.
- 2 Q. Okay. You didn't get any discovery in this case
- 3 did you because you weren't arrested?
- 4 A. Right.
- 5 Q. What is discovery?
- 6 A. You're talking about motion discovery?
- 7 Q. Yes?
- 8 A. Like evidence and all that.
- 9 Q. That the State has to turn over to the defense all
- 10 the evidence they have against you is that correct?
- 11 A. Correct.
- 12 Q. Okay. But nothing was ever turned over to you
- 13 because you weren't a defendant in the case, is that
- 14 correct?
- 15 A. Right.
- 16 Q. And you really never talked to any policeman about
- 17 this case?
- 18 A. Until this year.
- 19 Q. Until this year, is that correct?
- 20 A. Correct.
- 21 Q. Other than to tell the cops that showed up that you
- 22 didn't see anything?
- 23 A. Correct.
- 24 Q. And other than to talk to him on the phone and agree
- 25 to meet him and then not show up right?

1 A. Correct.

2 Q. Did he tell you anything about Freddie dropping the
3 phone in the car?

4 A. No.

5 Q. Did the people -- did the cops that first got there
6 tell you anything about Freddie dropping the phone in the
7 car?

8 A. No.

9 Q. How did you know Freddie might have dropped the
10 phone in the car?

11 A. Because he said it.

12 Q. He was out there looking for his phone, right?

13 A. Right.

14 Q. And when he couldn't find his phone what did he say?

15 A. He dropped his phone. He had dropped his phone.

16 Q. He said he must have dropped his phone where?

17 A. In the car.

18 Q. And that's how you found out about it?

19 A. Yes.

20 Q. Thank you.

21 THE COURT: Any re-cross?

22 MS. FORD: Yes, Your Honor.

23 RECROSS-EXAMINATION

24 BY MS. FORD:

25 Q. C.J. has been charged with a crime related to this

1 offense, correct?

2 A. [No response]

3 Q. C.J. has been charged with Obstruction of Justice.

4 You know that right?

5 A. Yes.

6 Q. Okay. C.J. and you are really close correct?

7 A. Yes.

8 Q. Y'all are really close?

9 A. Yes.

10 Q. You've been talking to C.J. as recently as last year

11 -- last week, correct?

12 A. Correct.

13 Q. No further questions.

14 THE COURT: Okay. You may step down. Thank you,

15 very much.

16 MR. DURANT: Your Honor, I'd ask that Mr. Jones be

17 excused.

18 THE COURT: Any objection?

19 MS. FORD: No, Your Honor.

20 THE COURT: All right. Mr. Jones, you are

21 released from your subpoena. Thank you, very much.

22 [Whereupon, the witness is excused and exits the

23 witness stand]

24 THE COURT: Can I see the attorneys up here for a

25 second?

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

3 THE COURT: Call your next witness, please?

4 MR. DURANT: I call Craig Kosarko.

5 [Whereupon, Mr. Kosarko comes forward]

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

10 MR. KOSARKO: I do.

11 CLERK OF COURT: Please state your name and spell
12 your last name.

13 MR. KOSARKO: Craig Kosarko, K-O-S-A-R-K-O.

14 [Whereupon, the witness takes the witness stand]

15

16 CRAIG KOSARKO,

17 Having been first duly sworn,

18 Was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DURANT:

21 Q. Good afternoon. Could you tell the jury where you
22 are employed?

23 A. Charleston Police Department.

24 Q. And how long have you been with the Charleston
25 Police Department?

- 1 A. About 12 years now.
- 2 Q. And what are your current duties?
- 3 A. I'm currently assigned to the Violent Crime Unit up
4 in Central.
- 5 Q. And were you doing the same thing in March of --
6 March 1st of 2011?
- 7 A. Yes, sir.
- 8 Q. In that capacity did you have the occasion to
9 respond to the fire station at 1775 Ashley River Road on
10 the afternoon of March the 1st of 2011?
- 11 A. I was one of the initial detectives responding there
12 in reference to the homicide.
- 13 Q. Okay. What was going on when you first arrived at
14 the fire station?
- 15 A. At that point the crime scene tape was being put up
16 and the area was being secured. Lieutenant Middleton was
17 on the scene and officers were also in pursuit of the
18 driver of the red vehicle.
- 19 Q. Okay. And that was the fellow that was later
20 identified as Kennedy Smith, is that correct?
- 21 A. Correct.
- 22 Q. Was the victim still present?
- 23 A. Yes, sir.
- 24 Q. And had the victim been pronounced dead at that
25 point?

1 A. Yes.

2 Q. What were you tasked to do?

3 A. I was there to remain with the vehicle to assist in
4 processing and also assist with the Deputy Coroner.

5 Q. Okay. Did the crime scene unit respond?

6 A. Yes.

7 Q. And what was done with the car?

8 A. Photographs were taken and the vehicle was secured
9 and towed to the crime scene office.

10 Q. To be processed?

11 A. Yes.

12 Q. Were you present when the coroner arrived and
13 searched the victim's pockets?

14 A. Yes, I was.

15 Q. And what was found in the victim's pocket that was
16 subsequently turned over to you?

17 A. About 850 dollars in U.S. currency and a black L.G
18 cell phone.

19 Q. Okay. And...

20 MR. BUTLER: Judge, may we approach?

21 THE COURT: Yes, sir.

22 [Whereupon, an off the record bench conference is
23 held]

24 THE COURT: All right. Do you have an objection
25 to the picture?

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1 MS. FORD: Yes, Your Honor.
2 THE COURT: What's the number, Solicitor?
3 MR. DURANT: State's exhibit number 8.
4 THE COURT: State number 8. What's your objection
5 -- what's your legal objection?
6 MS. FORD: More prejudicial than probative, Your
7 Honor.
8 THE COURT: All right. Objection overruled.
9 State's exhibit number 8 admitted with objection.
10 [Whereupon, State's exhibit number 8 is entered into
11 evidence by the court]
12 Q. [Mr. DuRant] That's State's exhibit number 8?
13 [Whereupon, the witness is shown photo]
14 A. Yes, sir.
15 Q. Have you seen that photograph before?
16 A. Yes, sir.
17 Q. Does it fairly and accurately depict where the phone
18 and the cash was found ---
19 A. --- yes, sir ---
20 Q. --- by the Deputy Coroner that day. And this item
21 right here [indicates]. You can't really see this on
22 that phone but the phone there [indicates] to the right
23 of the Coroner's hand that's the phone you're talking
24 about?
25 A. Yes, sir.

1 Q. And the cash over here [indicates] to the left of
2 the Coroner's hand that was the 850 dollars correct?

3 A. Correct.

4 Q. Okay. What did you do with the cash and the cell
5 phone?

6 A. They were logged into evidence.

7 Q. Okay. I hand you now what's been marked as State's
8 exhibit number 35 -- it's State's exhibit number 35 and
9 ask if you recognize that phone?

10 [Whereupon, the witness is shown exhibit]

11 A. Yes.

12 Q. And what phone is that?

13 A. That's the phone that we found on the victim.

14 Q. Okay. And this is your packaging from placing it
15 into evidence?

16 A. Yes, sir.

17 Q. Okay. And it's substantially in the same condition
18 you received it from the Coroner, is that correct?

19 A. Yes, sir.

20 MR. DURANT: Your Honor, we would offer State's
21 exhibit number 35 into evidence at this time ---

22 THE COURT: --- any objection?

23 MS. FORD: Your Honor, may be approach briefly?

24 THE COURT: Yes sir, yes ma'am.

25 THE COURT: What number is this?

1 MR. DURANT: State's 35.

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

4 THE COURT: All right. State's exhibit number 35
5 is admitted without objection, is that correct?

6 MS. FORD: Yes, Your Honor.

7 THE COURT: And y'all can check it before it goes
8 to the jury room.

9 MS. FORD: Yes, sir.

10 THE COURT: All right.

11 [Whereupon, State's exhibit number 35 is entered
12 into evidence by the court]

13 Q. [Mr. DuRant] During your investigation were you --
14 that is a black L.G. phone is that correct?

15 A. Correct.

16 Q. During your investigation were you able to determine
17 the number to that phone?

18 A. Yes. It was -

19 Q. Okay. Could you please answer any questions
20 defense counsel may have for you?

21 THE COURT: Cross-examination?

22 MS. FORD: No questions for this witness, Your
23 Honor.

24 THE COURT: All right. Mr. Kosarko, you may step
25 down. Thank you, very much. Any objection to Mr.

1 Kosarko being excused?

2 MR. DURANT: None from us, Your Honor.

3 THE COURT: All right. You may be excused.

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

6 THE COURT: Let me see the attorneys up here just a
7 second real quick.

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

10 THE COURT: Madame Forelady and ladies and
11 gentlemen of the jury we are going to take a lunch break
12 at this time. It is 1 o'clock. Be back in the jury room
13 at 2:30. Don't discuss the case and leave your notepads
14 in the chair. Come straight to the jury room and we'll
15 get started at 2:30. Have a good lunch.

16 [Whereupon, the jury exits the courtroom at 12:59
17 p.m.]

18 THE COURT: All right. We'll adjourn until 2:30.

19 MR. DURANT: Thank you, Your Honor.

20 MS. FORD: Thank you, Your Honor.

21 [Whereupon, a recess is held from 12:59 p.m. until
22 2:28 p.m.]

23 THE COURT: Is the State ready to proceed?

24 MR. DURANT: Yes, sir.

25 THE COURT: Bring us the jury please?

1 [Whereupon, the jury enters the courtroom at 2:30
2 p.m.]
3 THE BAILIFF: All jury present, Your Honor.
4 THE COURT: Thank you. Solicitor whenever you are
5 ready call your next witness please?
6 MR. DURANT: Thank you, Your Honor. The State will
7 call Jeff Miller.
8 [Whereupon, Mr. Miller comes forward]
9 [Whereupon, the witness is duly sworn by the Clerk
10 of Court as follows: do you swear or affirm your
11 testimony will be the truth, the whole truth, and nothing
12 but the truth so help you God]
13 MR. MILLER: I do.
14 CLERK OF COURT: Please state your full name and
15 spell your last name.
16 MR. MILLER: Jeffrey Curtis Miller, M-I-L-L-E-R.
17 [Whereupon, the witness takes the witness stand]
18 - - - - -
19 JEFFREY MILLER,
20 Having been first duly sworn,
21 Was examined and testified as follows:
22 DIRECT EXAMINATION
23 BY MR. DURANT:
24 Q. Good afternoon.
25 A. Good afternoon.

