

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

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

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FREDERICK L. FLOWERS,

APPELLANT

APPELLATE CASE NO. 2012-212907

RECORD ON APPEAL

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

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

4 Q. But that was a completed call?

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

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

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

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

14 A. That's correct.

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

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

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

23 A. The Kyocera, yes.

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

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

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

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

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

7 A. I did.

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

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

12 Q. And you interviewed him that day?

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

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

16 A. Absolutely not.

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

19 A. I confiscated his cell phone.

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

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

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

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

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

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

10 Q. And was the number the number to the
11 Cricket Kyocera phone in his contacts?

12 A. It was in his contacts.

13 Q. Under what name?

14 A.. Freddie.

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

16 A. That's correct.

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

19 A. I did.

20 Q. At ?

21 A. I did.

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

23 A. I had prepared a search warrant for the 735 Cricket
24 phone.

25 Q. The Kyocera?

1 A. The Kyocera.

2 Q. State's exhibit 4?

3 A. Yes. And that number came back as being a prepaid
4 number as well, but it didn't have subscriber information
5 to a C-T-Treen. I think it was was the
6 address listed.

7 Q. And what efforts did you make to locate Mr. Treen on
8 March the 21st?

9 A. I checked him through all of our databases; D-M-V,
10 our systems, the county I couldn't find anyone -- I
11 couldn't locate anyone by that name. I went to that
12 address 608 Castle Place. I found out it was a
13 fictitious address; it didn't exist.

14 Q. And what was the date of birth of the fictitious Mr.
15 Treen?

16 A. 2.

17 Q. And what is Freddie Flower's date of birth?

18 A.

19 Q. Now jumping ahead to March 31st. You had an occasion
20 to meet with Mr. Kennedy Smith again, is that correct?

21 A. I did.

22 Q. Was that when you obtained that written statement
23 that everybody has been talking about?

24 A. I did.

25 Q. And then on May the 12th of 2011 you had the occasion

1 to meet with Myhesa Wine again.
2 A. Right.
3 Q. Why and where was that?
4 A. I met with Myhesa in front of his residence. He
5 came out and sat down in the police car and I spoke to
6 him. The reason why I met with him again is because I
7 didn't believe him.
8 Q. Okay. And were you able to record that interview?
9 A. I tried to. I tried to record it and at the end of
10 the interview I went back to the recorder and for
11 whatever reason it just didn't pick it up.
12 Q. Did he really provide any different information on
13 that occasion than he provided before?
14 A. No.
15 Q. So based on that did you interview him again on June
16 the 1st?
17 A. I did.
18 Q. Of 2011? And where did that interview take place?
19 A. At the station.
20 Q. And why did you want to talk to him again?
21 A. Well, during the interview at his house in the
22 police car he had given me some information that indicted
23 that there may be some communication between him and
24 Freddie so I wanted to go over the phone records with
25 him.

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

4 A. Yes.

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

7 A. Yes.

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

10 A. Right.

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

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

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

21 A. Right.

22 Q. And Cornelius and Myhesa Wine correct?

23 A. Well, Michael Quarles.

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

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- 1 to him?
- 2 A. Myhesa had told -- Myhesa indicated that Reginald
3 might have information that would help the investigation.
- 4 Q. Okay. He said he had been over to Reginald's right
5 after the shooting correct?
- 6 A. That's correct.
- 7 Q. And Mr. Westcott's name is -- nickname is what?
- 8 A. Nasty.
- 9 Q. And what is his relationship with Frederick Flowers?
- 10 A. He's a friend.
- 11 Q. And by that time you had known his number showed up
12 in the call phone -- the cell phone log of the Cricket
13 Kyocera phone is that correct?
- 14 A. That's correct. On the day of the murder they had
15 communicated with one another.
- 16 Q. Once again did you believe you were being told the
17 truth?
- 18 A. Reginald was a little bit tougher. He wasn't
19 unbelievable but I wasn't getting the feeling he was
20 completely forthright with me.
- 21 Q. Now moving ahead to April the 13th, 2012 this year
22 did you have the occasion to come into contact with the
23 defendant Frederick Flowers?
- 24 A. I did.
- 25 Q. For what purpose?

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

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

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

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

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

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

18 [Whereupon, the witness is shown exhibit]

19 A. I do.

20 Q. And what is that?

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

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

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1 A. We sent -- or I sent -- requested it be sent to SLED
2 along with any contact D-N-A that might have been
3 recovered from the Cricket along with a standard sample
4 of blood from the defendant.
5 Q. Okay.
6 MR. DURANT: You have any problem with -- Ms. Ford,
7 do you have any objection to the admission of State's
8 exhibit 49, the buccal swab?
9 MS. FORD: No objection.
10 THE COURT: All right. 49 is admitted without
11 objection.
12 [Whereupon, State's exhibit number 49 is entered
13 into evidence by the court]
14 Q. [Mr. DuRant] And then I believe on July the 16th of
15 this year you had an occasion to interview Myhesa Wine
16 for a fourth time.
17 A. I did.
18 Q. And where did that take place?
19 A. At the Solicitor's office.
20 Q. Okay. And I believe he previously testified as to
21 what happened in regards to that.
22 A. That's correct.
23 Q. Had you been able to talk to Carlos Jones at this
24 time?
25 A. No, but it wasn't for lack of effort. I had spoken

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

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

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

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

10 A. That's correct.

11 Q. And his nickname is what?

12 A. Butta.

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

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

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

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

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

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

1 call from him.

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

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

7 A. No.

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

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

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

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

19 A. That's correct.

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

21 A. That's right.

22 Q. Did he show up that time?

23 A. He did show up that time.

24 Q. Who was he with?

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

1 girlfriend and his younger child; a boy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 A. That's correct.

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

22 A. Yes.

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

24 A. Yes.

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

1 re-interview Reginald Wescott?

2 A. I did.

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

4 A. Yes.

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

7 A. Yes.

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

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

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

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

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

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

22 A. Yes.

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

25 THE COURT: Cross-examination?

1 MS. FORD: Yes, Your Honor.
2 CROSS-EXAMINATION
3 BY MS. FORD:
4 Q. Hi Detective. Detective Osborne, in this case there
5 is really is it fair to say when the shooting first
6 occurred there wasn't really much physical evidence
7 around to lead you -- there was a phone in the car
8 basically.
9 A. Right.
10 Q. Okay. And you didn't know who that belonged to?
11 A. No.
12 Q. But you ultimately discovered that it belonged to
13 Freddie?
14 A. That's correct.
15 Q. But you also learned that he had other phones,
16 correct?
17 A. That's correct.
18 Q. And one of those phones is the number
19 A. That's correct.
20 Q. Do you have -- are the phone logs still up here?
21 A. Yes.
22 Q. And just -- on the day of the shooting March 1st you
23 went over with Mr. DuRant a lot of the calls that that
24 Cricket cell phone made. There are a lot of calls to and
25 from the number as well, correct?

- 1 A. That's correct.
- 2 Q. Okay. There are multiple calls from that number.
- 3 A. That's correct.
- 4 Q. And to that number. On -- when -- originally Mr.
- 5 Smith was the only I.D. witness correct?
- 6 A. [No response]
- 7 Q. He was the only one who talked to you ---
- 8 A. --- who came forward ---
- 9 Q. --- who agreed that he actually saw the shooting?
- 10 A. That's correct.
- 11 Q. At that point he didn't mention anything about a
- 12 phone correct?
- 13 A. Well, this was part of the reason I wanted to re-
- 14 interview him with David Aylor. When I went back over
- 15 and realized there were certain issues that we needed to
- 16 clarify; and that was one of them.
- 17 Q. And he -- but he said that he never saw anyone throw
- 18 a phone in the car -- or drop a phone in the car.
- 19 A. And that's what I wanted to ask him. I don't think
- 20 we asked him that. That never really came up.
- 21 Q. And did it when you spoke to him at Mr. Aylor's
- 22 office?
- 23 A. At Mr. Aylor's office it did, yes.
- 24 Q. Right. And he indicated no he never saw a phone?
- 25 A. That's correct.

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

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

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

6 A. Coming from...

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

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

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

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

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

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

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

1 didn't make any sense that he would be calling himself.
2 So therefore it seemed logical to me that if that phone
3 had called him earlier, two times within the hour and he
4 shot him from close range, it was likely that he might
5 have dropped the phone in the car.

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

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

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

10 A. That's correct.

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

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

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

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

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

19 A. I did.

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

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

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

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

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

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

9 A. Yes.

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

12 A. Yes.

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

15 A. Right, yes.

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

18 A. Which one?

19 Q. Well initially?

20 A. Yes.

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

22 A. Yes.

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

1 A. That's correct.
2 Q. And would you agree that is average type of height
3 for a male?
4 A. Six foot is on the taller end to me. The 5 foot 9
5 is right in the average realm.
6 Q. Okay. Now you would agree that Freddie Flowers is
7 way over 6 feet tall?
8 A. He's taller than 6 foot, yes.
9 Q. Okay. More like 6-5?
10 A. That wouldn't surprise me.
11 Q. Okay. And you also -- you told us how you spoke to
12 Jennifer Myers.
13 A. I did.
14 Q. And she had mentioned a Freddie correct?
15 A. Yes.
16 Q. She didn't really know this person though correct?
17 A. I spoke to her twice. But on the night of the
18 murder I spoke to her and Detective Fleming and I went
19 out there and spoke to her.
20 Q. Okay.
21 A. And she -- I mean I think she knew a Freddie. But I
22 think that she had heard information ---
23 Q. --- well what I'm going to -- she told -- we heard a
24 little from Carlos about the day before how Jennifer went
25 with Tiddy to correct?

1 A. Yes.

2 Q. Okay. She confirmed that as well.

3 A. Yes.

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

5 A. Yes.

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

7 muscular.

8 A. I do remember that description and that's why -- I

9 don't know how much you want me to say I mean ---

10 Q. --- well, I'm just saying that is the -- her

11 description that she gave was not a description of

12 Freddie Flowers is that fair to say?

13 A. It is fair to say, yes.

14 Q. Okay. Now you told us a little of how you charged

15 several people with Obstruction of Justice.

16 A. I did.

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

18 say?

19 A. No, I don't like charging that charge at all. I'd

20 much prefer people to come in and just tell the truth.

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

22 not uncommon for you to charge that charge.

23 A. Especially with murder cases, yes.

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

25 years.

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

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

4 A. Yes.

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

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

12 Q. Okay.

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

16 Q. All right. But ---

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

20 Q. Well Cornelius Jenkins he was charged correct?

21 A. He was.

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

24 A. Right.

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

1 West Ashley correct?
2 A. That's part of it, right.
3 Q. That's why he was charged.
4 A. That's not the only reason. He also indicated that
5 he had never spoken to the victim on the phone. When I
6 went back and looked at the phone records from January
7 until the day of the shooting he spoke to the victim
8 either 27 or 37 times on the phone.
9 Q. Okay. And then -- I want to talk about Kennedy
10 Smith, okay. You arrested him on Obstruction of Justice
11 right?
12 A. Yes.
13 Q. And this was just a day after the murder?
14 A. Yes.
15 Q. Okay. And you told us several reasons why you did
16 that.
17 A. Yes.
18 Q. Okay. Well it's not because he gave a description
19 of the shooter that was wrong correct, because you didn't
20 know that. That's not the reason why he was charged is
21 that fair to say?
22 A. That's not the reason why he was charged.
23 Q. Okay. He was charged -- he told you what he had
24 done that day and he said that he picked up his son from
25 the gas station correct?

1 A. That's correct.

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

3 A. Yes.

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

5 A. Yes.

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

8 A. Right.

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

11 A. No.

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

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

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

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

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

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

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

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

9 A. One reason; that's correct.

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

12 [Whereupon, the witness is shown exhibit]

13 A. I do.

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

16 A. It is.

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

21 A. Let me read it real quick.

22 [Whereupon, the witness reviews the document]

23 A. That's correct.

24 Q. That person was Brandon Smalls, correct?

25 A. That's correct.

1 Q. And Brandon Smalls from everything you have been
2 able to gather was not at during the time
3 of the shooting correct; at the house?
4 A. He was not at the house, that's correct.
5 Q. Right. He was down the street. He lives in the
6 area correct?
7 A. He does live in the area, correct.
8 Q. And he's a friend of Tiddy's?
9 A. Yes.
10 Q. Okay. He was actually very upset when he learned
11 that Tiddy had died?
12 A. Yes.
13 Q. Okay. He told you that Kennedy Smith picked up
14 Tiddy from his house, correct?
15 A. Brandon was interviewed on two different occasions.
16 Q. Right. What I'm going to is Brandon Smalls was
17 arrested.
18 A. Yes.
19 Q. Okay. For Obstruction of Justice.
20 A. Yes.
21 Q. And he told y'all -- would it help you to see his
22 affidavit?
23 A. Sure, if you're going to ask me specifics about it.
24 MR. DURANT: Your Honor, at this point we're
25 getting into a little relevance issue here, I think.

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

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

4 MR. DURANT: Thank you.

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

8 [Whereupon, the witness is shown exhibit]

9 A. Yes.

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

15 A. That's correct.

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

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

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

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

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

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

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

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

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

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

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

24 Q. Well that ---

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

1 just a second please, okay.

2 [Whereupon, an off the record bench conference is

3 held]

4 Q. [Ms. Ford] Okay Detective Osborne, we're not talking

5 about Cornelius Jenkins anymore, okay.

6 A. Okay.

7 Q. Instead I want to go to everybody else, okay.

8 Basically when you -- you talked to everybody involved in

9 this case pretty much, correct. You talked to Carlos

10 correct?

11 A. Yes.

12 Q. To Michael Quarles, correct?

13 A. Yes.

14 Q. And Reggie Wescott?

15 A. Yes.

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

17 A. Yes.

18 Q. With some pretty significant differences, correct is

19 that fair to say?

20 A. Yes.

21 Q. Okay. You haven't charged any of them with

22 Obstruction of Justice?

23 A. No.

24 Q. But would you say you could have?

25 A. I could have, yes.

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

3 A. Yes.

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

7 A. Yes.

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

10 A. Yes.

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

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

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

18 A. Yes.

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

20 A. Yes.

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

22 A. No, I didn't.

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

25 A. Yes.

1 Q. And just to be clear you never said tell me one
2 reason why you were able to observe the shooter. Did you
3 ever say anything like that? Kennedy Smith testified
4 that you didn't ask for more than one reason.
5 A. Yes. I can't remember what the questioning was at
6 that time. I don't recall asking him did you see the
7 shooter at different points. No, I don't recall asking
8 him that specifically, no.
9 Q. But you wanted to gather as much information as you
10 could, correct?
11 A. Not at that interview. In that interview his
12 attorney, David Aylor, I can't recall for what reason he
13 could not participate but he was out of town.
14 And so David was sort of saying I will let you talk
15 to my client but understand that the main purpose should
16 be to see if he can identify the shooter. If you're
17 going to get into a lot of detail then I would prefer to
18 be there. That's why it wasn't recorded ---
19 Q. --- no I'm talking about the 31st the written
20 statement.
21 A. That was with David, yes.
22 Q. Correct. And that was actually at Mr. Aylor's
23 office correct?
24 A. That's correct.
25 Q. So that's why that was not recorded.

1 A. Well, I wrote it down.
2 Q. In a written statement.
3 A. Yes.
4 Q. And what I'm saying is the purpose of that interview
5 was to get as much information as you could, correct?
6 A. I wanted a more in depth interview then, yes.
7 Q. And at that point that's when you were asking about
8 his ability to see the shooter. And he mentioned that
9 he saw the shooter when the shooter stepped away from the
10 car.
11 A. I think so, yes.
12 Q. But if he had seen the shooter at another point you
13 would have wanted to know that correct?
14 A. Right.
15 Q. Also I want to talk a little about Myhesa's
16 statement. Just to be clear Freddie was actually
17 arrested on March 11th correct?
18 A. That's correct.
19 Q. So 11 days after the shooting.
20 A. Right.
21 Q. And he turned himself in for that correct?
22 A. Yes.
23 Q. Myhesa originally indicated he wasn't there,
24 correct?
25 A. That's correct.

1 Q. But he did at this time indicate that Carlos
2 encouraged Freddie to commit the robbery correct?
3 A. What date are you referring to again?
4 Q. This is June of last year.
5 A. I'm sorry. That's correct.
6 Q. And part of your job is to gather police reports
7 together correct?
8 A. That's correct.
9 Q. You write some of them but as a lead investigator
10 you also gather all the other officer's reports.
11 A. Right.
12 Q. And you give them to the Solicitor correct?
13 A. Yes.
14 Q. Who then gives them to the defense attorney?
15 A. That's correct.
16 Q. And presumably I will give them or discuss them with
17 my client correct?
18 A. Correct.
19 Q. And that's what any defense attorney would do -- any
20 attorney?
21 A. I would think so, yes.
22 Q. But you spoke to Myhesa -- when Myhesa first
23 indicated that -- that was June of last year but you
24 didn't turn over the report until just a few months ago,
25 correct?

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

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

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

12 A. That's correct.

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

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

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

19 A. I assume.

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

23 A. [No response]

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

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

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

4 Q. Okay.

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

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

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

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

13 A. No.

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

16 A. Right.

17 Q. Okay.

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

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

23 A. It was me and Investigator Casey.

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

- 1 A. He denied that, yes.
- 2 Q. Instead he said that Myhesa was the one who gave
3 Freddie the gun correct?
- 4 A. That's correct.
- 5 Q. And that Reginald and Michael Quarles also had guns.
- 6 A. He saw one of them with a gun and the other one
7 basically made a motion like they had a gun. But I
8 think he only saw one of them actually with a gun.
- 9 Q. Okay. Just a little more about Kennedy. Initially
10 when you spoke to him before he gave an I.D. he told you
11 repeatedly that his vision was blocked, correct?
- 12 A. Yes.
- 13 Q. That he wouldn't be able to identify the shooter
14 because he didn't get a good view correct?
- 15 A. I do remember that coming up, yes.
- 16 Q. But he told you he was in a low car.
- 17 A. Right.
- 18 Q. And that his son was actually between him and the
19 shooter.
- 20 A. Right.
- 21 Q. And that he didn't think anything was going to
22 happen when he got there so he wasn't paying close
23 attention.
- 24 A. That's correct.
- 25 Q. But you told him that you didn't believe that. That

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

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

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

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

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

12 A. That's what he said.

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

15 A. No.

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

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

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

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

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

1 the description of the shooter and this time he is saying
2 low cut hair correct?
3 A. Yes.
4 Q. Okay. And then he said I said twists before
5 because I saw something shaking at the base of his neck
6 and I just thought they were twists correct?
7 A. Right.
8 Q. So he was -- is it fair to say that he was saying
9 that I was confused about that and not that I
10 deliberately lied about that.
11 A. That was the impression he left me with, yes.
12 Q. Were you -- and I'm just curious, were you with --
13 you met with a lot of the witnesses when they came to
14 speak to Mr. DuRant. Were you present when Kennedy Smith
15 came and talked to him within the past month?
16 A. No, I wasn't.
17 Q. Okay. When you spoke to Myhesa initially -- or
18 back in June -- I want to go back to when you spoke to
19 Myhesa in June -- and that's where he pretty much started
20 to really point the finger at Freddie correct?
21 A. That's correct.
22 Q. He gave actually several stories that same day but
23 that's when he started to get to the meat of it ---
24 A. --- that's correct ---
25 Q. --- or tried to. And you tried to assure him that

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

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

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

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

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

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

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

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

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

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

22 THE COURT: Redirect?

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

24 - - -

25 - - -

1 REDIRECT EXAMINATION

2 BY MR. DURANT:

3 Q. In cross-examination she indicated Mr. Kennedy Smith
4 did not say anything about a struggle or something like
5 that during his direct examination. Did I understand
6 that correctly?

7 A. Yes, I was a little confused. I think that's what
8 she was asking.

9 Q. Okay. But he did say that Freddie stepped back
10 because Tiddy was grabbing at the gun?

11 A. Right. And the gun jammed, that's right.

12 Q. And the gun jammed?

13 A. Right.

14 Q. And he was trying to mess with the gun to get it un-
15 jammed correct?

16 A. Yes.

17 Q. And you had indicated that C.J. had called Tiddy a
18 lot, correct?

19 A. Yes.

20 Q. You had the records. Did C.J. call Tiddy at all the
21 day of the shooting?

22 A. No.

23 Q. To Freddie's phone?

24 A. Freddie's phone, that's right.

25 Q. And she had asked you about Jennifer Myers and her

1 description of Freddie.
2 A. Yes.
3 Q. Correct. And the description didn't match Freddie,
4 correct?
5 A. That's correct.
6 Q. But she also said that day -- she picked out a
7 photograph and said this is Freddie Flowers correct?
8 A. She did. There was a -- and I could get into all of
9 Jennifer's comments but there was a little confusion as
10 to what she had heard and what she saw in regards to
11 Freddie. When I showed her a picture of Freddie Flowers
12 she said yes, that's Freddie.
13 Q. Okay. Despite what her description may have been
14 she identified a picture of him?
15 A. Right.
16 Q. And you said that when Mr. Smith -- when you charged
17 Mr. Smith he was being evasive about the marijuana.
18 A. Yes.
19 Q. Was he ever evasive about what happened?
20 A. No, in the sense that he went there and his son was
21 shot, no.
22 Q. Okay. That's remained -- his story about that has
23 remained pretty constant throughout hasn't it.
24 A. Right.
25 Q. It was just when you were talking about the shooter

1 or the marijuana that he was being evasive.

2 A. That's correct.

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

7 A. That's right.

8 Q. And so you charged him originally right?

9 A. Kennedy?

10 Q. Kennedy?

11 A. Right.

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

14 A. At that time I didn't.

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

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

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

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

22 Q. I have nothing further.

23 THE COURT: Recross?

24 MS. FORD: Yes, Your Honor.

25 - - -

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

3 A. I do.

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

7 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Okay.

1 MS. FORD: That's what I'm asking.
2 THE COURT: Fine. Go ahead.
3 Q. [Ms. Ford] It seems like you don't really remember
4 when you showed her these pictures or something. You
5 don't remember your conversations completely with Ms.
6 Myers ---
7 A. --- no, I do. But I know there are certain things I
8 can't say or there will be a problem.
9 Q. Okay.
10 A. And that's what I'm trying not to get into.
11 Q. Would it help you if I showed you a transcript of
12 the conversation of your interview with Ms. Myers?
13 A. Which one?
14 Q. Detective Osborne, if Jennifer Myers had been in the
15 house before and she said that I saw this guy Freddie out
16 there and she made a positive identification of him and
17 that person was this Freddie Flowers you would have
18 written that in a report, correct? That's something
19 important, correct?
20 A. If I didn't put that aspect in there then that is an
21 oversight on my part.
22 Q. Okay. No further questions.
23 MR. DURANT: And ---
24 THE COURT: --- no, we're through.
25 MR. DURANT: Okay.

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

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

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

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

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

13 MADAME FORELADY: Thank you.

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

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

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

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

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

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

6 MR. DURANT: Thank you, Your Honor.

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

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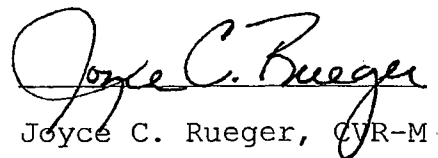
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C E R T I F I C A T E

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 29th day of August, 2012.

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

December 12, 2012



Joyce C. Rueger, CVR-M

Court Reporter

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

JURY TRIAL

VOLUME 4 OF 5

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

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

MR. DURANT: You want to do the pictures?

MR. BUTLER: We can talk about that.

MR. DURANT: May we approach, Your Honor.

THE COURT: Yes, sir.

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

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

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

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

MS. FORD: No, Your Honor.

THE COURT: Okay.

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

THE BAILIFF: Jury is all present, Your Honor.

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

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

1 [Whereupon, Ms. Woodward comes forward]

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

6 MS. WOODWARD: I do.

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

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

11 [Whereupon, the witness takes the witness stand]

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

15 - - - - -

16 CATHLEEN WOODWARD,

17 Having been first duly sworn,

18 Was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DURANT:

21 Q. Could you tell our jury your occupation?

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

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

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

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

3 A. Just a little over a year.

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

6 A. I worked in the Trace Evidence Laboratory.

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

9 A. About five and half years.

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

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

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

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

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

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

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

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

2 THE COURT: Okay. Court so finds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 A. Yes.

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

3 A. Can I check my notes really quick?

4 Q. Sure.

5 [Whereupon, the witness reviews documents]

6 A. That's correct.

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

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

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

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

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

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

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

3 A. Yes, we did.

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

7 [Whereupon, the witness is shown exhibit]

8 A. Yes sir, it is.

9 Q. And how do you know that?

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

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

17 A. That's correct.

18 Q. And your SLED item number 7?

19 A. Yes, sir.

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

23 [Whereupon, the witness is shown exhibit]

24 A. Yes sir, it is.

25 Q. And how do you know that?

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

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

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

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

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

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

17 A. Yes sir, I did.

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

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

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

1 A. That's correct.

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

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

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

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

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

14 A. Yes sir, gunshot residue was found.

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

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

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

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

23 MS. FORD: No objection.

24 THE COURT: Okay. Thank you very much.

25 [Whereupon, the witness is excused and exits the

1 witness stand]

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

3 [Whereupon, Mr. Whitler comes forward]

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

8 MR. WHITLER: I do.

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

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

13 [Whereupon, the witness takes the witness stand]

14 - - - - -

15 KENNETH WHITLER,

16 Having been first duly sworn,

17 Was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DURANT:

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

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

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

1 Identification Department at SLED?

2 A. Since 1997.

3 Q. Long time.

4 A. Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

22 A. That's correct.

23 Q. As your primary occupation is that correct?

24 A. Yes, sir.

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

1 field of firearms identification?