1 Q. Could you please tell our jury where you are
2 employed?

3 A. Charleston Police Department.

4 Q. And how long have you been with the Charleston
5 Police Department?

6 A. Since December 1985.

7 Q. And what are your current duties?

8 A. I'm a crime scene technician.

9 Q. And how long have you been in the crime scene unit
10 at C-P-D?

11 A. Since December of 1994.

12 Q. And in that capacity did you have the opportunity to
13 respond to Saint Andrews Fire Station at 1775 Ashley
14 River Road on March the 1st, of 2011?

15 A. Yes, I did.

16 Q. And what time did you arrive there?

17 A. 5:04 in the afternoon.

18 Q. And what was going on when you got there?

19 A. When I arrived the E-M-T's were assisting the victim
20 that had been injured. They were unable to help him and
21 they pronounced him dead.

22 Q. And what did you do at the station?

23 A. I started taking photographs of the car and of the
24 victim and then I waited for the Coroner to arrive.

25 Q. Okay. And among those photographs I believe some

1 of them have already been introduced into evidence as
2 State's 1 through 8. Those were taken at the fire
3 station?

4 A. Yes.

5 Q. Now what did you do with the victim's hands?

6 A. After the Coroner I did a gunshot residue test on
7 the victim's hands.

8 Q. And what is a gunshot residue test?

9 A. It's a two-part test that we use -- well, in this
10 case it was on the hands of the victim. One was a sticky
11 stub and another -- the second phase is a moistened swab.

12 And what you do is there is one for each side of the
13 hand and you take samples from both sides and then those
14 are sealed up into an envelope.

15 Q. Okay. And what is the purpose of the G-S-R kit?

16 A. We make those collections to see if there is any
17 gunshot residue on somebody's hands.

18 Q. Okay. To see if the victim has potentially handled
19 a weapon perhaps?

20 A. Correct.

21 Q. Okay. I hand you what has previously been marked
22 as State's exhibit number 36 for identification and ask
23 if you recognize that item?

24 [Whereupon, the witness is shown exhibit]

25 A. Yes, this is the gunshot residue test that I did.

1 Q. And how do you know?

2 A. It's got the evidence tag that I placed on it and
3 those are my initials on the back.

4 Q. Okay. And what did you do after obtaining -- the
5 kit after obtaining the samples from the victim in this
6 case James Javon Smith?

7 A. The sticky stubs and the swabs are all placed into
8 the envelope and it's sealed and then it's taken and
9 logged into evidence at the station.

10 Q. And that is a secure facility is that correct?

11 A. That's correct.

12 Q. And do you know whether or not that kit was later
13 sent to SLED for analysis?

14 A. Yes, it was.

15 Q. Now what was done with the vehicle that the victim
16 had arrived in at the fire station?

17 A. The vehicle was towed from the fire station to our
18 bay at the crime scene office and then they obtained a
19 warrant for us to do a search on that car.

20 Q. Okay. Now did you ever go over to
21 that day?

22 A. No, officers had responded to because
23 that's where the information was that the shooting
24 happened. But they could not locate the actual location
25 on Drive so we did not respond.

1 Q. Now moving ahead to 11:49 p.m., that same day did you
2 have the occasion -- that same day being March the 1st;
3 did you have the occasion to respond to 1646 Savannah
4 Highway?
5 A. Yes, I did.
6 Q. And why?
7 A. I was contacted by Detective Osborne to respond to
8 that location. They had stopped a car that was seen
9 leaving Drive. And during their investigation
10 they found a gun and a large sum of money.
11 Q. Okay. And what did Detective Osborne have you do?
12 A. I collected the money and collected the gun.
13 Q. Okay. And what kind of gun was it?
14 A. It was a Taurus 380 caliber handgun.
15 Q. Okay. And do you know if that weapon was later
16 sent to SLED for analysis?
17 A. Yes, it was.
18 Q. Okay. Moving ahead to the next day March the 2nd.
19 What did you do with the Toyota that had previously been
20 towed from the fire station?
21 A. The first thing that was done was photographs were
22 taken of the car and then the processing was started.
23 And we also had information that the victim was in the
24 car at the time of the shooting so I did a gunshot
25 residue, only the sticky stubs, on the passenger door.

1 Q. Okay. And from what areas of the passenger door
2 did you take the samples?

3 A. On the -- there is a rubber trim that runs along the
4 top of door on the inside and out. I did both of those
5 and then the rubber trim that runs along the top of
6 the...

7 Q. I hand you what has been marked as State's exhibit
8 number 37 for identification and ask if you recognize
9 that item?

10 [Whereupon, the witness is shown exhibit]

11 A. Yes, I do.

12 Q. And what is that?

13 A. These are the 3 sticky stubs used for the G-S-R
14 collection.

15 Q. And how do you know?

16 A. This is my evidence tag on here and then by the seal
17 my initials.

18 Q. Okay. And what was done with that sample after it
19 was obtained?

20 A. It was later sent to SLED.

21 Q. Okay. Now was the vehicle processed for latent
22 fingerprints?

23 A. Yes, it was.

24 Q. Were you able to lift any latent fingerprints?

25 A. Yes, I believe I got 11 latent --

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1 Q. And do you know where they came from in the car?

2 A. Yes.

3 Q. And where did they come from?

4 A. I need the cards to look at.

5 Q. Pardon?

6 A. I need the cards.

7 Q. Okay. I hand you what has previously been marked
8 as State's exhibit number 38 and ask if you recognize
9 those?

10 [Whereupon, the witness is shown exhibit]

11 A. These are the latent cards that I lifted from the
12 car during the search warrant.

13 Q. And if you would could you just go through those and
14 tell us where you...

15 A. At the outside right side door, the outside right
16 side door, the outside right side door, inside right side
17 door, outside right side door, outside driver's door,
18 outside driver's door, outside driver's door, outside
19 driver's door, outside driver's door, and then one from
20 the cell phone.

21 Q. And which cell phone was that do you recall?

22 A. That was the Kyocera cell phone.

23 Q. That was located where in the car?

24 A. That one was located in the floor board of the right
25 passenger seat.

1 Q. Now were the windows in that car up or down when you
2 first responded out to 1775 St. Andrews?

3 A. They were down.

4 Q. Okay. And I believe you said you got one from the
5 interior passenger window. How did you get that if the
6 windows were down?

7 A. I -- at the time of the incident we didn't know if
8 the windows were up or down. So I rolled the windows up
9 and then processed the inside.

10 Q. Okay. And so you got lifts from both the interior
11 and the exterior of the passenger window that you had to
12 raise the window to pick up -- to get those lifts, is
13 that correct?

14 A. Correct.

15 Q. Okay. And those are the latent lifts that you
16 lifted from the vehicle?

17 A. Yes, they are.

18 Q. And are they in substantially the same condition now
19 as they were when you lifted them?

20 A. Yes, they are.

21 MR. DURANT: Your Honor, I would offer State's --
22 one of those -- before I do that --

23 Q. [Mr. DuRant] One of those latent's have been marked
24 individually. Could you look at that? It's been marked
25 as State's exhibit number 38-A I believe.

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1 [Whereupon, the witness views the exhibit]
2 A. Yes. That's the one from the cell phone.
3 Q. That's the one from the Kyocera cell phone?
4 A. Yes.
5 Q. And that's previously been marked as State's exhibit
6 number 38-A for identification is that correct?
7 A. Correct.
8 Q. And that is the lift that you made from the Kyocera
9 cell phone?
10 A. Yes, it is.
11 Q. Okay. Is it -- does it appear to be in
12 substantially the same condition now as it was when you
13 made that lift?
14 A. Yes, it is.
15 MR. DURANT: Your Honor, at this time we would
16 offer State's 38, which is the entire group of lifts and
17 the sub -- State's 38-A into evidence.
18 THE COURT: Any objections?
19 MS. FORD: No, Your Honor.
20 THE COURT: All right. 38 and 38-A admitted
21 without objection.
22 [Whereupon, State's exhibit numbers 38 and 38-A are
23 entered into evidence by the court]
24 Q. [Mr. DuRant] What did you do with those lifts after
25 obtaining them?

1 A. After they were all filled out then they were placed
2 in this plastic bag and then sealed up and then I
3 initialed the seals.

4 Q. And where were they -- where were they taken to?

5 A. They are dropped in a lock box for the latent
6 examiner.

7 Q. Okay. And y'all have your own latent examiners at
8 Charleston Police Department is that correct?

9 A. Correct.

10 Q. Now were you able to locate any shell casings during
11 your processing of the vehicle?

12 A. Yes. 3 shell casings were found in the car.

13 Q. I hand you what has previously been marked as
14 State's exhibit number 39 and ask if you recognize that
15 item?

16 [Whereupon, the witness is shown exhibit]

17 A. Yes, I do.

18 Q. And what is that?

19 A. It is the 2 shell casings we recovered from the car.

20 Q. And what is the make and the -- I'm sorry but you
21 probably answered this but I didn't hear you, where were
22 they located?

23 A. One was found in the right front passenger
24 floorboard and then the other one was found in the
25 floorboard right behind that same seat.

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1 Q. Behind the passenger seat?

2 A. Yes.

3 Q. And what was the make and caliber of those shell

4 casings?

5 A. Win 380.

6 Q. Winchester is -- I mean Win is for Winchester is

7 that correct?

8 A. Yes, it is.

9 Q. And what was done with those shell casings after you

10 collected them?

11 A. They were placed in these small yellow envelopes and

12 then each one individually sealed and placed into the

13 larger envelope. Then it was submitted to latent

14 recovery to be fingerprinted.

15 Q. I'm talking about the shell casings now. You sent

16 them for potential fingerprints on the shell casings, is

17 that correct?

18 A. Yes.

19 Q. Do you know what the results of that were?

20 A. I don't recall.

21 Q. Okay. And where did the shell casings go,

22 ultimately?

23 A. Eventually they were sent to SLED.

24 MR. DURANT: Court's indulgence. Your Honor, at

25 this point we would offer State's 39 into evidence, I

1 believe without objection.

2 THE COURT: Any objection?

3 MS. FORD: No, Your Honor.

4 THE COURT: All right. State's exhibit number 39
5 admitted without objection.

6 [Whereupon, State's exhibit number 39 is entered
7 into evidence by the court]

8 MR. DURANT: And I believe also -- State's 36 and
9 State's 37 I believe also without objection.

10 THE COURT: Any objection?

11 MS. FORD: No, Your Honor.

12 THE COURT: All right. State's 36 and 37 without
13 objection.

14 [Whereupon, State's exhibit numbers 36 and 37 are
15 entered into evidence by the court]

16 Q. [Mr. DuRant] Okay. We've already talked about the
17 Cricket Kyocera phone. During your processing of the car
18 where was that phone located?

19 A. The right front passenger floorboard.

20 Q. And was that taken into evidence by you?

21 A. Yes, it was.

22 Q. I hand you what's previously been marked as State's
23 exhibit number 40 and ask you to look at that and look
24 inside that and tell us if you recognize it.

25 [Whereupon, the witness is shown exhibit]

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1 A. Yes, I do.

2 Q. And is that the Cricket Kyocera phone that you took
3 into evidence?

4 A. Yes, it is.

5 MR. DURANT: Your Honor, at this time we would
6 offer State's exhibit number 40 into evidence I believe
7 without objection.

8 THE COURT: Any objection?

9 MR. DURANT: With the understanding that we will
10 check it before it goes back to the jury.

11 THE COURT: Right.

12 MS. FORD: No objection, Your Honor.

13 THE COURT: All right. State's 40 without
14 objection admitted.

15 [Whereupon, State's exhibit number 40 is entered
16 into evidence by the court]

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

18 MR. DURANT: Your Honor, at this --

19 Q. [Mr. DuRant] After -- you indicated earlier when
20 you processed the car you took photos of it is that
21 correct?

22 A. Yes.

23 MR. DURANT: Your Honor, at this time the State
24 would offer State's exhibit numbers 9 through 22 I
25 believe without objection from defense counsel.

1 THE COURT: Is that correct?

2 MS. FORD: That's correct, Your Honor.

3 THE COURT: All right. State's exhibits 9 through
4 22 admitted without objection.

5 [Whereupon, State's exhibit numbers 9, 10, 11, 12,
6 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 are entered
7 into evidence by the court]

8 Q. [Mr. DuRant] Can you see that Mr. Miller? If not,
9 you're certainly welcome to step out.

10 A. I can see it.

11 Q. What is -- this is State's exhibit 9. What does
12 that depict?

13 A. The passenger side of the vehicle.

14 Q. Okay. And does that depict the area where you
15 performed the G-S-R test on the phone?

16 A. Yes.

17 Q. And you indicated one of them was this bottom strip
18 here [indicates] is that correct?

19 A. Right.

20 Q. And the other one was up on the top here [indicates]
21 is that correct?

22 A. Correct.

23 Q. And you did 2 on the bottom I believe. One was
24 inside and one was outside.

25 A. Correct.

- 1 Q. Moving on to State's exhibit number 9 -- 10, excuse
2 me. What does that depict?
- 3 A. That shows the passenger seat floorboard and then
4 you can see the cell phone that was in there.
- 5 Q. This would be the cell phone right here [indicates]?
- 6 A. Yes.
- 7 Q. State's exhibit number 11. What does that show?
- 8 A. It shows 2 fingerprint lifts from the window.
- 9 Q. Okay. That would be the passenger window?
- 10 A. Yes.
- 11 Q. And I believe that's the exterior passenger window,
12 is that correct?
- 13 A. Yes, the number 1.
- 14 Q. And once again you have to raise the window to get
15 those is that correct?
- 16 A. Yes.
- 17 Q. State's exhibit number 12. Those are -- depicts
18 what?
- 19 A. It's 3 more lifts -- fingerprint tape lifts from
20 that door.
- 21 Q. Okay. And State's exhibit number 13?
- 22 A. That's 4 lifts and that's going to be from the --
23 those are the driver's door.
- 24 Q. The driver's door? And State's exhibit number 14?
- 25 A. It's another latent lift from the window.

1 Q. That's the one from the inside of the passenger
2 window is that correct?

3 A. Yes.

4 Q. State's exhibit number 15?

5 A. That's the lift that was made from the cell phone.

6 Q. This might be hard to see but State's exhibit number
7 16. This is once again what part of the car?

8 A. The passenger floor board.

9 Q. This is obviously after the phone has been removed.
10 Let's go on to State's 17 and see if we can see what's
11 down there.

12 A. That's one of the 380 shell casings.

13 Q. This item right here [indicates]?

14 A. Yes.

15 Q. State's exhibit 18?

16 A. That's a picture of the bottom of it showing you the
17 make and the caliber.

18 Q. Okay. State's exhibit 19?

19 A. That's the floor board behind the passenger seat.

20 Q. State's exhibit 20?

21 A. There is a recovered shell casing, the other Win
22 380.

23 Q. Right there [indicates]. State's exhibit 21?

24 A. Again showing the stamp, the manufacturer.

25 Q. And State's exhibit 22?

- 1 A. That was a receipt that was found inside the car.
- 2 Q. That's from the Doscher's store?
- 3 A. Yes, on Savannah Highway.
- 4 Q. And that is a receipt I believe March 1st at 16:32 is
- 5 that correct?
- 6 A. Yes.
- 7 Q. After obtaining that lift from the Cricket Kyocera
- 8 phone found in the passenger floor board did you do any
- 9 additional processing with that item?
- 10 A. Yes. Also phones that we recover are small for
- 11 contact D-N-A as well as fingerprint.
- 12 Q. What is contact D-N-A?
- 13 A. Its touch D-N-A. If somebody touches something we
- 14 swab it trying to get a D-N-A sample.
- 15 Q. Okay. And how did you go about doing that? How do
- 16 you go about doing that?
- 17 A. For that we moisten the swab and then we do a part
- 18 of the phone we feel might experience -- feel is the best
- 19 part of the phone to obtain a contact sample.
- 20 Q. Okay. And what part of the phone did you do?
- 21 A. On that particular phone the area where the buttons
- 22 are.
- 23 Q. The keyboard kind of?
- 24 A. Yes.
- 25 Q. Okay. I hand you what has previously been marked

1 as State's exhibit number 41 and ask if you recognize
2 that item?

3 [Whereupon, the witness is shown exhibit]

4 A. Yes, I do.

5 Q. And what is that?

6 A. This is a swab that we collected from the Kyocera
7 cell phone.

8 Q. And tell me once again how do you know?

9 A. My sticker is on here where I give it the number and
10 the evidence tape -- you see the evidence tape that was
11 placed on it.

12 Q. And what did you do with that swab after obtaining
13 the sample from the phone?

14 A. They are sealed up and placed in the envelope and
15 then taken to the station and logged into evidence.

16 Q. Okay. And do you know whether or not that item was
17 later sent to SLED for analysis?

18 A. Yes, it was.

19 MR. DURANT: Your Honor, at this time we would
20 offer State's exhibit number 41 and I believe once again
21 without objection.

22 THE COURT: Any objection?

23 MS. FORD: No, Your Honor.

24 THE COURT: All right. 41 is admitted without
25 objection.

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1 [Whereupon, State's exhibit number 41 is entered.
2 into evidence by the court]

3 MR. DURANT: Court's indulgence for just one
4 moment.

5 Q. [Mr. DuRant] Could you please answer any questions
6 that Ms. Ford may have for you?

7 THE COURT: Cross-examination?

8 MS. FORD: Beg the court's indulgence. I have no
9 questions, Your Honor.

10 THE COURT: Okay. You may step down. Thank you
11 very much.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 THE COURT: Call your next witness, please.

15 MR. DURANT: The State would call Kathleen Butler.

16 [Whereupon, Ms. Butler comes forward]

17 MR. DURANT: I would ask that Mr. Miller be excused
18 if there is no objection, Your Honor.

19 THE COURT: Any objection?

20 MS. FORD: No, Your Honor.

21 THE COURT: Okay.

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

1 MS. BUTLER: I do.

2 CLERK OF COURT: State your full name and spell
3 your last name, please.

4 MS. BUTLER: Kathleen Ann Butler, B-U-T-L-E-R.

5 [Whereupon, the witness takes the witness stand]

6 - - - - -

7 KATHLEEN BUTLER,

8 Having been first duly sworn,

9 Was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DURANT:

12 Q. Could you tell our jury where you are employed Ms.
13 Butler?

14 A. Charleston Police Department.

15 Q. And how long have you been employed by the
16 Charleston Police Department?

17 A. Twenty-five years.

18 Q. And what is the nature of your work at Charleston
19 Police Department?

20 A. I am the latent print examiner.

21 Q. How long have you been in the fingerprint
22 identification section?

23 A. Approximately 12 years.

24 Q. And how much of your time is currently devoted to
25 fingerprint identification?

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1 A. Approximately -- percent.

2 Q. - And what type of training have you had in the area
3 of latent print identification?

4 A. My training actually started when I was in the crime
5 scene unit before -- from about 1997 until 2001. I did
6 an independent study under the two previous latent
7 examiners Chris Scott and Lyndy [phonetic] Oliver.

8 They explained the basics of fingerprint comparison,
9 how you accomplish a fingerprint comparison from a known
10 fingerprint and a latent fingerprint, pattern recognition
11 and how you document that comparison.