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

4 Q. Okay.

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

8 THE COURT: Any objection?

9 MS. FORD: No, Your Honor.

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

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

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

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

21 [Whereupon, the witness is shown exhibits]

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

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

25 Q. Okay. And you know that how?

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

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

8 A. That's correct.

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

11 A. That's correct.

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

13 A. That's correct.

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

17 A. Yes, sir.

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

20 A. Yes, sir.

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

23 A. Yes, sir.

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

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

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

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

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

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

13 A. It was not the pistol.

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

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

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

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

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

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

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

16 A. That's correct.

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

21 A. Yes sir, I did.

22 Q. And what are those possibilities?

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

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

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

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

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

21 Q. Are all those 380 autos?

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

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

25 THE COURT: Cross Examination?

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

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

5 MS. FORD: No, Your Honor.

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

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

10 THE COURT: Call your next witness.

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

12 [Whereupon, Ms. Boehm comes forward]

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

17 MS. BOEHM: I do.

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

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

21 [Whereupon, the witness takes the witness stand]

22

23 MARY ANNE BOEHM,

24 Having been first duly sworn,

25 Was examined and testified as follows:

DIRECT EXAMINATION

1
2 BY MR. DURANT:

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

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

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

9 A. Approximately six and half years.

10 Q. And what is your educational background?

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

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

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

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

22 A. I have helped train analysts.

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

25 A. Yes, sir.

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

3 A. Approximately a thousand.

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

6 A. Yes, sir.

7 Q. How many occasions and in what courts?

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

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

13 THE COURT: Any objection?

14 MS. FORD: No, Your Honor.

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

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

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

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

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

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

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

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

11 A. That's correct.

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

15 A. Yes, I did.

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

20 [Whereupon, the witness is shown exhibits]

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

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

4 A. Yes, sir.

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

7 A. That's correct.

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

10 A. That's correct.

11 Q. What is a buccal swab?

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

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

17 A. Yes.

18 Q. And what is a contact swab?

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

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

25 A. Epithelial -- skin cells.

1 Q. And what is a blood spot?

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

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

9 A. Yes, sir.

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

13 A. Yes, sir.

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

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

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

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

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

25 A. Yes, on that item.

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

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

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

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

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

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

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

19 A. It was a weak profile.

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

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

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

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

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

7 A. Yes, sir.

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

9 THE COURT: Yes, sir.

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

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

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

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

21 MR. BUTLER: Yes.

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

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

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

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

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

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

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

15 MR. BUTLER: Yes, sir.

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

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

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

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

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

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

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

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

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

25 MR. DURANT: Okay.

1 PROFFERED TESTIMONY

2 BY MR. DURANT:

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

7 [Whereupon, the witness is shown exhibit]

8 A. Yes sir, I do.

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

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

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

16 A. That's correct.

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

19 A. Yes, it would.

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

22 A. Yes, it would.

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

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

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

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

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

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

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

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

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

22 THE COURT: I want to hear ---

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

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

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

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

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

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

18 MR. DURANT: Okay.

19 THE COURT: Okay?

20 MR. DURANT: That's fine.

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

23 MR. BUTLER: No, sir.

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

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

1 p.m.]

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

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

4 MR. DURANT: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. DURANT:

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

10 [Whereupon, the witness is shown exhibit]

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

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

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

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

18 A. Yes, sir.

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

21 A. Yes, sir.

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

24 THE COURT: Can you blow it up any?

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

1 that.

2 THE COURT: Okay.

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

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

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

6 THE COURT: I understand.

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

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

14 A. It might be, yes.

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

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

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

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

1 books, you know.

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

3 THE COURT: All right. Come around.

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

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

8 Q. [Mr. DuRant] And if you would Ms. Boehm here's the
9 mouse and you may have a seat. And if you need to point
10 to any specific item on there you can certainly do so.

11 Now, there is a first column there over on your left
12 [indicates]. What is that?

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

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

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

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

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

8 MR. BUTLER: Yes, sir.

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

11 [Off the record momentarily]

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

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

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

21 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

14 A. That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 to have one allele that is above the 75 range and one
2 allele that is below the 75 range?
- 3 A. Yes, sir.
- 4 Q. So in your results when you do that you would only
5 report the one that is above your 75 reference is that
6 correct?
- 7 A. That's correct. That's the only thing that is
8 called. If it's under 75 RFU's it's not even called.
9 You don't look at it.
- 10 Q. Okay. And then next I believe you have a dash
11 equals no results. What does that mean?
- 12 A. That -- basically no results were obtained from that
13 certain locus.
- 14 Q. And then you have bold equals major contributor is
15 that correct?
- 16 A. That's correct.
- 17 Q. And we have no bold numbers in this -- these
18 protocols is that correct?
- 19 A. That's correct.
- 20 Q. Because you'd already testified there was no major
21 contributor to the mixture, is that correct?
- 22 A. That's correct.
- 23 Q. And finally you've got N -- equals inconclusive.
24 What does that mean?
- 25 A. That would be a scenario that doesn't happen often

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

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

8 A. That's correct.

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

10 A. Yes, sir.

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

15 A. That is correct.

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

18 A. That he was excluded from the mixture.

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

20 A. Yes, sir.

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

25 A. Let me grab my report.

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

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

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

10 If you move onto the second one D-21 James Smith is
11 a 28 31.2 and from the cell phone I got a 28.30; both of
12 those results are weak. So there could be a potential
13 drop out at that locus so he may be there and may not be
14 there.

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

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

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

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

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

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

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

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

22 A. Yes, sir.

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

- 1 A. No conclusive statement can be made regarding the
2 inclusion or the exclusion of Frederick Flowers as a
3 contributor to this mixture.
- 4 Q. And once again by referring to that chart could you
5 explain your findings regarding Frederick Flowers?
- 6 A. Again, if you go to the chart Frederick Flowers is a
7 13-14, the cell phone is a 13-14. D-21 30-32.2, cell
8 phone was 28-30. He could have contributed that 30-32.2,
9 it may have dropped out or it may not be there.
- 10 Q. Now when you say dropped out that means it may have
11 been below that 75 RFU ---
- 12 A. --- that's correct, uh huh. Again, at D-7 he was a
13 10-11. The cell phone just had a 10. Again his 11 may
14 have dropped out. CSF there is a 10-11 but there is
15 nothing for me to compare it to. And the cell phone I
16 didn't get a result. D-3 he's a 17. The evidence was a
17 16-17. THO-1 he is a 7. There is a 7-9.3.
- 18 Q. And both of those once again could be -- well 2 --
19 the THO-1 there is two 7's. A 7 for Mr. Flowers and a 7
20 for the swab from the cell phone, is that correct?
- 21 A. Right.
- 22 Q. 7 is a strong 7 and 9.3 is a weak 9.3 is that
23 correct?
- 24 A. That's correct.
- 25 Q. And once again when you're talking about D-3, S-1

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

4 A. Correct; or it's weak.

5 Q. Okay.

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

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

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

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

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

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

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

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

6 A. That's correct.

7 Q. Okay.

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

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

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

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

18 A. That's correct.

19 Q. Okay. About T-POX --

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

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

22 A. Possible.

23 MR. BUTLER: Judge, may we approach?

24 THE COURT: Yes, sir.

25 [Whereupon, an off the record bench conference is

1 held]

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

5 MR. BUTLER: Yes, I do.

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

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

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

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

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

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

23 Q. And --

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

1 have a seat on the witness stand.

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

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

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

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

14 A. That's correct.

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

17 A. That's correct.

18 Q. Okay.

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

20 ---

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

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

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

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

2 THE COURT: Pardon?

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

4 THE COURT: Okay. Whoever wants to do it is fine.

5 MS. FORD: Beg the court's indulgence. Just a few
6 questions.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. FORD:

10 Q. You were only -- you only looked at the D-N-A from
11 Frederick Flowers and Javon Smith in this case, correct?

12 A. As well as the cell phone.

13 Q. Right. You were trying to I.D. the D-N-A on the
14 cell phone, correct?

15 A. That's correct.

16 Q. From Freddie Flowers and Javon Smith, correct?

17 A. That's correct.

18 Q. You didn't look at anyone else?

19 A. There were no other samples submitted.

20 Q. If you had been given another D-N-A sample would you
21 have been able to compare that person's D-N-A to the
22 D-N-A on the phone?

23 A. Yes. If I was successful and generated a D-N-A
24 profile I would have compared it to the cell phone as
25 well.

1 Q. And there were at least two people's D-N-A on that
2 phone?

3 A. That's correct.

4 Q. Okay. And one was not Javon Smith for sure?

5 A. That's correct.

6 Q. So at least two people or possibly three or four,
7 correct?

8 A. That's correct.

9 Q. And there is no way of knowing what a person was
10 doing when his or her D-N-A may have gotten on an object,
11 correct?

12 A. No, ma'am.

13 Q. No further questions.

14 THE COURT: Any redirect?

15 MR. DURANT: No sir, Your Honor.

16 THE COURT: Okay. You may step down. Any reason
17 she cannot be excused?

18 MR. DURANT: I would ask that the witness be
19 excused, Your Honor.

20 THE COURT: Any objections?

21 MS. FORD: No, Your Honor.

22 THE COURT: All right. You may be excused. Thank
23 you so very much. Y'all have a safe trip back to
24 Columbia.

25 [Whereupon, the witness is excused and exits the

1 witness stand]

2 THE COURT: Madame Forelady and ladies and
3 gentlemen, I am going to ask you to go to the jury room.
4 I think what I'll do is take the afternoon break for us
5 of about ten or fifteen minutes.

6 So y'all can take a break too because I need to take
7 up a matter outside your presence. Please don't discuss
8 the case amongst yourselves and leave your notepads in
9 the chair.

10 [Whereupon, the jury exits the courtroom at 3:50
11 p.m.]

12 THE COURT: All right. Mr. Butler, there were
13 several objections at the bench concerning the D-N-A
14 expert's testimony of Ms. Boehm.

15 I want to make sure the record is clear because I
16 don't know if it has picked it up. I want to give you an
17 opportunity to put it on the record so we can make sure
18 everything is on the record and make sure everybody makes
19 the appropriate arguments, okay.

20 MR. BUTLER: Thank you, Judge.

21 THE COURT: Please proceed.

22 MR. BUTLER: My objection was that the witness's
23 answers concerning certain, for lack of a better way to
24 put it, numbers dropping out was speculative and would
25 not comply with 702 and that the proper way to phrase

1 that question would be to a reasonable degree of
2 scientific certainty. She couldn't say that because one
3 of the ways for example -- this is marked for I.D. as the
4 State's what Mr. DuRant?

5 MR. DURANT: You're talking about the chart? I
6 believe 50.

7 MR. BUTLER: State's 50 ---

8 THE COURT: --- 50. State number 50.

9 MR. BUTLER: State's 50 for I.D. For example at
10 site the third one in the list D-7S820 where the cell
11 phone is 10. Well one possibility is that's Frederick
12 Flowers and the 11 dropped out.

13 But the other possibility is that the unknown sample
14 is Homo 10. That's another possibility but it's just a
15 possibility. You could say the same thing with D-16S539
16 and TPOX, T-P-O-X. All of those can be explained
17 different ways; not to a reasonable degree of scientific
18 certainty. So that was the basis of my objection to that
19 line of questioning under 702 and State v Council.

20 THE COURT: Okay.

21 MR. DURANT: And my response is as it was at the
22 bench, Your Honor and that goes to the weight and not the
23 admissibility of the evidence. Basically she -- her
24 conclusion at the end of the testimony was that based
25 upon a reasonable degree of scientific certainty she

1 could not include or exclude Mr. Flowers as a
2 contributor. And also with regard to that exhibit, Your
3 Honor, I would renew my motion to move this into
4 evidence.

5 I think it's clear that it is very demonstrative to
6 her testimony, that it made her testimony make sense to
7 this jury. And quite frankly the defendant doesn't want
8 it in because the defendant matched it 1, 2, 3, 4, 5, 6
9 loci and ---

10 THE COURT: --- I'm sorry, what?

11 MR. DURANT: The defendant matched it 1, 2, 3, 4,
12 5, 6 loci and couldn't be ruled out in 1, 2, 3, 4, 5 of
13 them. And he doesn't want the jury to see those numbers.

14 MR. BUTLER: That's right. But that's not clear.
15 I don't want the jury to see those numbers; absolutely
16 right because it's misleading. To match 6 loci makes it
17 sound like it's a match.