12 Q. And how long have you been a latent print examiner
13 now with the city -- Charleston Police Department?

14 A. Approximately 12 years.

15 Q. Okay. And are you a member of any -- what
16 certifications do you have in the area of fingerprint
17 identification?

18 A. I am certified not only in crime scene but latent
19 fingerprints.

20 Q. And who certifies you?

21 A. The International Association of Identification.

22 Q. Are you a member of any professional associations
23 related to fingerprint identification?

24 A. I am a member of the International Association
25 Division, the national and the local South Carolina ---

1 Q. --- I'm sorry. I didn't mean to cut you off. Have
2 you previously been qualified as an expert in the area of
3 latent print identification?

4 A. Approximately 17 times.

5 Q. And in what courts?

6 A. Three times in Federal Court here in South Carolina
7 and 14 times in the state of South Carolina General
8 Sessions.

9 Q. Okay.

10 MR. DURANT: Your Honor, at this time we would
11 offer Ms. Butler as an ---

12 THE COURT: --- does the defense have any questions
13 they would like to ask on qualification or do they
14 stipulate she is qualified?

15 MS. FORD: No Your Honor, I'm fine.

16 THE COURT: All right. The court finds she is
17 qualified as a fingerprint examiner and identification.

18 Q. [Mr. DuRant] And what is an inked print?

19 A. An ink print or otherwise known as a known is one
20 that is rolled by an I.D. technician on a suitable
21 surface like a backing card with special identifiers as
22 to the identification of the individual and his date of
23 birth and social security; or hers, and they are rolled
24 from nail to nail, the top part of it being your right
25 hand from the number 1 finger, which is your left thumb,

1 to the number 5 finger, which is your pinky. Then you go
2 down below that and do the same with the left hand the
3 number 6 finger, starting with your thumb, and through
4 the number 10, which is your pinky on your left hand.

5 Below that is the plain impressions and the reason
6 they do that is to match them up against the rolled
7 impressions on top.

8 Q. And what is a latent print?

9 A. Latent means invisible. So it's an invisible
10 impression of the friction ridges left on the -- objects
11 in the form of perspiration and other contaminants being
12 anything, from makeup, dirt, sweat.

13 So it's through development not only with powders
14 but chemicals that -- made visible and then are collected
15 either with tape or photography.

16 Q. And is it possible for someone to touch a surface
17 and not leave a latent print?

18 A. Yes, it is.

19 Q. Why is that?

20 A. There are several reasons. You have individuals who
21 don't perspire. So if you're not a secretor and your
22 hands are dry you're not going to leave a fingerprint. A
23 fingerprint is made up of old -- approximately 90 to 99
24 percent moisture, and one percent of contaminants, which
25 is dirt and grease, etcetera. So if they have covering

1 over their hands or they are not a secretor they are not
2 going to leave a fingerprint. Then you look at the
3 surface.

4 Clean, glass type smooth surfaces are the best to
5 leave fingerprints on. Your oxidized -- think of a car,
6 it would be oxidized without the sun baking -- taking
7 care of it will prevent fingerprints from being left
8 behind.

9 You also have an environment -- and another
10 environmental factor could be direct sunlight drying up
11 the moisture.

12 So between the individual, the receiving surface and
13 your environmental factors you cannot leave a
14 fingerprint.

15 Q. And smears, of course, instead of somebody who does
16 like that [indicates] instead of just going like that
17 [indicates]?

18 A. Yes. You can have distortions, so much distortion
19 to a fingerprint, distortion being movement instead of
20 pressure, not enough pressure to a fingerprint to where
21 you cannot read it.

22 Q. And of course you always hear about fingerprints on
23 T.V. Does anybody have the same fingerprints as
24 somebody else?

25 A. The premise behind fingerprints is no two people

1 have the same fingerprint or motion arrangement within
2 our fingerprint.

3 Q. Is that true for like identical twins as well?

4 A. Even with identical twins no two people in the whole
5 world have been found to have the same fingerprints.

6 Q. Okay. And how do you go about making that
7 identification or not by comparing the latent print to
8 another print?

9 A. We use the A-C-E-V, which is analyze, compare,
10 evaluate, and verify. Under the evaluation part you're
11 going to look at the latent first.

12 You're looking for a starting point, a pattern type
13 if one is available, scars; anything that can draw you in
14 to an area within those ten fingers on a -- card to
15 start.

16 So if I'm looking at a fingerprint and I've got a
17 loop I'm not going to look at swirls or arches. It's
18 basically used as a start. So I want to weed out as much
19 as I can for someone -- searching.

20 Once I see something that is similar like either a
21 small -- loop or very few ridges between the delta and
22 the core of the fingerprint, something to clue me in that
23 they might be similar I will turn around and start
24 looking into the ridges themselves. It's basically you
25 have a starting point and you look for a sequence of

1 points within that fingerprint, find it in the known,
2 which is your -- part. If you cannot find it then you
3 move on to the next image that will come close to what
4 you're looking at.

5 If you do find it you continue branching out through
6 all the areas that are visible from latent to the known
7 until you come to a conclusion that it is a match and
8 there is no characteristics that are unexplainable.

9 And then you make a decision, you write a report,
10 and then you have another latent examiner verify, go
11 behind you and work the whole case as if it has not been
12 looked at before.

13 So if both of you make the same decision as to
14 whether it is an identification or elimination of that
15 individual.

16 Q. And that's the same thing you do with Ms. Kaleisha
17 Gill [phonetic] in this case, is that right?

18 A. Yes. Actually Kaleisha Gill was the lead examiner
19 on this case. I was the verifier in this case.

20 Q. Okay. And regarding this case I'm going to hand
21 you State's exhibit 38, which contains a number of lifts
22 and ask you if those were the lifts that you examined in
23 this case?

24 [Whereupon, the witness is shown exhibit]

25 A. Yes, they are.

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1 Q. Okay. And if you would -- basically your job is to
2 compare latents against knowns. Which known prints did
3 you compare against the latents that were left -- that
4 were lifted from the car?

5 A. We were asked on March 4, 2011 to compare Frederick
6 Flowers, Cornelius Jenkins, Carlos Jones to these latent
7 fingerprints.

8 Q. Okay. And did you also have known lifts from the
9 victim, James Javon Smith and his father Kennedy Smith?

10 A. Yes, we do.

11 Q. Okay. And I just briefly want to go through your
12 results starting with the lift you designated as lift
13 number 1.

14 A. All right. Latent lift number 1, which was
15 developed on the outside of the right side door ---

16 Q. --- that would be the outside of the passenger door,
17 is that correct?

18 A. I have to go by what ---

19 Q. --- okay ---

20 A. --- Corporal Miller put down ---

21 Q. --- okay ---

22 A. --- on the right side.

23 Q. Were you able to match that with anyone?

24 A. That was matched to James Smith.

25 Q. That would be the victim in this case correct?

1 A. Correct.

2 Q. How about lift number 2 from the outside right side
3 door?

4 A. Lift number 2 is non-comparable or lacks the
5 quantity or quality to effect identification, which means
6 there is nothing to match it or eliminate it.

7 Q. So basically the print, the latent print just isn't
8 of sufficient quality to make a determination?

9 A. Correct.

10 Q. How about lift number 3 the outside right side door?

11 A. It possesses the quantity and quality to effect
12 identification but was unable to be searched through what
13 we call A-F-I-S, Automated Fingerprint Identification
14 System.

15 Q. Okay. So it didn't match any of your known's and
16 wasn't sufficient for you to run it through your computer
17 is that correct?

18 A. Correct.

19 Q. Okay. How about number 4 the outside right side
20 door?

21 A. That was identified to Kennedy Smith.

22 Q. Number 5 the outside right side door?

23 A. Number 5 was identified to James Smith.

24 Q. Number 6 the outside driver's door?

25 A. Number 6 was identified to Kennedy Smith.

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- 1 Q. Number 7 the outside driver's door?
- 2 A. Number 7 identified Kennedy Smith.
- 3 Q. Number 8 from the outside driver's door?
- 4 A. Number 8 is Kennedy Smith also.
- 5 Q. And number 9 from the outside driver's door?
- 6 A. Identified to Kennedy Smith.
- 7 Q. Lift number 10 from inside the right side door, the
8 passenger window?
- 9 A. That one possesses the quantity and quality to
10 effect identification and was also run against our
11 Automated Fingerprint Identification System. It did not
12 hit or match to anyone.
- 13 Q. And finally the one we're probably most interested
14 in the cell phone, which has now been marked as State's
15 exhibit number 38-A?
- 16 A. That -- latent lift number 11 from the cell phone
17 lacks the quantity and quality to effect identification.
- 18 Q. In other words it just wasn't a good enough lift for
19 you to make an identification is that correct?
- 20 A. Or elimination; either one.
- 21 Q. Okay. Thank you. Could you please answer any
22 questions defense counsel may have for you?
- 23 MS. FORD: I have no questions for this witness,
24 Your Honor.
- 25 THE COURT: Okay. Thank you very much. You may

1 step down. Thank you very much.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Call your next witness please.

5 MR. DURANT: The state would call Richard Wiersma.

6 [Whereupon, Mr. Wiersma comes forward]

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

11 MR. WIERSMA: I do.

12 CLERK OF COURT: State your full name and spell you
13 last name, please?

14 MR. WIERSMA: Richard L. Wiersma, W-I-E-R-S-M-A.

15 [Whereupon, the witness takes the witness stand

16 - - - - -

17 RICHARD WIERSMA,

18 Having been first duly sworn,

19 Was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. DURANT:

22 Q. Good afternoon. Could you tell the jury where you
23 are employed?

24 A. City of Charleston Police Department.

25 Q. And how long have you been with the City?

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- 1 A. Eight years.
- 2 Q. And what do you do there?
- 3 A. I am assigned to the Crime Scene Unit.
- 4 Q. And you've been with the crime unit for how long?
- 5 A. Five years.
- 6 Q. In that capacity did you have the occasion to attend
- 7 the autopsy of the victim James Javon Smith on March the
- 8 2nd, 2011?
- 9 A. Yes, I did.
- 10 Q. Where was the autopsy conducted?
- 11 A. The Medical University of South Carolina Pathology
- 12 Department.
- 13 Q. And who was the medical examiner?
- 14 A. Doctor Ellen Riemer.
- 15 Q. During the autopsy did you have the occasion to
- 16 receive possession of some evidence from Doctor Riemer?
- 17 A. Yes, I did.
- 18 Q. And among those items I'm going to hand you State's
- 19 exhibit numbers 44 and 45 and ask if you recognize those
- 20 items?
- 21 [Whereupon, the witness is shown exhibits]
- 22 A. Yes, I do.
- 23 Q. What are they?
- 24 A. Two projectiles from the victim's body.
- 25 Q. Okay. And those were turned over to you by Doctor

1 -- and how do you know that?

2 A. The packaging is written in my handwriting and the
3 seals have my initials on them.

4 Q. Okay. And after packaging and labeling those
5 projectiles what did you do with them?

6 A. These were placed in evidence at the Charleston
7 Police Department.

8 Q. Did you alter or tamper with them in any manner
9 while they were in your possession?

10 A. No.

11 Q. Do they appear to be in substantially the same
12 condition now as when you received them from Doctor
13 Riemer?

14 A. Yes.

15 MR. DURANT: Your Honor, at this time we would
16 offer State's exhibits 44 and 45.

17 THE COURT: Any objections?

18 MS. FORD: No, Your Honor.

19 THE COURT: All right. State's numbers 44 and 45
20 admitted without objection.

21 [Whereupon, State's exhibit numbers 44 and 45 are
22 entered into evidence by the court]

23 Q. [Mr. DuRant] Do you know what was ultimately done
24 with those projectiles, sir?

25 A. Ultimately they were sent to SLED.

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1 Q. Okay. And I also hand you what has previously been
2 marked as State's exhibit number 46 and ask if you
3 recognize that item?

4 [Whereupon, the witness is shown exhibit]

5 A. Yes, I do.

6 Q. What is that?

7 A. It is a blood standard that was taken at the
8 autopsy.

9 Q. And that blood standard was taken by Doctor Riemer
10 and delivered to you is that correct?

11 A. Yes.

12 Q. And how do you know that is the blood standard she
13 provided to you?

14 A. The same thing; the packaging is in my handwriting,
15 my initials on the seal.

16 Q. And that is -- the purpose of blood standard is to
17 establish the D-N-A profile for the victim, is that
18 correct?

19 A. Yes.

20 Q. What did you do with the blood spot after obtaining
21 possession of it from Doctor Riemer?

22 A. This is allowed to dry. Anything that may be wet
23 whether it's water, blood, whatever is allowed to dry
24 until it can be packaged so it doesn't collect mold and
25 things like that.

1 Q. Okay. And once you dried it what did you do with
2 it?

3 A. It was packaged and placed in evidence at the
4 Charleston Police Department.

5 Q. And did you alter or tamper with it in any way while
6 it was in your possession other than just drying it and
7 labeling it and packaging it?

8 A. No.

9 Q. Do you know if the blood spot was later sent to SLED
10 for analysis?

11 A. Yes, it was.

12 MR. DURANT: Your Honor, at this time we would
13 offer State's exhibit 46 I believe without objection.

14 THE COURT: Any objection?

15 MS. FORD: No, Your Honor.

16 THE COURT: 46 admitted without objection.

17 [Whereupon, State's exhibit number 46 is entered
18 into evidence by the court]

19 Q. [Mr. DuRant] Would you please answer any questions
20 defense counsel may have?

21 THE COURT: Cross-examination?

22 MS. FORD: I have no questions for this witness,
23 Your Honor.

24 THE COURT: You may be excused. Thank you very
25 much.

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1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: The state would call Rodney VanHorn.

4 [Whereupon, Mr. VanHorn comes forward]

5 MR. DURANT: Your Honor, may Mr. Wiersma be
6 excused?

7 THE COURT: Yes.

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

12 MR. VANHORN: I do.

13 CLERK OF COURT: State your full name and spell
14 your last name please?

15 MR. VANHORN: My full name is Rodney Thomas VanHorn.
16 Last name is spelled V-A-N capital H-O-R-N.

17 - - - - -

18 RODNEY VANHORN,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DURANT:

23 Q. Could you tell our jury where you are employed, sir?

24 A. City of Charleston Police Department.

25 Q. And how long have you been with the City?

1 A. Eighteen years.

2 Q. What are your current duties?

3 A. I am a full time -- police officer assigned to the
4 Digital Evidence Unit. I am a digital examiner.

5 Q. Okay. And you are a Corporal is that correct?

6 A. That's correct.

7 Q. In the Digital Evidence Unit?

8 A. That's correct.

9 Q. How long have you been with the digital evidence
10 unit?

11 A. Six years.

12 Q. And what is the digital evidence unit?

13 A. The digital evidence unit intakes, processes,
14 examines, recovers data from digital evidence items,
15 digital media. We then put that data and that
16 information into report form and return it to the
17 investigator for follow-up.

18 Q. Is that -- is your digital evidence unit an approved
19 lab?

20 A. It is. It's an ISO internationally accredited lab.

21 Q. And what is ISO?

22 A. International -- it's just a set of standards,
23 policies, and procedures that we have to follow regarding
24 rules of evidence and how we process the items. And
25 then the output from those items we follow those and then

1 we're inspected regularly to ensure that we do.

2 Q. Okay. And does the digital media you work with
3 does that include cell phones?

4 A. Yes.

5 Q. Could you please relate to the jury your training
6 you've had in the field of digital evidence?

7 A. In relation to digital evidence I started in 2006 in
8 internal digital evidence unit training that lasted a
9 year. I've been to several Cybercop classes regarding
10 data acquisition, data recovery, both intermediate and
11 advanced.

12 I've been trained in Windows systems, N-T file
13 systems, software training to include access data,
14 imagine scan, which is FBI sponsored.

15 I have training in manipulation of digital evidence,
16 digital forensics, cloud investigations and forensics,
17 UFED [phonetic] training, which is a hardware extraction
18 device for cell phones, decoding digital evidence,
19 network training, and pretty much any other like guide to
20 digital forensics.

21 Q. And you've been doing this for 6 years now?

22 A. Yes.

23 Q. How much of your time is devoted to digital evidence
24 analysis?

25 A. I'm assigned there. I'm also a police officer so

1 with the exception of police training I'm there full
2 time.

3 Q. Okay. And have you previously been qualified as an
4 expert in the field of digital evidence in the courts of
5 this State?

6 A. Yes, I have.

7 MR. DURANT: Your Honor, at this time we would
8 offer Mr. VanHorn as an expert in the ---

9 THE COURT: --- any objection ---

10 MR. DURANT: --- digital evidence extraction.

11 THE COURT: Any objection or questions?

12 MS. FORD: No, Your Honor.

13 THE COURT: All right. The court so finds. Thank
14 you very much.

15 Q. [Mr. DuRant] Now relative to this case did you have
16 the occasion to extract some data from some digital
17 phones submitted by Detective Osborne in this case?

18 A. I did.

19 Q. And I believe there were 3 phones submitted in all
20 is that correct?

21 A. That's correct.

22 Q. Do you remember what kind of phones they were?

23 A. One was an LG GT 365, one was a Motorola I-205, and
24 the third submission was a Cricket Kyocera.

25 Q. Okay. And I'm going to ask you primarily about two

1 of those; the LG phone and the Cricket Kyocera. I'm
2 going to hand you what has previously been marked as
3 State's exhibits 35 and 40 and ask if those were the
4 phones that you examined and extracted data from?

5 [Whereupon, the witness is shown exhibits]

6 A. I'm looking at the Kyocera now.

7 Q. That would be State's exhibit what? It should be on
8 the envelope.

9 A. 40.

10 Q. Okay.

11 A. That's the correct phone. And exhibit 35 is labeled
12 the LG and that's the correct phone.

13 Q. So those are the phones that you examined, is that
14 correct?

15 A. Yes, sir.

16 Q. In addition to the Motorola. How do you go about
17 extracting data from cell phones?

18 A. The software that was used in this particular case
19 is a forensic software. The phone can be connected to
20 the forensic machine in a number of ways. In this
21 particular instance it was connected via the USB port.

22 The software that we use makes no rights to the cell
23 phone; it doesn't make any changes to the cell phone so
24 it gets the data extracted in pure form. It pulls out
25 whatever compatible data is in the phone and puts it into

1 report form that can be released to the detective.

2 Q. Okay. And what is the name of the software that is
3 used?

4 A. The one in this case was Susteen Secure View 3 and
5 it was version 2.4.1.0.

6 Q. And is that the software standard in the industry?

7 A. It is one of the software's that we use.

8 Q. Okay. Let's start with the LG phone; State's
9 exhibit number 35. Were you able to extract any data
10 from the phone's resident memory?

11 A. From the LG, not from the resident memory.

12 Q. And what is resident memory?

13 A. Resident memory just means that's the data that
14 resides on the phone itself. No external SD card so to
15 speak or SIM card on the phone itself; its residence.

16 Q. Because cell phones I think -- the phone has a
17 memory and the SIM card has a memory as well is that
18 correct?

19 A. Yes, sir. And the phone and the capacity; it just
20 depends on how much data you can store on...

21 Q. Okay. And why were you not able to access the
22 resident memory of that phone?

23 A. On the LG -- the LG was -- code protected.

24 Q. What does that mean?

25 A. It takes a password.

1 Q. A password?

2 A. It's usually a 4 number code.

3 Q. Okay. And you didn't have in the software to break
4 the code is that right?

5 A. No, this particular software it wasn't compatible
6 with retrieving --

7 Q. Okay. Were you able to access the SIM card from
8 State's 35, the LG phone?

9 A. Yes, I was.

10 Q. And from the SIM card from that phone were you able
11 to determine what the phone number was for that phone,
12 the LG phone?