18 Mr. DuRant used the word match. It's not a match.
19 The witness says she can't include or exclude him. I
20 don't want this going back because it's misleading and
21 Mr. DuRant in his closing is going to say look how close
22 it is ---

23 THE COURT: --- back it up just a second so the
24 record is clear. Your 702 and your 703 motion is denied,
25 okay.

1 MR. BUTLER: Yes, sir.

2 THE COURT: Now we're talking about the issue of
3 allowing State's exhibit number 50 to go into evidence,
4 okay.

5 MR. BUTLER: Yes, sir.

6 THE COURT: Please proceed.

7 MR. BUTLER: Yes, sir. It's misleading because
8 just as Mr. DuRant says he matches 6 loci he uses the
9 word match but the witness rightfully testified I can't
10 include him or exclude him. Mr. DuRant wants to use this
11 to say well, it's really close to a match.

12 But that's not what she said. If -- the document is
13 absolutely misleading, completely misleading as a
14 substitute to her testimony. It's also hearsay. Just
15 because a police officer testifies doesn't mean his
16 report comes in. A witness testifies and their statement
17 doesn't come in.

18 And yes, I proposed the diagrams as an alternative
19 to the photograph but diagrams aren't statements. This
20 is essentially her testimony reduced to one sheet of
21 paper that goes back to the jury room. I object to it.
22 It's hearsay. And it's more prejudicial and confusing
23 that could ever be probative especially in light of her
24 testimony.

25 THE COURT: Mr. DuRant, let me just ask you this

1 question. Do you have 702 in front of you?

2 MR. DURANT: No, but I can get it in front of me.

3 THE COURT: Get it in front of you. I want to ask
4 you a question. Do you have it in front of you?

5 MR. DURANT: Yes, sir.

6 THE COURT: Where it says scientific, technical, or
7 other specialized knowledge will assist the trier of fact
8 to understand the evidence or to determine a fact in
9 issue. Now, the ultimate result from the expert was she
10 could not include or exclude the defendant. So what fact
11 in issue are we trying to prove with that witness?

12 MR. DURANT: The sentence here scientific,
13 technical or other specialized knowledge will assist the
14 trier of fact to understand this evidence. That document
15 helps ---

16 THE COURT: --- but ---

17 MR. DURANT: --- the trier of fact understand that
18 evidence.

19 THE COURT: I understand. But the evidence doesn't
20 indicate whether it was his phone through D-N-A analysis
21 or not.

22 MR. DURANT: Judge, I haven't tried to change this
23 witnesses opinion. Her opinion is her opinion.

24 THE COURT: Right.

25 MR. DURANT: All I said was that that -- and she

1 agreed that assisted her in being able to explain her
2 opinion to the jury.

3 THE COURT: I understand that.

4 MR. DURANT: And I think that that -- just as 702
5 says assists the trier of fact to understand.

6 THE COURT: All right. I'm going to grant the
7 motion -- I'm going to sustain the motion. I'm not going
8 to allow State's exhibit number 50 to go back to the jury
9 because of the possibility of confusion especially since
10 the expert testified they could not exclude or include
11 the defendant in the case. And I'm not going to allow
12 that to go back into evidence. And that motion is
13 sustained. Anything else before we take a break?

14 MR. DURANT: No, sir.

15 THE COURT: All right. Thank you very much.

16 [Whereupon, a recess is held from 3:57 p.m. to 4:11
17 p.m.]

18 THE COURT: And under 403 I also don't think the
19 probative value outweighs the prejudicial value. We need
20 Mr. Flowers here. Mr. DuRant, is this going to be your
21 last witness you think?

22 MR. DURANT: Yes, sir.

23 THE COURT: Okay. Is the defense ready to
24 proceed?

25 MS. FORD: Yes, Your Honor.

1 THE COURT: All right. Bring us the jury, please?

2 [Whereupon, the jury enters the courtroom at 4:13

3 p.m.]

4 THE BAILIFF: All jury is present, Your Honor.

5 THE COURT: Okay. Thank you. Call your next
6 witness please, sir.

7 MR. DURANT: Yes, sir. The State would call Doctor
8 Ellen Riemer.

9 THE COURT: Doctor Riemer if you will come around
10 please.

11 [Whereupon, Doctor Riemer comes forward]

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

16 DOCTOR RIEMER: I do.

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

19 DOCTOR RIEMER: My name is Doctor Ellen Riemer,
20 R-I-E-M-E-R.

21 [Whereupon, the witness takes the witness stand]

22 - - - - -

23 ELLEN RIEMER,

24 Having been first duly sworn,

25 Was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. DURANT:

3 Q. And Doctor Riemer, could you tell our jury what you
4 do?

5 A. I'm a forensic pathologist and medical examiner,
6 which is a medical doctor who specializes in diagnosing
7 injuries and natural disease and determines the cause and
8 manner of death of individuals by performing autopsy
9 examinations.

10 THE COURT: Does the defense agree that she is
11 qualified as a forensic pathologist?

12 MS. FORD: Yes, Your Honor.

13 THE COURT: The court so finds.. I'm not trying to
14 stop you from introducing her to the jury, okay. Do what
15 you think is appropriate, okay.

16 MR. DURANT: Thank you, sir.

17 THE COURT: Please proceed.

18 Q. [Mr. DuRant] You're affiliated with the Medical
19 University is that correct?

20 A. Yes.

21 Q. And what is your connection with the Medical
22 University of South Carolina?

23 A. I'm employed as a faculty member and attending
24 pathologist at the Medical University of South Carolina.

25 Q. Okay. And as part of your affiliation with the

1 Medical University have you had an occasion to perform an
2 autopsy in this case on Mr. James Javon Smith on March
3 2nd, 2011?

4 A. Yes.

5 Q. And could you tell us what Mr. Smith's age was?

6 A. I'm just going to pull out a copy of my autopsy
7 report to refresh my recollection.

8 [Whereupon, the witness reviews documents]

9 A. Mr. Smith was a 25 year old man.

10 Q. And how tall was he?

11 A. He was 69½ inches in length, which is 5 foot 9½
12 inches in length.

13 Q. And his weight?

14 A. He weighed 190 pounds.

15 Q. Okay. And as part of your autopsy did you take
16 photographs during the course of the autopsy?

17 A. Yes.

18 Q. And I'll hand you what's previously been marked as
19 State's exhibits 24, 25, 26, 27, 28, and 29 and ask you
20 if reference to those photographs would assist you in
21 explaining your findings to the jury in this case?

22 [Whereupon, the witness is shown exhibits]

23 A. Yes, they would.

24 MR. DURANT: Your Honor, at this time we would
25 offer State's exhibits 24, 25, 26, 27, 28, and 29.

1 THE COURT: Now the defense had objections to which
2 numbers? I don't remember the numbers.

3 MR. DURANT: It was 24, 26, and 27.

4 THE COURT: All right. Defense had objections to
5 State's exhibits 24, 26, and 27, which we previously
6 heard. And I overrule those objections. So 24 is
7 admitted with objection, 25 without, 26 with objection,
8 27 with objection, 28 without objection, 29 without
9 objection. Is that correct?

10 MS. FORD: Yes, Your Honor.

11 THE COURT: Thank you, very much.

12 [Whereupon, State's exhibit numbers 24, 25, 26, 27,
13 28, and 29 are entered into evidence by the court] .

14 Q. [Mr. DuRant] As part of your autopsy did you
15 perform an external examination of the body?

16 A. Yes.

17 Q. And based upon your external examination of the body
18 what evidence of recent injury did you find?

19 A. I found a gunshot wound to the right side of the
20 chest and a gunshot wound to the right hip.

21 Q. Okay. And the gunshot wound to the right side of
22 the chest is the one that you designated as gunshot A is
23 that correct?

24 A. Yes, arbitrarily.

25 Q. Okay. And the gunshot wound to the right hip?

1 A. I labeled B.

2 Q. Okay.

3 A. For clarity.

4 Q. I understand. And I'd like to start with the
5 gunshot wound designated as gunshot wound A in your
6 autopsy report. Could you tell us -- could you put it
7 up? Could you tell us what -- where the point of entry
8 was on there. If you can, stand up.

9 A. Is that okay?

10 Q. Yes, that's quite all right if you want.

11 A. This is the photograph of the lateral, the right
12 side [indicates] of the decedent as he -- the deceased
13 individual as he is lying on the autopsy table. And we
14 can see that there is an entry gunshot wound on the right
15 side of the chest. It's just -- which is below the
16 armpit [indicates].

17 Q. And in the examination of that wound was there any
18 evidence of soot deposition or stippling around the
19 wound?

20 A. No there was not.

21 Q. And if you would briefly, what is soot deposition
22 and stippling?

23 A. Soot deposition and stippling is gunpowder that is
24 deposited on the skin when a firearm is fired in close
25 proximity to the person's skin.

1 Q. And in forensic terms you have forensic --
2 pathological terms I guess you'd say you have close
3 gunshot wounds, distant gunshot wounds, contact wounds,
4 is that correct?
5 A. That's right. If there is soot I designate it a
6 contact wound; a close range.
7 Q. And with contact wound you mean basically a gun to
8 the -- right to the skin is that correct?
9 A. It's when the muzzle of the gun is pressed up
10 against the skin.
11 Q. Okay. And what is considered close gunshot wound?
12 A. When I see gunpowder stippling it usually indicates
13 that the firearm was fired within a scant few inches --
14 Q. Okay. So what kind of...
15 A. Well, I cannot tell the difference -- the distance
16 that this gun was fired because it didn't leave any
17 evidence ---
18 Q. --- and that's because of what?
19 A. Well, it's possible it could have been deposited on
20 an intermediate object, like if it was a book pressed up
21 against -- it's just before -- when the bullet hit the
22 book the book would have absorbed the stippling.
23 Q. Or if he is wearing clothes?
24 A. That's right. If he's wearing clothing that could
25 have absorbed it as well.

1 Q. Okay. So if he's wearing clothing unless it's a
2 contact wound you couldn't tell if it was close or
3 distant ---

4 A. --- that's correct. So it's of indeterminate range.

5 Q. Okay. And basically when you're talking about a
6 distant gunshot range in forensic pathology terminology
7 you're probably talking about two or three feet anyway?

8 A. That's correct.

9 Q. And what was the trajectory of that bullet wound or
10 gunshot wound?

11 A. The trajectory, which is another word for the
12 direction of the wound path, the direction of the wound
13 path is from the right to left.

14 So it would be coming from the right side of the
15 body to the left side of the body. And it was going
16 toward the back so it veered toward the back of the body
17 and it was going downward.

18 Q. Okay. So it was a downward angle as well ---

19 A. --- downward angle from right to left and slightly
20 front to back.

21 Q. Okay. And if you would could you tell us what
22 internal injuries were caused by that gunshot wound?

23 A. Yes. After the bullet entered the right lateral
24 side of the chest, which is the skin and the muscle, it
25 went through the right -- one of the ribs on the right

1 side specifically the right 6th rib and then went through
2 the right lung, two lobes of the lung; the middle lobe
3 and the lower lobe and then proceeded through the
4 thoracic aorta, which is the major blood vessel that
5 supplies blood to the body and it continued into the left
6 lung.

7 And the core of a bullet terminated in the left side
8 of the chest, between a couple of ribs. And
9 interestingly enough the bullet separated into the jacket
10 and the core along the wound path; so that the jacket --
11 when the bullet separated the jacket was left behind in
12 the right lung.

13 Q. And that would be depicted on State's exhibit here
14 [indicates], which I believe that last one was State's
15 24. This would be State's 25.

16 A. So this [indicates] is an x-ray that I took through
17 the victim's chest to give me an idea what sort of
18 bullets or projectiles or other objects I might find
19 within the body.

20 And I did it of the chest because I saw the entrance
21 gunshot wound on the right side of the chest. And here
22 [indicates] I can see -- you can see it's sort of a semi-
23 circular shape irregular piece of metal.

24 Metal comes out looking very white on an x-ray. And
25 that's the -- and here [indicates] is another piece and

1 this looks just like a projectile. So I know that there
2 is going to be a bullet somewhere in the left side of the
3 chest. And this [indicates] was something that indicated
4 a piece of the bullet may have broken off. And in fact
5 when I recovered that, that was the jacket of the bullet
6 and then this [indicates] was the bullet core.

7 Q. So the jacket was recovered in the right lung. The
8 bullet core was recovered adjacent to the left rib cage
9 is that correct?

10 A. That's correct.

11 Q. And what is the effect of those injuries on the
12 human body? You indicated that the aorta is the major
13 artery in the body and obviously he had two lungs
14 perforated. What is the physical affect of that on the
15 body?

16 A. Well, as a result of this gunshot wound to the chest
17 the victim suffered an extensive amount of internal
18 bleeding. So there were one and half liters of blood
19 that I recovered in the left chest cavity and 1300
20 milliliters of blood in the right chest cavity.

21 So basically the lungs, as a result of the damage
22 from the bullet and just blood loss within the chest
23 cavity and combined -- and along with the aorta so the
24 aorta is continuing to bleed into the left chest cavity.
25 And between all the blood that I recovered within the

1 chest cavity it was 3 liters, which is basically like
2 three quarters of a gallon. So nobody could lose that
3 much blood and survive.

4 Q. Okay. And getting back to this little bit of
5 jacket and the core this was obviously not a through and
6 through injury is that correct? You recovered the bullet
7 but obviously ---

8 A. --- and that's right and ---

9 Q. --- there is no exit wound?

10 A. I did not. There was no exit wound. So -- and this
11 [indicates] also confirms that.

12 Q. And you recovered the bullet core and the jacket
13 fragment as part of your autopsy is that correct?

14 A. That's correct.

15 Q. Now I want to move on to gunshot wound B and
16 referring to State's exhibit 26 at this time.

17 A. So this is also a photograph [indicates] of Mr.
18 Smith lying on the table. This is a view [indicates] of
19 the right hip. And we can see that there is another
20 entrance gunshot wound on the right lateral side -- the
21 right side of the hip.

22 And that gunshot wound went through muscle, skin,
23 and fat of the right hip and the right buttock and
24 actually exited the back of the right buttock.

25 Q. Okay. And that would be depicted in State's

1 exhibit I believe 27?

2 A. Right. Since this is a very close up picture it may
3 not be obvious what we're looking at. But this line
4 [indicates] is the intergluteal fold so that's where the
5 two buttocks come together. And this [indicates] is the
6 top of the buttocks and this [indicates] is the back of
7 the right buttock.

8 Q. Okay. So that's basically the right buttock is
9 that correct?

10 A. The right buttock.

11 Q. And once again there was no stippling associated
12 with this wound was there?

13 A. No, there was not.

14 Q. And I believe you also recovered a projectile with
15 regard to this particular wound [indicates] as well is
16 that correct?

17 A. Yes. Although the projectile exited the body it
18 would -- it was actually in the decedent's hand when I
19 removed the pads.

20 Q. Okay. And with regard to the -- and we've gone
21 basically just through the -- I think 28 and 29. This is
22 28 [indicates]. And what does this depict?

23 A. That's a -- that's the jacket ---

24 Q. --- the bullet jacket and the core ---

25 A. --- yes, the bullet jacket and the core ---

1 Q. --- from gunshot wound A ---
2 A. --- from gunshot wound A. So this [indicates] is
3 the jacket and we actually see it has the same shape that
4 we saw in the x-ray and that's the core [indicates] that
5 was recovered in the left side of the chest. That's in
6 the little piece.
7 Q. And in State's 29?
8 A. That's a bullet that the jacket and core are still
9 together and so it's a jacketed bullet and that was the
10 one that was in the pants.
11 Q. Okay. And those of course were turned over to I
12 believe Mr. Weir's -- of the Charleston Police Department
13 is that correct?
14 A. Yes.
15 Q. And you also turned over to him a blood spot from
16 the victim, James Javon Smith?
17 A. Yes.
18 Q. Okay. Thank you very much. Those are all the
19 photos I have. I did want to ask you just a couple more
20 questions and we will be done. As part of your autopsy
21 was a toxicology screen done for alcohol and drugs?
22 A. Yes.
23 Q. And is that done is all autopsies?
24 A. That's standard procedure that is performed on all
25 autopsies.

1 Q. And what were the results of the toxicology screen?

2 A. The toxicology testing was positive for Delta Non-
3 THC and Delta carboxy-THC, which is marijuana and
4 metabolites.

5 Q. Okay. And how about for ethanol?

6 A. Ethanol was negative.

7 Q. Okay. Ethanol basically means alcohol ---

8 A. --- alcohol.

9 Q. So there is no evidence that he had been drinking
10 and no evidence that he had used marijuana?

11 A. That's correct.

12 Q. Any evidence that he used any other illegal
13 substances besides marijuana?

14 A. Nothing illegal. The other substances that were
15 identified on the drug we tested was caffeine. So we all
16 know we could have caffeine and the metabolite of
17 cotinine, which is a metabolite of nicotine.

18 So it indicates that at some point the victim had
19 had nicotine and then homoproline [phonetic], which is a
20 chemical that's present in tea as well as in chocolate.

21 Q. Okay. Based upon the history you obtained in this
22 case, the finding from your autopsy do you have an
23 opinion based upon a reasonable degree of medical
24 certainty as to a cause of death in this case?

25 A. Yes, a gunshot wound to the chest and right hip.

1 Q. And principally the one to the chest is that
2 correct?

3 A. That did the most damage.

4 Q. And in layman's terms he essentially bled to death
5 internally from that gunshot wound?

6 A. Absolutely.

7 Q. Thank you very much. Could you please answer any
8 questions that defense counsel may have?

9 THE COURT: Cross-examination?

10 MS. FORD: I have no questions for this witness,
11 Your Honor.

12 THE COURT: Okay. Any reason the doctor cannot be
13 excused?

14 MS. FORD: No, Your Honor.

15 THE COURT: Doctor, thank you so very much. You
16 may be excused. Thank you.

17 MR. DURANT: Thank you, Doctor Riemer.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 MR. DURANT: The State rests, Your Honor.

21 THE COURT: Okay. Can I see the attorneys up here
22 very briefly please; not on the record.

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

25 THE COURT: All right. Madame Forelady and ladies

1 and gentlemen of the jury, I'm going to let you go at
2 this time. If you would be back in the morning at 9:30
3 we'll finish the case tomorrow. Please don't discuss the
4 case amongst yourselves and leave the note pads in the
5 chairs. I hope you have a good evening.

6 [Whereupon, the jury exits the courtroom at 4:34
7 p.m.]

8 THE COURT: Thank you, sir. Any motions from the
9 State?

10 MR. DURANT: No sir, Your Honor.

11 THE COURT: Any motions from the defendant?

12 MOTION FOR DIRECTED VERDICT

13 MS. FORD: Your Honor, at this time we would ask
14 for a directed verdict.

15 THE COURT: Do you have any argument or anything
16 you want to put on the record?

17 MS. FORD: No, Your Honor.

18 THE COURT: Okay. Is there anything the State
19 would like to put on the record?

20 MR. DURANT: I think the evidence speaks for itself
21 in this case, Your Honor.

22 THE COURT: I understand. I'm just giving you the
23 opportunity.

24 MR. DURANT: I understand. I'm just trying to ---

25 THE COURT: --- okay, motion denied.

1 MS. FORD: Thank you, Your Honor.

2 FIFTH AMENDMENT RIGHTS

3 THE COURT: All right. Mr. Flowers, I'm going to
4 ask you some questions about your right to testify or
5 your right to remain silent under the Fifth Amendment.
6 During this process if you don't understand my questions
7 please tell me you don't understand or if you want to
8 stop and talk to your attorneys about the question I will
9 allow you to do that. Do you understand?

10 MR. FLOWERS: Yes, sir.

11 THE COURT: All right. Would you please stand and
12 raise your right hand please?

13 [Whereupon, Mr. Flowers stands]

14 [Whereupon, the witness is duly sworn by the court
15 as follows: Mr. Flowers, do you swear to tell the truth
16 and nothing but the truth so help you God?]

17 MR. FLOWERS: Yes, sir.

18 THE COURT: Are you more comfortable standing or
19 sitting?

20 MR. FLOWERS: Standing.

21 THE COURT: Standing?

22 MR. FLOWERS: Yes, sir.

23 THE COURT: Okay. Under the Fifth Amendment of
24 the Constitution and under the South Carolina
25 Constitution no one can be compelled in a criminal case

1 to be a witness against themselves, which is commonly
2 referred to as the right to remain silent. Do you
3 understand?

4 MR. FLOWERS: Yes, sir.

5 THE COURT: Have you talked to your attorneys about
6 this previously?

7 MR. FLOWERS: Yes, sir.

8 THE COURT: No one can compel you or require you to
9 testify. Do you understand?

10 MR. FLOWERS: Yes, sir.

11 THE COURT: And this is a personal privilege that
12 you have.

13 MR. FLOWERS: Yes, sir.

14 THE COURT: It's your privilege and no one else can
15 exercise or waive that right to testify. Do you
16 understand?

17 MR. FLOWERS: Yes, sir.

18 THE COURT: Or waive the right to not testify. Do
19 you understand?

20 MR. FLOWERS: Yes, sir.

21 THE COURT: You have the right to testify but you
22 have the right not to testify. Do you understand?

23 MR. FLOWERS: Yes, sir.

24 THE COURT: You have the right to consult your
25 attorneys before you make a decision on whether you want

1 to testify or not testify. I am not going to ask you for
2 a decision this afternoon. I will wait until in the
3 morning to receive your decision in case you want to
4 discuss it further with your attorneys tonight or later
5 this afternoon. Do you understand?

6 MR. FLOWERS: Yes, sir.

7 THE COURT: If you elect not to testify there is
8 not any inference of guilt and your failure to testify
9 cannot be considered by the jury at deliberations and I
10 will so tell the jury that. Do you understand?

11 MR. FLOWERS: Yes, sir.

12 THE COURT: I will inform the jury that it's the
13 State's obligation to prove you guilty beyond a
14 reasonable doubt. You have no obligation to prove
15 yourself innocent and they cannot infer at all or even
16 consider the fact in the deliberations that you did not
17 testify. Do you understand?

18 MR. FLOWERS: Yes, sir.

19 THE COURT: If you elect to testify then you will
20 assume the role of a witness. Do you understand?

21 MR. FLOWERS: Yes, sir.

22 THE COURT: And you've been in the courtroom all
23 week and you've heard witnesses testify. Do you
24 understand?

25 MR. FLOWERS: Yes, sir.

1 THE COURT: Now if you assume the role of a witness
2 and the question is proper under the rules of evidence
3 and the rules of court you will be required to answer the
4 question. Do you understand?

5 MR. FLOWERS: Yes, sir.

6 THE COURT: In other words you either have to take
7 the Fifth Amendment and not testify or decide to testify.
8 Do you understand?

9 MR. FLOWERS: Yes, sir.

10 THE COURT: It's not like on television where they
11 get on the witness stand and take the Fifth to one
12 question and answer the next question. Do you
13 understand?

14 MR. FLOWERS: Yes, sir.

15 THE COURT: You either take the Fifth Amendment and
16 not testify, or you testify and then you become a
17 witness. Do you understand?

18 MR. FLOWERS: Yes, sir.

19 THE COURT: Do you have any questions about that
20 concept?

21 MR. FLOWERS: No, sir.

22 THE COURT: As I told you earlier it's your
23 decision and it must be freely and voluntarily and
24 intelligently made with knowledge of the Fifth
25 Amendments. Has anybody forced you not to testify?

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1 MR. FLOWERS: No, sir.
2 THE COURT: Has anybody threatened you about
3 testifying?
4 MR. FLOWERS: No, sir.
5 THE COURT: Has anybody forced you or threatened
6 you to try to make you testify?
7 MR. FLOWERS: No, sir.
8 THE COURT: Has anybody put any pressure on you to
9 testify or not testify?
10 MR. FLOWERS: No, sir.
11 THE COURT: Do you have any questions about what I
12 have told you?
13 MR. FLOWERS: No, sir.
14 THE COURT: Have you understood what I've told you?
15 MR. FLOWERS: Yes, sir.
16 THE COURT: Have you understood the discussions
17 that you have had with your attorneys concerning the
18 right to testify?
19 MR. FLOWERS: Yes, sir.
20 THE COURT: Or the right to remain silent?
21 MR. FLOWERS: Yes, sir.
22 THE COURT: Did you understand all the
23 conversations?
24 MR. FLOWERS: Yes, sir.
25 THE COURT: Have you had ample time to talk to your

1 attorneys about your right to testify?

2 MR. FLOWERS: Yes, sir.

3 THE COURT: All right. Solicitor, does he have
4 any criminal record?

5 MR. DURANT: No convictions, Your Honor.

6 THE COURT: Okay. I'm going to allow you to
7 discuss it further with your attorneys if you so choose.
8 If you don't want to discuss it, that's fine. It will be
9 your decision and I'm not going to require you to give me
10 an answer tonight. But the first thing in the morning
11 I'm going to ask you are you going to testify or not
12 testify. Do you understand?

13 MR. FLOWERS: Yes, sir.

14 THE COURT: And if you want to testify that's fine.
15 If you don't want to testify that's fine; it's your
16 decision. Do you understand?

17 MR. FLOWERS: Yes, sir.

18 THE COURT: And I would encourage you to listen to
19 whatever advise and instruction your attorneys give to
20 you and take that into consideration and make your
21 decision, okay?