13 A. Yes.

14 Q. What was that phone number?

15 A. It was -

16 Q. Okay. Moving ahead to State's exhibit number 40,
17 the Cricket Kyocera phone, were you able to access the
18 resident memory on that phone?

19 A. Yes.

20 Q. And what was the phone number for that phone, the
21 Cricket Kyocera?

22 A. On that phone the number is listed as .

23 Q. And what information were you able to extract from
24 the resident memory of that phone, the Cricket Kyocera,
25 State's exhibit number 40?

1 A. With the Kyocera and this particular software the
2 activity trail was compatible with contact lists, or what
3 some people call an address book, for call history and
4 ring tones.

5 Q. Okay. And do you have the report you prepared from
6 the LG phone?

7 A. From the LG phone?

8 Q. I mean, excuse me, the Cricket Kyocera phone,
9 State's 40?

10 A. I have both.

11 Q. Okay. If you would I'm going to hand you what's
12 previously been marked as State's exhibit 47 and ask you
13 to compare that with your data extraction and let us know
14 if that is a true and accurate copy....

15 [Whereupon, the witness is shown exhibit]

16 A. Yes.

17 Q. Of the contact or address book list extracted from
18 that phone?

19 A. Yes sir, it is.

20 Q. Okay. I'm also going to hand you State's exhibit
21 number 48 and ask you to check that and let us know if
22 that is a true and accurate copy of the call history you
23 extracted from the Cricket Kyocera phone?

24 [Whereupon, the witness is shown exhibit]

25 A. Yes, it is.

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1 MR. DURANT: Your Honor, at this time we would
2 offer State's 47 and -- was it 47 and 48, is that
3 correct?

4 A. Yes, sir.

5 MR. DURANT: 47 and 48 into evidence I believe
6 without objection.

7 THE COURT: Any objection?

8 MS. FORD: No, Your Honor.

9 THE COURT: All right. 47 and 48 admitted without
10 objection.

11 [Whereupon, State's exhibit numbers 47 and 48 are
12 entered into evidence by the court]

13 Q. [Mr. DuRant] Your Honor -- I mean Mr. VanHorn, with
14 regard to State's exhibit number 47 the contact list from
15 the Cricket Kyocera phone I'd like to direct your
16 attention to contact number 0115. Who is the listed
17 contact at 0115?

18 A. The name is capital T-I-E-T.

19 Q. And what is the number for the contact T-I-E-T?

20 A. 843-

21 Q. And that, of course, is the same number to -- as you,
22 extracted from the other phone, the LG phone is that
23 correct?

24 A. The LG; yes sir.

25 Q. With regard to State's exhibit 48 previously in

1 evidence, that is the call history is that correct?

2 A. Yes, sir.

3 Q. And does that list the last 30 numbers dialed by
4 that phone, is that correct?

5 A. The dialed numbers going out would be 30, yes sir.

6 Q. Okay. And with regard to the dialed numbers by --
7 this would be the Kyocera phone we're talking about;
8 State's 40, I want to direct your attention to number 20
9 under the dialed -- numbers dialed by that phone. What
10 number was dialed in number 20?

11 A. The number is 843-

12 Q. And that would be to the contact known as T-I-E-T
13 correct?

14 A. Yes. Right

15 Q. And what is the date and time of that call?

16 A. 3-1, 2011 at 15:57 and 39 seconds.

17 Q. So that's about ---

18 A. --- 3:57 ---

19 Q. --- just short of 4 p.m. is that correct?

20 A. Yes, sir.

21 Q. And what is the duration of that call?

22 A. 59 seconds.

23 Q. Moving down a couple to dialed call number 23 what
24 is the number dialed at that time?

25 A. The same. 843-

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1 Q. And that is to the same contact?
2 A. T-I-E-T.
3 Q. And what is the time on that -- date and time?
4 A. Date and time was 3-1, 2011 at 16:26 and 57 seconds.
5 Q. So that's about 4 -- almost 4:27 is that correct?
6 A. Yes, sir.
7 Q. But the duration on that is what?
8 A. Zero.
9 Q. And what does that mean?
10 A. Typically that means that the call wasn't completed
11 for whatever reason either outgoing or incoming.
12 Q. And then right underneath that dialed call number
13 24. There was another call to what number?
14 A. 843-
15 Q. And that would be the contact who?
16 A. T-I-E-T.
17 Q. And that one apparently was connected is that
18 correct?
19 A. Yes.
20 Q. And what is the duration of that call?
21 A. 29 seconds.
22 Q. And what is the date and time that that call was
23 made?
24 A. About a minute later 3-1, 2011 at 16:27 and 30
25 seconds.

1 Q. Okay. So about 4:27 and a half, right?

2 A. Yes, sir.

3 Q. Moving on to the calls received by that Cricket

4 Kyocera phone what is the date and time of the last call

5 actually received by that phone?

6 A. The very last call coming in to that phone was 3-1,

7 2011 at 16:46 and 28 seconds.

8 Q. And from -- what was the contact's name?

9 A. The contact's name was capital C-T-P-T.

10 Q. And the duration of that call was how long?

11 A. Fifteen seconds.

12 Q. And under the dialed section under State's exhibit

13 number 48 what was the last number dialed on that phone?

14 A. The last number dialed is 843-

15 Q. And who is the contact listed there?

16 A. Capital M-Y-E.

17 Q. And that's at what time now?

18 A. That was 3-1, 2011 at 16:45 and 50 seconds.

19 Q. Okay. Could you please answer any questions that

20 Ms. Ford may have?

21 CROSS-EXAMINATION

22 BY MS. FORD:

23 Q. There's just one number I want to discuss in the

24 calls okay?

25 A. Yes, ma'am.

1 Q. I guess I'll start dialed numbers its 005?
2 A. For which phone?
3 Q. For the Kyocera?
4 A. The Cricket? Okay.
5 Q. Yes?
6 A. In the dialed outgoing?
7 Q. Yes?
8 A. 005?
9 Q. Yes. And that number is for correct?
10 A. 843- , yes ma'am.
11 Q. And on March 1st that's at 10:09 a.m. correct?
12 A. 10:09:20 -- 26, yes.
13 Q. And there is a call to that number again right after
14 that correct, 10:09:47?
15 A. Yes.
16 Q. And then again at 10:14:12?
17 A. Yes.
18 Q. That call right there lasted over a minute, 1 minute
19 and 18 seconds?
20 A. Uh huh. And 18 seconds, yes.
21 Q. And then go to 025 at 16:39:58 p.m. or hour of 4:39,
22 it was 4:30 -- or 4:40. The Cricket number called -
23 again?
24 A. Yes -- that's 385.
25 Q. Correct -- the notes.

- 1 A. You said 382 the first time.
- 2 Q. But then right below that call 26 --
- 3 A. Right.
- 4 Q. There's a call to ?
- 5 A. Correct.
- 6 Q. And then below that there is a call to the same
- 7 number ?
- 8 A. Correct.
- 9 Q. And then going to received calls there are calls
- 10 from that same number starting at call number --
- 11 dialed -- number 16 at 12:29 a.m.?
- 12 A. From 3-1, 2011, yes its 2382 call number 60.
- 13 Q. Okay. And then the conversation lasts 3 minutes
- 14 and 17 seconds?
- 15 A. That's correct.
- 16 Q. And then there is a call at 8:48 in the morning
- 17 correct?
- 18 A. Correct.
- 19 Q. And then again at 9:50:30 in the morning, correct?
- 20 A. Correct.
- 21 Q. And then again at 10:11 in the morning?
- 22 A. Yes, correct.
- 23 Q. And then at 11:31 in the morning?
- 24 A. Correct.
- 25 Q. And then going to missed calls on March 1st there is

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1 a missed call with that number at 10:14 correct?
2 That would be number 24.
3 A. Number 24? Yes, at 10:14.
4 Q. And then 10:43 as well?
5 A. Correct.
6 Q. And then 10:46 as well?
7 A. Correct.
8 Q. And then 11:01?
9 A. Correct.
10 MS. FORD: Beg the court's indulgence.
11 [Whereupon, Ms. Ford and Mr. Butler confer]
12 Q. [Ms. Ford] In trying to keep track of this it was
13 brought to my attention that perhaps I didn't mention the
14 time. - But just in case I didn't under dialed calls --
15 A. Of the Kyocera?
16 Q. Yes. And again looking at the number 640-2382 there
17 are 2 calls to that number at 6:42: 50 -- I'm sorry,
18 16:42:50 so that's 4:42:50 and its 16:42:59 correct?
19 A. Correct.
20 Q. And all these times they're kept in military time,
21 right?
22 A. In this yes. In this -- the way that this software
23 extracted these numbers from this particular phone it put
24 in at military time.
25 Q. All right. No further questions.

1 THE COURT: Any redirect?

2 MR. DURANT: No, sir.

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

5 MR. DURANT: None from us, Your Honor.

6 MS. FORD: No, he's fine, Your Honor.

7 THE COURT: Thank you very much. You may be
8 excused. Have a good day.

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

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

12 THE COURT: Yes, sir.

13 [Whereupon, an off the record bench conference is
14 held]

15 THE COURT: All right. Ladies and gentlemen of
16 the jury we'll take about a 10 minute break. It will be
17 long enough hopefully to cycle through the restroom and
18 get started right back.

19 Don't talk about the case and leave your notepads in
20 the chairs. Y'all are getting pretty good about lining
21 up and coming in right.

22 [Whereupon, the jury exits the courtroom at 3:41
23 p.m.]

24 THE COURT: We'll take about a 10 minute break.

25 [Whereupon, court is in recess from 3:42 p.m. until

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1 3:57 p.m.]

2 THE COURT: Are we ready to proceed or do y'all
3 need a few minutes?

4 MR. DURANT: I think we're ready, Your Honor.

5 THE COURT: Okay. Bring us the jury, please.

6 [Whereupon, the jury enters the courtroom at 3:58
7 p.m.]

8 THE BAILIFF: All jurors seated, Your Honor.

9 THE COURT: Thank you very much. You can call
10 your next witness, please.

11 MR. DURANT: The State would call David Osborne.

12 THE COURT: Okay.

13 [Whereupon, Mr. Osborne comes forward]

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

18 MR. OSBORNE: I do.

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

21 MR. OSBORNE: David Osborne, O-S-B-O-R-N-E.

22 - - - - -

23 DAVID OSBORNE,

24 Having been first duly sworn,

25 Was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. DURANT:

3 Q. Good afternoon Detective Osborne. Could you tell
4 the jury where you are employed?

5 A. I work for the Charleston Police Department.

6 Q. And how long have you been with the Charleston
7 Police Department?

8 A. I've been with the City for ten years now.

9 Q. And what are your current responsibilities at the
10 Charleston Police Department?

11 A. I am the sergeant in charge of the Violent Crimes
12 Unit.

13 Q. And you have been in charge of the Violent Crimes
14 Unit for how long now?

15 A. Not long. I was promoted to Sergeant in December.
16 I had another assignment so I guess I've been back here
17 probably about three or four months.

18 Q. Okay. And previous to that in March of 2011 you
19 were a detective in the violent crime unit, is that
20 correct?

21 A. I was.

22 Q. And what was your role in the investigation of the
23 murder of James Javon Smith?

24 A. I was the case agent.

25 Q. Okay. And what is the case agent?

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1 A. Well just to give you an example about the way these
2 homicides -- when it first comes out all the detectives
3 come out and help out, do various interviews, gather
4 different types of evidence.

5 As the days pass along the case agent takes on the
6 primary responsibility basically managing the case. So
7 you could say he is more like a case manager.

8 Q. And what was the victim James Javon Smith's
9 nickname?

10 A. The victim's nickname was Tiddy.

11 Q. Now going to March the 1st of 2011 the day of the
12 murder, when did you become involved in the
13 investigation?

14 A. I learned of the murder and I came into work later
15 on that night.

16 Q. Okay. So you were not on duty at the time the
17 murder took place?

18 A. I was not.

19 Q. And how did you become involved in the investigation
20 when you went to work that night?

21 A. When I came into work I met with Sergeant Knobeloch
22 [phonetic]. He briefed me with what we had at that
23 point. I also briefly met with Kennedy Smith.

24 Q. Okay. And that was on the night of March the 1st?

25 A. On the night of the murder, yes sir.

1 Q. And did you obtain any information from Kennedy
2 Smith that hadn't already been obtained from Detectives
3 Fleming and Burckhardt?

4 A. No.

5 Q. Were you made -- when you came in that evening were
6 you made aware of a cell phone that had been retrieved
7 from the pocket of James Javon Smith, the victim?

8 A. Yes.

9 Q. And that would be the black LG cell phone that was
10 previously -- been marked as State's exhibit number 35
11 into evidence, is that correct?

12 A. That's correct.

13 Q. And what did you do -- were you provided with a call
14 history that had been obtained from that phone from
15 Sergeant Knobloch?

16 A. I was.

17 Q. What did you do?

18 A. I started calling the last numbers that appeared in
19 the victim's cell phone trying to make contact with
20 anyone that might be able to shed some light on what
21 happened to him. I left messages on several numbers. I
22 was able to talk to one person by the name of Jennifer.

23 Q. And what was Jennifer's relationship with the
24 victim?

25 A. Jennifer, she is the victim's girlfriend.

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1 Q. And I know from your supplement that you filed at
2 the time that one of the calls -- numbers you attempted
3 to call at that was .
4 A. That's correct.
5 Q. And there was apparently a call in the call history
6 to the LG at 4:27 p.m. is that correct?
7 A. That's correct.
8 Q. Did you -- were you able to make contact with that
9 number?
10 A. No.
11 Q. But you did try, correct?
12 A. I tried I think it was around 10 p.m. I called. It
13 went straight to voice mail.
14 Q. And did that number later become
15 significant in your investigation?
16 A. It did.
17 Q. But it wasn't at that time, correct?
18 A. No, not at that time.
19 Q. And to what phone did you later find out that number
20 belonged?
21 A. The 735 number came back to the Cricket Kyocera
22 phone that was missing its battery pack -- or battery
23 back. And that phone was recovered from the passenger
24 floor board of Kennedy Smith's car from the passenger
25 floorboard.

1 Q. Now if you would just explain what went on with the
2 jury that evening regarding some guy named Henry Lucas.

3 A. Well, I knew that detectives went to
4 They tried to talk to some of the people at that
5 residence.

6 They weren't really met with a warm reception so we
7 felt that there still might be some information that
8 could be obtained at that residence.

9 We set up surveillance on that residence. A car
10 came up, spent a short time there and then left. We
11 conducted a traffic stop.

12 The driver was identified as Henry Lucas. He was in
13 possession of a .380 handgun and also a large amount of
14 cash.

15 Q. And is that when you called Mr. Miller that had
16 testified previously?

17 A. He came out and we were on 17 at the old Alex's
18 restaurant.

19 Q. Okay. And what was done with the Taurus .380?

20 A. We sent that to SLED to compare to ballistics that
21 we recovered from the homicide.

22 Q. Just to see whether or not that was the murder
23 weapon?

24 A. Yes.

25 Q. And what was done with Mr. Lucas?

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- 1 A. I took him back to the station. I interviewed him.
2 The story seemed to check out so he was released.
- 3 Q. Now moving ahead to the next day March the 2nd what
4 did you do with regard to the victim's father Kennedy
5 Smith?
- 6 A. I charged him with Obstruction of Justice.
- 7 Q. Why?
- 8 A. Kennedy lied and he did everything he could to
9 impede our investigation. So -- and that's part of
10 Obstruction of Justice. I felt like we had enough
11 evidence to charge him so I did.
- 12 Q. And when you served the warrant on him that day did
13 you have occasion to interview him again?
- 14 A. Yes.
- 15 Q. And was there any change in his story from the
16 previous one?
- 17 A. No, the only change was that he admitted to having
18 possession of marijuana.
- 19 Q. Was there any change in his -- the previous
20 description he had given of the shooter?
- 21 A. No.
- 22 Q. He was still maintaining the shooter had what
23 hairstyle at that time?
- 24 A. Twists in his hair.
- 25 Q. Now that day you also went to is

1 that correct?

2 A. I did.

3 Q. Who resides at that address or who lives at that
4 address?

5 A. Frederick Flowers.

6 Q. That's the address you had for him at the time?

7 A. Yes.

8 Q. And was Frederick there?

9 A. No he wasn't.

10 Q. Who did you talk to?

11 A. We spoke to a Robert Flowers.

12 Q. And why were you looking for Frederick Flowers at
13 that time?

14 A. His name had come up as being the shooter.

15 Q. And where is in relation to

16 [phonetic]

17 A. It's about two to three blocks south of the incident
18 of the shooting.

19 Q. Towards Savannah Highway?

20 A. Yes, sir.

21 Q. And the defendant was not there was he?

22 A. No, he wasn't.

23 Q. Later that day did you have an occasion to meet with
24 Jennifer Myers?

25 A. I did.

1 Q. And she provided you a statement that day?

2 A. Yes.

3 Q. Based upon your interview with her were you able to

4 ascertain the number to the victim's black LG cell phone?

5 A. It was ---

6 Q. --- State's number 35?

7 A. Yes.

8 Q. And that was the number previously testified to by

9 Officer VanHorn; the is that correct?

10 A. That's right.

11 Q. Moving ahead to the next day March the 3rd did you

12 attempt to get in contact with a person named Cornelius

13 Jenkins?

14 A. I did.

15 Q. And how did his name come up in the investigation?

16 A. We had obtained information that Cornelius may have

17 information himself that could help further the

18 investigation.

19 Q. Okay. And I believe that information came from a

20 Brittany Mack is that correct?

21 A. That's correct.

22 Q. Were you able to make contact with Cornelius

23 Jenkins?

24 A. No. I went by two different addresses and left

25 cards. He ended up calling me back. I told him I would

1 like to sit down and talk to him. He refused.

2 Q. Did -- later that day did you -- you actually ended
3 up having an occasion to talk to him is that correct?

4 A. I did. I got a phone call from Cornelius's sister
5 who offered to bring him to the station. So I agreed and
6 I met with him later on that night?

7 Q. Okay. He provided a statement at that time?

8 A. He did.

9 Q. And did you view that as a true statement?

10 A. No, not at all.

11 Q. Now what was his relationship with the defendant
12 Frederick Flowers?

13 A. He was Freddie's friend.

14 Q. Now I'm not going to ask you everything you did in
15 relation to this investigation. I want to move on at
16 this point to March the 8th of 2011. And what did you do
17 with regard to some cell phones that had been recovered
18 in this case?

19 A. I prepared search warrants to have data extracted
20 from the cell phones.

21 Q. And from how many cell phones?

22 A. Three.

23 Q. And which cell phones were those?

24 A. A Motorola cell phone which was recovered from the
25 front passenger's seat in Kennedy's vehicle.

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- 1 Q. Whose cell phone was that?
- 2 A. That was Kennedy Smith's cell phone.
- 3 Q. And how about the second one?
- 4 A. The second one was the LG phone and that phone was
- 5 recovered from the victim's pocket.
- 6 Q. That's the one that has now been marked as State's
- 7 35, correct?
- 8 A. That's correct.
- 9 Q. And how about the third phone?
- 10 A. The third one was the Cricket Kyocera recovered from
- 11 the passenger floor board of Kennedy's car.
- 12 Q. And that's now been marked as State's 40 correct?
- 13 A. That's correct.
- 14 Q. Now you said that the Motorola belonged to Mr.
- 15 Kennedy Smith. At that time who did you believe LG phone
- 16 belonged to?
- 17 A. Well I knew the victim in this case was a drug
- 18 dealer so I just assumed that both of the phones belonged
- 19 to him.
- 20 Q. And is it unusual for people that you deal with to
- 21 own more than one phone?
- 22 A. No.
- 23 Q. And what did you do with the phones after obtaining
- 24 the search warrant?
- 25 A. I sent the search warrants along with the phones to

1 Rodney VanHorn in the physical evidence unit.

2 Q. Okay. Later that afternoon did you have an
3 occasion to meet with someone named Myhesa Wine related
4 to the investigation?