22 MR. FLOWERS: Yes, sir.

23 THE COURT: Thank you so very much. All right.
24 We will I guess adjourn until 9:30 in the morning. If
25 the attorneys want to come up I've got the charge put

1 together and we can have as the rules require an informal
2 charge conference. And of course you'll take your
3 exceptions to the charge after it's been given at the
4 appropriate time. We'll go off the record and y'all can
5 come forward and take a look at it.

6 [Whereupon, court adjourns at 4:40 p.m.]

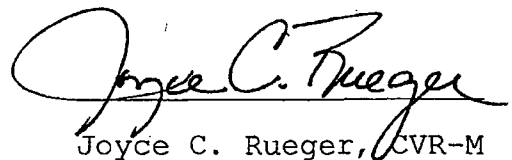
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C E R T I F I C A T E

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 30th day of August, 2012.

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

December 12, 2012



Joyce C. Rueger, CVR-M

Court Reporter

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

JURY TRIAL

VOLUME 5 OF 5

held before the Honorable J.C. Nicholson, Jr.

Mia Perron, Official Court Reporter, 9th Judicial Circuit

in the Charleston County Courthouse

Charleston, South Carolina

on August 31, 2012, Commencing at 9:45 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
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DEFENDANT

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

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

3 THE COURT: Yes, ma'am.

4 MS. FORD: I did think of one other charge ---

5 THE COURT: --- is Mr. Flowers here?

6 MS. FORD: Yes, sir.

7 MS. FORD: I handed a copy to the Solicitor.

8 THE COURT: Do what now?

9 MS. FORD: A possible charge.

10 [Whereupon, Ms. Ford proffers documents to the

11 court]

12 THE COURT: What is it?

13 MS. FORD: It's basically a charge saying -- to

14 provide evidence against the defendant of personal damage

15 or for the hope of -- treatment from the prosecution must

16 be examined and weighted by the jury with a greater care

17 than the testimony of an ordinary witness. The jury must

18 determine whether the witness's testimony has been

19 affected by interest or by prejudice against the

20 defendant.

21 THE COURT: All right. This is a 4th Circuit case,

22 an 8th Circuit case, a Fed 2nd, a 9th Circuit, and North

23 Carolina v North Carolina Appellate Court.

24 MS. FORD: I agree it's not -- hasn't been in South

25 Carolina but...

1 THE COURT: Well, what would South Carolina say
2 about it? Whereas -- I am of the opinion that South
3 Carolina law says -- I don't know of any case that says
4 you got to treat that type of testimony different from a
5 standpoint of a charge and that's what this charge says.

6 MS. FORD: Correct, Your Honor ---

7 THE COURT: --- it must be examined and weighed by
8 the jury with greater care. I guess the thing is the
9 greater care. I don't know of any case in South Carolina
10 that says you've got to examine it with greater care. I
11 think it just goes to the general bias issue.

12 MS. FORD: Yes, sir. I agree that there is no
13 South Carolina case. I would just request the law has to
14 be made at some time.

15 THE COURT: Well, I'm not going to charge it.

16 MS. FORD: Yes, sir.

17 THE COURT: I don't have any real problem with the
18 charge personally, okay. But it's the -- I don't think
19 it's the law in South Carolina but I'll mark it as your
20 request and you can take exception to it at the
21 appropriate time.

22 MS. FORD: Yes, sir.

23 THE COURT: And if the Supreme Court says we've got
24 to charge it in the future that's fine with me.

25 MS. FORD: Okay. Thank you, Your Honor.

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Volume 5 (of 5) - August 31, 2012

1 THE COURT: Okay. I'm sorry, I didn't mean to cut
2 you off if you want -- do you agree for it to charge?

3 MR. DURANT: You said exactly what I was going to
4 say.

5 THE COURT: Huh?

6 MR. DURANT: You said exactly what I was going to
7 say.

8 THE COURT: Okay. So your mental telepathy you
9 passed it on to me, huh. Is there anything else you want
10 to say about it? I didn't mean to cut you off.

11 MS. FORD: No, Your Honor.

12 THE COURT: Let me look at something real quick,
13 okay.

14 MS. FORD: Yes, sir.

15 THE COURT: Evidence.

16 {Whereupon, the court views documents}

17 THE COURT: What I want to quote to you and I'll
18 quote it to you on my charge when I talk about the
19 creditability of the witnesses, which is number 4 and
20 I'll read to you what it says.

21 The reason a witness would want to give testimony
22 which would help or hurt one side or the other, has the
23 witness exhibited any bias, prejudice, or other motive in
24 the case but you may consider whether a particular
25 witness may gain some reward, payment, personal advantage

1 of vindication through his or her testimony.

2 Now, that's saying the same thing but that's not
3 specifically saying hey, you got to talk about leniency
4 with greater care. I'm not going to put that in, but
5 I've told you what I will charge, which I think covers
6 the bias issue, okay. Anything else?

7 MS. FORD: No, Your Honor.

8 THE COURT: Okay. Are y'all ready for closing
9 arguments?

10 MR. BUTLER: Judge, can I put just 3 things on the
11 record that we talked about yesterday citing the Fletcher
12 [phonetic] case and object to malice can be inferred from
13 deadly weapon, and citing Schrock, Arnold, and Bostick
14 object to the circumstantial evidence charged that the
15 law makes no distinction.

16 THE COURT: That's fine, put it on the record, but
17 I think the proper time to put it on the record is take
18 exception to my charge ---

19 MR. BUTLER: --- yes, sir ---

20 THE COURT: --- after I finish the charge, okay.

21 MR. BUTLER: Thank you.

22 THE COURT: But I have no problem memorializing
23 what we discussed at the bench yesterday. And the court
24 reporter -- this recorder will record what occurs up
25 here, okay. And I'm going to start recording the

1 objections up here in the future so we don't have to go
2 back and waste time and put it all on the record, okay.

3 MR. BUTLER: Yes, sir.

4 THE COURT: Anything else?

5 MS. FORD: No, Your Honor.

6 THE COURT: Is the State ready -- are you going to
7 open and close or have y'all talked about that?

8 MR. DURANT: I think I've got to open, Your Honor.

9 THE COURT: Well, unless she waives it I mean.

10 MS. FORD: No, Your Honor. I would not waive it.

11 MR. BUTLER: She would go last ---

12 MR. DURANT: --- I -- she could ---

13 THE COURT: --- pardon?

14 MR. DURANT: --- I would invite her to.

15 THE COURT: Pardon?

16 MR. BUTLER: She goes last.

17 MS. FORD: I go last. I didn't put up any
18 evidence, Your Honor.

19 THE COURT: That's right. I'm sorry. You're
20 right. Thank you; that passed me by. And another thing
21 I got -- Mr. Flowers?

22 MR. FLOWERS: Yes, sir.

23 THE COURT: Yesterday we talked about your right to
24 testify and your right to remain silent and Fifth
25 Amendment. I told you I would wait until today for you

1 to give me your decision. What is your decision?

2 MR. FLOWERS: The Fifth Amendment.

3 THE COURT: You want to remain silent?

4 MR. FLOWERS: Yes, sir.

5 THE COURT: You do not want to testify?

6 MR. FLOWERS: Yes, sir.

7 THE COURT: All right. Do you have any questions
8 at all?

9 MR. FLOWERS: No, sir.

10 THE COURT: All right. Thank you so very much.
11 You ready for your opening?

12 MR. DURANT: Yes.

13 THE COURT: Okay -- or your closing. Bring us the
14 jury please?

15 [Whereupon, the jury enters the courtroom at 9:49
16 a.m.]

17 THE BAILIFF: All present, Your Honor.

18 THE COURT: Thank you very much. Ladies and
19 gentlemen of the jury the State has rested their case and
20 the defendant has exercised his right under the Fifth
21 Amendment not to testify.

22 And I will instruct you that the State is
23 responsible for proving the defendant guilty beyond a
24 reasonable doubt. The defendant has no obligation to
25 prove himself innocent, and he has the right under the

1 Fifth Amendment of the Constitution to remain silent.
2 And that cannot be considered by you in any manner
3 whatsoever during your deliberations because he has that
4 constitutional right. And that should not enter into
5 your discussions at all concerning his innocence or his
6 guilt. Solicitor?

7 MR. DURANT: Thank you, Your Honor.

8 THE COURT: We're going into closing arguments now
9 and after the closing arguments I'll charge you on the
10 law that is applicable in this particular case. And I do
11 send my charge back to the jury room that I read to you.

12 CLOSING ARGUMENT

13 BY MR. DURANT:

14 It's been a long week. And y'all have heard a lot
15 of testimony in this case. And in a few minutes after
16 I've had the opportunity to address you and Ms. Ford has
17 had the opportunity to address you and the Judge has
18 charged you on the law you will be asked to go to your
19 jury room and return a verdict in this case.

20 I would submit this would be a relatively easy case
21 for you to decide. In a lot of death cases, shooting
22 cases, cases involving a killing the only job of the jury
23 is to decide is it murder, is it the result of
24 provocation or voluntary manslaughter, or criminal
25 negligence, or involuntary manslaughter. Was the killing

1 perhaps even justified because of self defense? That
2 never happened in this case. There is no evidence of any
3 provocation by James Javon Smith. There is no evidence
4 of any criminal negligence. Even if the first shot was
5 fired by mistake the ones that were not -- there is no
6 evidence whatsoever that James Javon Smith was armed but
7 that -- or that Freddie Flowers acted in self-defense in
8 this case as confirmed by lack of G-S-R or gunshot
9 residue on the victim's hands.

10 There is no question that James Javon Smith was
11 murdered. The only question you need to resolve as a
12 jury is this: is he the one who killed him period.
13 Ladies and gentlemen, every bit of the evidence you have
14 heard in this courtroom this week points to Frederick
15 Flowers as being the man that walked up to that Toyota
16 and fired that pistol into James Smith.

17 With that in mind I would like to kind of run
18 through the evidence you've heard in this case starting
19 with Kennedy Smith. Kennedy Smith is a piece of work.
20 You may not like him. The detectives certainly didn't
21 like him.

22 They did not like him because they did not believe
23 he was being straight with them. Not about what had
24 happened; he's always been consistent about what went on
25 out there that day. But they always believed he was

1 being evasive in identifying the shooter and also about
2 the marijuana. And he told you why that was. And as a
3 father his desire for revenge is understandable. I mean
4 after all he had just sat in a car by his son and watched
5 his son be murdered in cold blood.

6 But his desire in street justice very clearly
7 compromised this case. Luckily after a week had passed
8 he had had time to cool down and think about it some more
9 and realized that the street justice he hoped for was not
10 going to come to pass. He finally decided to cooperate.

11 And when Detective Osborne went to him on March the
12 9th of 2011 and showed him the photo lineup that you have
13 -- will have in evidence -- who did he pick out as the
14 shooter? Freddie Flowers; not Cornelius Jenkins, not
15 Carlos Jones, not Michael Quarles.

16 He had seen photo lineups with all those people and
17 he did not pick any of them out. He picked him out as he
18 saw his picture in the lineup. And he took the stand on
19 this past Tuesday and told you that this was the man that
20 walked up to his car and killed his son.

21 Once again, not Cornelius Jenkins, not Carlos Jones,
22 not Richard Wescott, not Myhesa Wine, not Michael
23 Quarles. Frederick Flowers. Now given his behavior in
24 this case I can understand his reluctance on his part --
25 based solely upon his testimony. And quite frankly if.

1 this case was just his testimony we would -- in all
2 likelihood we would not be here today. But that is not
3 the evidence that you have -- all the evidence you have
4 with this case. You have the testimony of his friends,
5 Reginald Wescott, Michael Quarles, Myhesa Wine, Carlos
6 Jones. Those are his friends; not Tiddy Smith's friends.

7 They have no allegiance to Kennedy Smith. They have
8 no reason to come in here and lie on Freddie Flowers for
9 the benefit of someone that most of them barely even
10 knew. And it is true that not a single one of them when
11 first questioned by the police told the truth. And I
12 have never tried to hide that fact from you.

13 But getting to the truth in a criminal case is a
14 process. And this case is a perfect example of that
15 process. When dealing with witnesses of a crime in a
16 criminal case to a crime in a criminal case; particularly
17 when those witnesses are friends of the defendant you
18 never get the truth when you talk to them the first time.

19 And that's understandable for a lot of reasons.
20 First and foremost nobody wants to get in trouble. Or
21 they don't want to get involved. Or they don't want to
22 see their buddy get in trouble. Or they don't want to be
23 a snitch. It's against the code; the code that is
24 perpetrated as violence in our community because nobody
25 wants to come forward and get it right. Or they may be

1 afraid of retribution. So they always lie just as they
2 lied in this case. But when confronted by the police and
3 the police kept the heat on and the police present them
4 with evidence letting them know that the police know that
5 what they've told in court is not the truth. They start
6 moving towards the truth. Always start with a lie and
7 move to the truth; it's never the other way.