5 A. I did.

6 Q. And where was that?

7 A. My first interview with Myhesa was at the Amoco gas
8 station at 171 and 61; at that split.

9 Q. Okay. And why did you want to talk to My at that
10 time?

11 A. Because I had learned that Myhesa had spoken to
12 Freddie on the day of the murder.

13 Q. Spoke to him in person or spoke to him on the phone,
14 if you recall?

15 A. In person.

16 Q. Okay. And did Mr. Wine provide you with a
17 statement at that time?

18 A. He did.

19 Q. And what was Mr. Wine's relationship with the
20 defendant?

21 A. He was Freddie's friend.

22 Q. Now the following day March the 9th did you have the
23 occasion to meet with Kennedy Smith again?

24 A. I did.

25 Q. And tell me how that came about.

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- 1 A. I had received a phone call from Investigator Miles
2 I believe. He is Kennedy's attorney's investigator and
3 he said that Kennedy was ready to talk to me.
- 4 Q. Okay. And where was Mr. Smith at that time?
- 5 A. He was in the Detention Center.
- 6 Q. So you picked him up from the Detention Center?
- 7 A. I did.
- 8 Q. And where did you take him?
- 9 A. I brought him down to C-P-D station.
- 10 Q. Now during that interview was there any change in
11 the description he had previously provided of the
12 shooter?
- 13 A. He then changed the description from having the
14 twists in his hair to having a low cut.
- 15 Q. And after talking to him that day did you have an
16 opportunity to show him some photographic lineups?
- 17 A. I did.
- 18 Q. And that would be -- one of them was what's now been
19 marked as State's exhibit's 42 and 43 is that correct?
- 20 A. Yes.
- 21 MR. DURANT: And those are in evidence aren't they?
- 22 THE COURT: They are in evidence.
- 23 Q. [Mr. DuRant] Tell me about that. How did you go
24 about showing him the photographic lineup?
- 25 A. We have what we call a line up admonition form. The

1 first thing I did was read that to Kennedy and asked him
2 if he understood and he indicated that he did.

3 Q. Okay. That's the admonition on State's 42?

4 A. Yes, that's it.

5 Q. And he indicated he understood that?

6 A. Yes.

7 Q. And he signed it?

8 A. Yes.

9 Q. And what time was this?

10 A. That would have been at 3:10 p.m.

11 Q. Okay. And what did you do after going over the
12 admonition with him?

13 A. Once he indicated that he understood the admonition
14 form would have been stapled to the lineup, which would
15 have been behind it and then I handed it to him.

16 Q. And what did he do when you handed it to him?

17 A. He looked it over and he looked at the lineup. And
18 then after about five seconds he identified Frederick
19 Flowers as being the shooter.

20 Q. Okay. And did you have him sign -- what did you
21 have him do when he picked out that photograph?

22 A. I had him circle the photo and then sign his name.

23 Q. And what did he -- which part of the admonition did
24 he sign after making that identification?

25 A. On the admonition form he has two options. I read

1 them to him. The first is I was unable to make a
2 positive identification and the second is I have made a
3 positive identification.

4 He indicated that he had made a positive
5 identification, wrote the number; and Freddie's number
6 would have been 5 so he wrote 5 on there, and signed his
7 name.

8 Q. And what did he write down in the comments section?

9 A. On the comments section he wrote this looked the
10 closest to the person who shot my son. Neck and side of
11 the face and complexion is what I saw. And then he put
12 his initials after that.

13 Q. Okay. And I believe following that you showed him
14 another photograph and lineup is that correct?

15 A. I did.

16 Q. Do you recall who the target was in that
17 photographic lineup?

18 A. It was Cornelius Jenkins. I was trying to identify
19 some of the other individuals who were out there.

20 Q. And was he able to make a determination -- was he
21 able to make an identification?

22 A. He was not.

23 Q. Okay. Let's jump ahead to March 11th, the day you
24 heard back from the digital evidence unit concerning the
25 data extraction.

1 And regarding the report you got back from Mr.
2 VanHorn were you able to confirm the telephone number for
3 the Cricket Kyocera that was found in the floorboard of
4 the car?

5 A. Yes, it was

6 Q. And you had previously -- and also confirmed the
7 telephone number you had for the LG phone

8 A.. That's correct.

9 Q. That you previously obtained from talking to the
10 girlfriend?

11 A. That's correct.

12 Q. After reviewing that D-E-U report what conclusion
13 did you reach?

14 A. I was under the assumption like I said earlier that
15 the victim was in possession of both of those phones.
16 But when I looked at the call detail that was provided to
17 me by D-E-U I saw that within the past hour those phones
18 had communicated with one another.

19 That left me with the impression, at least with the
20 belief, that there was a good chance that the Cricket
21 phone could have belonged to the shooter.

22 Q. Okay. And I'll hand you what has previously been
23 marked as State's exhibit 48, which is the call history
24 from the Cricket Kyocera phone already in evidence.

25 [Whereupon, the witness is shown exhibit]

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1 Q. And what particular calls were you referring to?
2 A. Okay.
3 Q. Starting with item number 20 or dialed call number
4 20.
5 A. Number 20 is on March the 1st, the day of the
6 shooting, at 15:57 there is a call to and the contact is
7 T-I-E-T.
8 Q. And the duration of 59 seconds, is that correct?
9 A. Yes, sir.
10 Q. And then after that place number 23 or dialed call
11 number 23?
12 A. That one is at 16:26 again to T-I-E-T 801 number.
13 And that has zero for the duration.
14 Q. And number 24?
15 A. That's at 16:27 on the same day, the same person.
16 That has a duration of 29 seconds.
17 Q. Okay. Is State's exhibit number 47 up there as
18 well?
19 A. Yes.
20 Q. Okay. And what is State's exhibit number 47?
21 A. These are the contacts that were extracted from the
22 Kyocera phone.
23 Q. Okay. And I want to direct your attention to 0061,
24 the number being . Who is that contact listed
25 as?

- 1 A. Mye, M-Y-E.
- 2 Q. And during your investigation did you discover the
3 identity of Mye?
- 4 A. Myhesa Wine.
- 5 Q. And what is Myhesa Wine's relationship with the
6 defendant?
- 7 A. Freddie's friend.
- 8 Q. How about contact number 62 designated Old Lady.
9 Did you ever discover the identity of that contact?
- 10 A. I believe that was Tonya Flowers.
- 11 Q. And what is Tonya Flower's relationship with the
12 defendant?
- 13 A. Freddie's mother.
- 14 Q. Contact number 70 designated Danny. Were you able
15 to discover the identity of that contact?
- 16 A. Yes.
- 17 Q. And who is Danny -- Danny's real name?
- 18 A. His real name is William White.
- 19 Q. And what is his relationship with the defendant, if
20 any?
- 21 A. Freddie's cousin.
- 22 Q. How about a 0072? There is a contact named Big Bra
23 with a number of Did you discover the
24 identity of that contact?
- 25 A. Cornelius Jenkins.

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1 Q. At 0078 there is a contact named Butta at 300 --
2 number of . Did you discover the identity of
3 that contact?
4 A. It's Carlos Jones.
5 Q. And at 0094 a contact named Nasty at Did
6 you discover the identity of that contact?
7 A. It was Reginald Wescott.
8 Q. And at 0115 contact T-I-E-T at
9 A. That was the victim James Smith.
10 Q. On State's exhibit 48 the contact -- the call
11 history of the Kyocera I want to direct your attention to
12 some calls made the day of the murder.
13 Under the dialed section by that Cricket Kyocera
14 phone at call number 8 at 11:31 in the morning who was
15 that call to?
16 A. Butta; or Carlos Jones.
17 Q. And March the 3rd, the next one number 9 March 1st at
18 12:28 who was that -- was there an attempt to call
19 someone?
20 A. The same person Butta; Carlos.
21 Q. At 012 March 1st 2001 at 1:16 there was a call to
22 who?
23 A. Mye; Myhesa Wine.
24 Q. And then there was another attempted call to Myhesa
25 Wine under -- at dialed number 13 at what time?

1 A. At 1:30. I'm sorry, 1:20.
2 Q. Okay. How about at 015 on March the 1st, 2011 at
3 1:22?
4 A. Danny or William White.
5 Q. The defendant's cousin?
6 A. Yes.
7 Q. How about 016 on March the 1st, 2011 at 1:43 there
8 was a call to who?
9 A. It was contact Old Lady, Tonya Flowers; Freddie's
10 mother.
11 Q. Okay. And call 17 March the 1st 1:48 a call to who?
12 A. Butta, Carlos Jones.
13 Q. March 1st 3:57:39 was the call you previously
14 mentioned to T-I-E-T?
15 A. Correct.
16 Q. 59 seconds?
17 A. Yes.
18 Q. Call number 21 March the 1st at 4:11 p.m. to who?
19 A. Nasty; or Reginald Wescott.
20 Q. Who did he call at 22, dialed call 22 on March 1st at
21 16:23:06? Who was that call to?
22 A. Butta, Carlos Jones.
23 Q. Okay. Moving to 23 3-1 -- on March the 1st, 2011 at
24 16:26 call or attempted call to who?
25 A. T-I-E-T, James Smith; the victim.

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

RECEIVED
JUL 26 2013
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FREDERICK L. FLOWERS,

APPELLANT

APPELLATE CASE NO. 2012-212907

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of July, 2013.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 26th day of July, 2013.

Palmer Kay
Notary Public for South Carolina

(L.S.)

My Commission Expires: July 24, 2022.