8 You know it's like walking in the kitchen and
9 catching your child with his or her hand in the cookie
10 jar. And you say what are you doing? I told you, you
11 could not have any cookies. And they said well, I didn't
12 eat any cookies, I didn't have any cookies.

13 And you say well, why is your hand in that cookie
14 jar. Well, I was just counting the cookies. I wanted to
15 see how many cookies we had left but I was not eating any
16 of them. What are those crumbs down there at your feet,
17 those cookie crumbs? How did those get there?

18 Oh, I dropped one of those cookies when I was
19 counting them and I had to pick it up and throw it away.
20 But I didn't eat it. Well, how did you get all those
21 cookie crumbs on your lips and stuck between your teeth?
22 Okay, I ate the cookie.

23 That's what you have in this case. So in the end
24 you get a pretty good idea of what went on out there that
25 day at You didn't get the whole truth

1 from all of them. I think probably the closest version
2 you got to the truth was from Carlos Jones. Because
3 really the fact of the matter is, ladies and gentlemen,
4 these people, these witnesses, were his friends. And
5 because they were his friends every one of those people
6 out there knew that Freddie was going to do little Tiddy.

7 There is no way in the world that those guys didn't
8 hang out there that day and that was not a topic of
9 conversation. You can bet your bottom dollar that every
10 one of them knew about Freddie going to do that -- on
11 Tiddy.

12 And you can bet your bottom dollar that despite you
13 know what Reginald Wescott and Michael Quarles want you
14 to believe that they -- Freddie shot Tiddy. They come in
15 here and say, yeah Freddie walked up to the car and he
16 was -- at the car and there were gunshots at the car, but
17 I never saw a gun in Freddie's hand. Bull. Every one of
18 them saw that gun in Freddie's hand.

19 It's just not every one of them wanted to admit
20 that. I don't know if they think that makes them less
21 involved or what but every one of them saw it. And any
22 link to the contrary is just ridiculous, ludicrous.

23 That's not to say that these guys knew that Freddie
24 Flowers was going to kill Tiddy. I don't think any of
25 them believe that. I don't believe any of them believe

1 that that was what was going to happen that day. But
2 they all knew that Tiddy -- that Freddie was going to do
3 that. And in the end every one of them independent of
4 each other came around to admit it that that man, their
5 friend, their associate walked up to that car and fired
6 the fatal shots into Tiddy Smith, which corroborates
7 Kennedy Smith's version of how the shooting took place.

8 Next I'd like to address the Cricket cell phone.

9 You heard an awful lot about the phone in this case.

10 There is no question that is one of Freddie's phones.

11 You'll have the exhibits up there of contacts in
12 that phone of Freddie's friends, Freddie's family, Myhesa
13 Wine, old lady; Freddie's mother, Danny, Freddie's
14 cousin, Big -- Freddie's good friend Cornelius Jenkins,
15 Butta, Freddie's good Carlos Jones, Nasty, Freddie's
16 friend Reginald Wescott, and last but not least not a
17 friend but notable Tiet, T-I-E-T, the dead guy.

18 Reginald Wescott, Carlos Jones have all identified
19 that phone as big Freddie's phone. They've all talked to
20 Freddie on that phone and received calls from Freddie on
21 that phone. That phone number 3 was Michael
22 Quarles cell phone under the contact, Freddie.

23 The fictitious Sigfield Treen whose name that phone
24 was in just happened to have the same date of birth of
25 Freddie Flowers. It's his phone. Put everything

1 together; it's his phone. And it's true that he had
2 other phones; that is true. But the number to one of
3 those phones I believe was and it also shows
4 that there were calls between that phone and the Cricket
5 on the day of the murder as Ms. Ford pointed out.

6 Now we don't know who had that 640 phone that day.
7 Perhaps it was one of Freddie's other friends down the
8 road giving the heads up when Tiddy showed up. But what
9 we do know is that on the day of the murder he had that
10 Cricket phone. At the time of the murder he had that
11 Cricket set up; the one with the 735 number.

12 If you'll look at the call history on the date of
13 the murder from like 11:30 in the morning going all the
14 way up to 16:45 around the time every one of the numbers
15 dialed by that phone are to one of Freddie's contacts
16 followed by the CT, CP -- Old Lady, Butta, -- Tiet,
17 Nasty, -- Tiet, Tiet, -- and this phone calls -- dials
18 Freddie's contacts.

19 Likewise, if you go to the calls received by that
20 phone on the day of the murder from 2:30 up until the
21 time of the murder, calls received by that phone --
22 Cornelius Jenkins, Danny, -- Big -- Butter -- CT, CP;
23 once again, all contacts listed in the address book of
24 the Cricket cell phone that belongs to Freddie Flowers.
25 Myhesa Wine, Carlos Jones both saw him with that phone on

1 the day of the murder. Myhesa saw him at around 1 or
2 1:30 -- went earlier in the day and Freddie was talking
3 about doing the -- saw the phone on the table when he
4 arrived. Carlos Jones at sees Freddie
5 using that phone to call Tiddy -- sees Freddie with that
6 phone in his hand when he walks up to the car and shoots
7 Tiddy.

8 After the shooting Carlos sees Freddie trying to
9 find that phone in the ditch after the shooting when My
10 and Freddie meet back up at Freddie's place on Wemby
11 Freddie tells My I must have dropped my phone in the car.

12 And then you have the D-N-A evidence, which
13 admittedly is not conclusive. You get a mixture of the
14 D-N-A and that it was a very weak sample, which is very
15 common in contact D-N-A situations. And the opinion of
16 the analyst was that Freddie cannot be included or
17 excluded as a contributor. SLED will only call a match
18 if there is a match on all 15 loci; and they did not have
19 a match on all 15 loci.

20 But I tell you this ladies and gentlemen of the jury
21 Freddie Flowers' profile sure had a lot of numbers in
22 common with the D-N-A profile developed from that Cricket
23 cell phone. And speaking of D-N-A this is just not a
24 forensic evidence kind of case. I know you're used to
25 seeing that on T.V. and real life doesn't happen that

1 way; however what little forensic evidence there was in
2 this case corroborates what you heard from the witnesses.
3 We know from the firearms guy, Mr. Whitler, that there
4 was one gun used to murder Tiddy Smith. We know from the
5 G-S-R lady, Ms. Woodward a couple of things.

6 Number 1, we know that Tiddy Smith didn't have a
7 gun. He didn't have G-S-R on his hands, nor is there any
8 evidence that he ever possessed a weapon of any kind.
9 And we also know from her that whoever shot Tiddy did it
10 at the passenger window of that car because of the
11 gunshot residue around the passenger window.

12 And we also know from the testimony of the medical
13 examiner that that is the case as well because if you
14 remember Doctor Riemer's testimony regarding the
15 trajectory is consistent with Tiddy Smith having been
16 shot while he sat in the passenger seat of that car by
17 somebody standing at the passenger door, an entrance
18 wound here [indicates] down, here [indicates] down.

19 And when we put all this together it's pretty clear
20 what happened out there that day at
21 Freddie early on that day 1 or 1:30 when Myhesa Wine was
22 over there was already talking about doing a lick.

23 I don't know if that was for money. I don't know if
24 it was for drugs. I don't know if it was to teach Tiddy
25 a lesson. I don't know if it was for street -- but he

1 already had the idea in his head then. Later on he meets
2 up with his crew over at and because they
3 are Freddie's crew they all knew Freddie was going to do
4 this lick. You can bet that that was the topic of the
5 day.

6 So Freddie takes his cell phone, calls up Tiddy,
7 Freddie needs some reefer. Can you come on over and take
8 care of us? And sure enough Tiddy comes driving up --
9 riding up as a passenger in his father's car.

10 And Freddie walks up to that car, just as Carlos
11 Jones said, cell phone in one hand -- that cell phone in
12 one hand, the gun behind him and brings it around -- just
13 as Mr. Smith said, Tiddy sees that weapon and makes a
14 grab for it and Freddie shoots; and when he shoots that
15 gun jams.

16 And in his haste to get that jam cleared he let's go
17 of the phone because he's got to use that other hand to
18 rack the slide on that semi automatic and he drops his
19 phone in the passenger window, and it ends up on the
20 passenger floor board of Mr. Smith's car.

21 Freddie clears the jam and he says well, I've gone
22 this far I may as well seal -- I may as well close the
23 deal and he continues shooting. And one of those shots
24 goes through Tiddy's -- and he dies of massive internal
25 bleeding. This was no accident. The only accident here

1 was Freddie dropping his phone in that car. Tiddy's
2 death was a murder. And I know Tiddy was a drug dealer
3 but in the beginning of the case I also told you that
4 that does not mean he deserves to die.

5 And I know this is Freddie Flowers trial and Freddie
6 Flowers is entitled to justice, but Tiddy Smith who is
7 the victim in this case is also entitled to justice. And
8 he is looking to you for that justice.

9 A couple of more points I want to make and I'm going
10 to sit down. Ms. Ford in her opening statement indicated
11 that for some reason everyone was conspiring to frame her
12 client. I don't know what that reason is. It does not
13 make sense to me; perhaps it makes sense to you as
14 jurors.

15 This was a conspiracy between his friends and police
16 and presumably my office to frame an innocent man and
17 probably did a pretty poor job of it. You know if this
18 was a frame job don't you think everybody's testimony
19 would have been bam, bam, bam; just like everybody else's
20 testimony.

21 What you had in this case is not what you have in
22 any case. The fact that there are variations in the
23 testimony is really indicative of truth. That's true
24 because when people witness a major event they later
25 recount better than -- those accounts will always vary in

1 minor details, but not as to the nature of the witness.

2 For example, I think probably most of y'all were
3 around when the planes flew into the World Trade Center
4 in New York. That is an event that is engraved and
5 etched in your minds. The details of what you did that
6 day are not what that is.

7 And in this case the main event was the shooting of
8 Tiddy Smith by Freddie Flowers and that is the common
9 theme amongst all the testimony that you have heard here
10 this week. And as I said these are Freddie's friends.

11 They are not Tiddy's friends. What is their motive
12 for turning on their friend? They could have just as
13 easily stuck to their original lies. They could have
14 just as easily made up a shooter that did not exist.
15 They could have just as easily if they wanted to frame
16 somebody they don't like.

17 Why are they going to frame their own boy, their
18 friend? And it is apparent from every one of his friends
19 who testified from that stand that they were not really
20 pleased to have to come in here under subpoena and
21 testify against Freddie Flowers.

22 Did any of them look like they were having a good
23 time to you? It's apparent that all of those guys would
24 have rather been anywhere else in this world this week
25 other than in this courtroom sitting in that chair

1 testifying against their friend. But the bottom line is
2 that every one of them was out there. Every one of them
3 saw what happened. Every one of them saw Freddie shoot
4 Tiddy. And every one of them finally reached the
5 conclusion why should I go down for something that he
6 did?

7 And so they came here and they told you what
8 happened. And what happened that day was Freddie walked
9 up to that car and murdered Tiddy without provocation as
10 Tiddy sat in the passenger seat. And that ladies and
11 gentlemen is murder.

12 And I just want to make a very brief mention of the
13 burden of proof and then you won't have to hear from me
14 anymore. The judge is going to charge you on the law in
15 a little bit before you go back and deliberate.

16 And before you retire to deliberate Judge Nicholson
17 will charge you that the burden is on the State of South
18 Carolina to prove Freddie Flowers guilty beyond a
19 reasonable doubt. Beyond a reasonable doubt does not
20 mean beyond all doubt. It does not mean certainty.

21 When dealing with matters of human affairs there is
22 never anything that is certain and the law does not
23 require certainty in criminal cases. But the laws
24 require that you as jurors be firmly convinced, firmly
25 convinced of Freddie Flowers guilt. So ladies and

1 gentlemen, if after considering all the evidence you have
2 heard in this case you are firmly convinced that this is
3 the man that walked up to Mr. Smith's car and shot Tiddy
4 Smith then the oath you took as jurors requires you to
5 find him guilty of Murder and requires you to find him
6 guilty of Possession of a Firearm during the Commission
7 of a Violent Crime. All I can ask is that you do your
8 duty. Thank you.

9 MS. FORD: May it please the court?

10 THE COURT: Yes ma'am, Ms. Ford.

11 CLOSING ARGUMENT

12 BY MS. FORD:

13 Persistence, intimidation, harassment, bullying;
14 whatever you want to call it those things do not lead to
15 the truth. Instead they lead to people saying what they
16 have to say or what they think they have to say.

17 A drug dealer was killed. And the police wanted a
18 quick arrest, a conviction. Their strategy never was who
19 killed Tiddy. Their strategy was we heard a name
20 Freddie; let's get people to confirm that. But it was
21 not Freddie.

22 And the witnesses have demonstrated that the truth
23 is simply not important to them. There was a murder as
24 Mr. DuRant said. And I'll not object to that. Tiddy was
25 certainly tragically killed. There was not much to go on

1 when it first happened. There was a phone in the car and
2 so I want to talk about that phone real quick. Kennedy
3 Smith never mentioned that he saw the shooter throw or
4 drop a phone in the car. He didn't know that that phone
5 belonged to the shooter; people just knew that they
6 didn't recognize it.

7 And Detective Osborne told you that he didn't think
8 it made sense that Tiddy was calling himself on possibly
9 his two phones. And so that phone did belong to Freddie
10 Flowers. But it's only one phone that belonged to him.
11 There were some calls to his Mom and his cousin but that
12 was hours earlier; the one o'clock hour. A lot can
13 happen in over three hours. No one even knows where
14 Tiddy lives on that day.

15 Then there is the talk of the D-N-A. It was
16 inconclusive when it came to Freddie. But what do we
17 know? We know that there was multiple people's D-N-A on
18 that phone; two but possibly more. The lady from SLED
19 said she couldn't say for sure how many people's D-N-A
20 was on that phone.

21 But that proves that multiple people were handling
22 that phone. And no one was even a major contributor.
23 You heard multiple people said that Freddie had several
24 phones. One phone he had was 640-2382 number. And you
25 heard that that number and the Cricket phone were calling

1 each other all day, including at that 4 o'clock hour.
2 Detective Osborne already said that he didn't think it
3 made sense that somebody would be calling himself.

4 So what makes sense is that two different people
5 have those two different phones. Myhesa mentioned that
6 Carlos would use Freddie's phone sometimes. She said
7 that day she thought that Carlos was using a 640 number.

8 But Carlos insisted that he had his own phone that
9 day. Why is it so difficult to believe that maybe Carlos
10 or somebody else had that Cricket phone number? The
11 Solicitor mentioned the call to and from the contact.
12 Well, these boys knew a lot of the same people.

13 Now I want to talk about Kennedy Smith. The police
14 decided from the very beginning that they did not like
15 him. Why? Well, because he abandoned his son at the
16 fire station. And that didn't make sense to them. And
17 then why else? Well, because of the marijuana.

18 The police saw him throw a bag of marijuana, but he
19 had the nerve to not only deny it but to say that the cop
20 was lying. So things did not start out well between Mr.
21 Smith and the police.

22 But what did Mr. Smith say from the very beginning?
23 He said over and over I couldn't get a good view of the
24 shooter. And that makes perfect absolute sense. Now he
25 says the shooter stood out to me because he was a head or

1 two taller than everyone else out there. So that would
2 maybe make sense. But he didn't say that because that
3 wasn't the case. He told us -- he tried to make a big
4 deal of how he got all of these good looks at the
5 shooter.

6 Well, he also told us that he wasn't paying
7 attention because he had no reason to pay attention when
8 he drove up. He drove up past the driveway so all the
9 boys were behind him. He was dropping his son off.

10 And he probably didn't want to get too involved in
11 his son's drug transaction because he saw this group of
12 guys; he mentioned he thought it was nine. He heard
13 someone say he would be riding dirty but he told us that
14 that didn't even register with him. He didn't think
15 anything of it.

16 He saw a black male walking to the car, but he
17 couldn't see his hands. He told us he doesn't remember
18 what the person was wearing. He said the shooter, when
19 the shooter got to the door he never crouched down or
20 anything.

21 At one point he steps back and that's when he gets a
22 good view. But he said he only stepped back like a foot
23 or two. If someone is standing at a car window;
24 especially this is Celica, it's a small car. Then
25 anyone's head is pretty much going to be way above the

1 window. But especially someone as tall as Freddie
2 Flowers; their face would not be able to be seen. So for
3 him to say that he saw anyone's face that does not make
4 sense.

5 He also told us that it happened so fast. He
6 mentioned seconds. We also heard that he was actually
7 trying to start the car to try to get away. He was
8 preoccupied trying to escape, not seeing someone's face.

9 He told the police from the very beginning I swear I
10 couldn't get a good view. But he did say he did see a
11 general view and the guy had twists, that he had a dark
12 complexion, that he was slender, and that he was average
13 height. He said between maybe 5'7 and 6 feet tall.

14 But Detective Osborne -- I already told you that the
15 police didn't care too much for Mr. Smith. They were mad
16 that he had the nerve to lie about the marijuana. And so
17 even though it makes perfect sense that he wouldn't have
18 been able to get a good view Detective Osborne said I
19 don't believe you.

20 And so what happened from there? Well, he decided
21 to arrest him, not only for the drugs but for Obstruction
22 of Justice the very next day. And at that point after
23 being arrested he -- at the time that he was arrested he
24 still didn't change his story. He still said I didn't
25 get a good view; the guy had twists I told you. And so

1 it wasn't for over a week after he had been sitting in
2 jail not able to be outside with his family. But at that
3 time Detective Osborne picked him up from the jail and
4 took him to Charleston Police Station.

5 And even though he told you that they had a special
6 room there dedicated to recording interviews and that
7 other interviews had been recorded, for some reason that
8 most important interview where Freddie is supposedly
9 identified is not recorded.

10 There is no reason for why it wasn't recorded; it
11 just wasn't recorded. So Kennedy makes an identification
12 of Frederick Flowers. But did he really -- did he really
13 positively identify Freddie?

14 He says this looked -- this looked the closest to
15 the person who shot my son, neck and side of face,
16 complexion is what I saw. So he admits again I didn't
17 get a great look at the guy. This was the closest.

18 And even several weeks later on March 31st the second
19 meeting after Kennedy had supposedly decided to be
20 truthful and honest because he wanted justice for his
21 son, when Detective Osborne asked at what point he saw
22 the shooter he responded with when he racked the slide of
23 the gun. But then, of course, he went on and on about
24 all the multiple times he saw the shooter. And when I
25 asked him about that his response was well Detective

1 Osborne just didn't ask the right questions. He said at
2 what point and not what point plural. Really. No doubt
3 -- I have no doubt that he mourns his son, that he is
4 upset over his son's death, of course. But it was very
5 -- it's truly an awful experience for him.

6 But he simply is not credible. He was so sure on
7 the stand. I'm absolutely sure that it was Freddie. He
8 was talking about Freddie like he knows this person. He
9 told us that he never knew Freddie Flowers and he never
10 knew the shooter who he saw that night.

11 So he's so sure. He's gotten on the stand and he's
12 adopted a belief because Freddie Flowers is the person
13 who is sitting in that chair [indicates] where the
14 defendant sits. He doesn't care if someone is
15 wrongfully arrested. We know that because of things that
16 he's done.

17 When he first met with detectives -- Detective
18 Osborne -- Detective Burckhardt he was shown some
19 pictures. And he actually -- he said I'm going to think
20 about this picture. And then he said well I'm 65 percent
21 sure that could be the shooter.

22 And so Detective Burckhardt says okay, well then
23 that's not a positive I.D., which was the right thing to
24 do. But instead Mr. Smith argued with him about it
25 wanting to I.D. that person who was just a random filler

1 that had been chosen. He didn't care who was arrested
2 for this charge. And he still doesn't. Recently he told
3 you that he met with the Solicitor within the past few
4 months and he was shown some pictures. And he picked
5 someone else out of the pictures he was shown who
6 resembled the shooter.

7 Why did he change his story? Well, he told us he
8 started to change his story originally about the
9 marijuana because he said well, I thought about it and I
10 figured that they probably could get a fingerprint off
11 the bag. And that maybe there was a video.

12 And then he said I was told I'm going to rot in jail
13 and I deeply believed it. And then, of course, he
14 mentioned oh, and justice for my son. He's the type of
15 person who exaggerates. He would say the sky is yellow,
16 the sky is yellow, people would have to -- they can show
17 him all kind of evidence but he would just persist.

18 He's just that type of person. He has a mental
19 illness he told us about. Apparently it's bad enough
20 that he hasn't been able to work in seven years. Perhaps
21 he does things a little differently than the average
22 person. He also has some making up to do because again
23 he left his son while he was dying. And that doesn't
24 look good to the family or to the State. He still has
25 these pending charges of Obstruction of Justice and

1 Possession with Intent to Distribute Marijuana. He came
2 up with some story that he intentionally came up with a
3 false description because he was hoping for street
4 justice.

5 He didn't tell that to Detective Osborne on March 9
6 -- March 31st, the point in time in which he had decided
7 to be honest. He came up with that recently. Why?
8 Because he had to explain something.

9 He had told police before it was basically just a
10 trick. He thought he saw something moving at the base of
11 the shooter's neck. But he knew that wasn't going to cut
12 it. So now he's come up with a different story.

13 What he originally said is the truth because it
14 makes the most sense; he didn't get a good view of the
15 shooter. But the shooter he saw had twists. And the
16 shooter he saw was of average height. In every
17 description including the description he gave on the
18 stand the shooter was at most 6 feet.

19 When I started at a taller height I think 5'8 he
20 corrected me and said no, no, no. I said like 5'7 or
21 something. Freddie Flowers is 6'5. My father is 6'5
22 and growing up my whole life that's the first thing
23 people notice. That's the description people use when
24 they are referring to him; wow he's tall. It would stand
25 out. And it would have stood out to Mr. Kennedy Smith if

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1 it were true. So Mr. Smith is not credible. Well who
2 else is not credible? No one. No one in this case is
3 credible. And Detective Osborne told you a few times
4 well, I just didn't believe him.

5 So are they believable now; because it's not
6 possible that they are all telling the truth because
7 their stories don't match up. Is anyone telling the
8 truth? No. No one is telling the truth. How can we
9 tell that? Their stories don't match up with one
10 another.

11 They don't all fit Kennedy Smith's version of what
12 happened. Some of the elements don't make sense. And
13 then there is one thing; they are all clearly trying to
14 protect themselves. So why would they say Freddie? The
15 Solicitor, Mr. DuRant, brought that up. I'm not saying
16 it's some big conspiracy where they all got together and
17 said let's say it was Freddie. Again, the strategy was
18 we heard this name; tell us it was Freddie.

19 Detective Osborne he never even tried to say was it
20 Myhesa? Was it Carlos? Was it Reggie? Was it Michael
21 Quarles? Was it C.J? Was it Homer? Was it Brandon
22 Smalls? Was it Michael Deas? These are just some of the
23 people you've heard mentioned in this trial. And again,
24 there could have been other people outside who have never
25 been accounted for. Detective Osborne would tell them

1 it's okay if you were there. Just tell me. Just tell me
2 Freddie did it or you heard Freddie did it or someone
3 told you they saw Freddie do it.

4 Now I'm going to talk about each one of these
5 witnesses individually a little bit okay. I'm going to
6 start with Myhesa first started to really talk about
7 Freddie last year June of 2011.

8 And he only -- he says that he doesn't -- at that
9 time he didn't actually admit to being there at

10 but he says that Freddie was down the street. And
11 he said earlier Freddie was talking about doing a lick
12 and Carlos was encouraging him.

13 But then he changed -- he really changed his story
14 when Detective Osborne said to him, and he admitted to
15 this and so did Detective Osborne, there is nothing you
16 can do to help Freddie. He's already going to prison.

17 And at that point it was clear what he had to do --
18 what he could do to save himself make -- Myhesa made a
19 decision that Freddie was a goner. He was a lost cause.
20 It didn't matter if it is the truth. He was now
21 disposable.

22 This man wouldn't leave him alone and he had to say
23 something. And Detective Osborne was clearly looking for
24 something to be said about a certain person. And so
25 Freddie at that point became interchangeable with whoever

1 may have been the shooter. And the ball started rolling
2 until it reached all of the others who mostly just came
3 up with their version of the story within the past few
4 weeks.

5 But back to Myhesa and specifically what he says.
6 He originally told police that Carlos was encouraging
7 Freddie to do a lick. And while that possibly could have
8 led to something -- that suggested certainly that Carlos
9 was involved with this.

10 Detective Osborne didn't really do anything with
11 that information. And instead the Solicitor and the
12 defendants didn't learn that this statement was even
13 given until the past month. Detective Osborne said it
14 was a mistake, he made a mistake.

15 And I only point that out not to say that he was
16 hiding something but that's the point at which all the
17 other defendants and all of the people he heard from then
18 they started to hear that Myhesa was naming Carlos. And
19 so that's when things really started to change.

20 Myhesa told you that he and Reggie are cousins. But
21 they are more than cousins; they are really close. And
22 then Michael Quarles said he is close to Myhesa as well.
23 Myhesa told me that he's been talking to Carlos. Carlos
24 and C.J. are super tight. Carlos said he helped raise
25 C.J. So that's how everything got started with the other

1 -- and the State they weren't really satisfied with
2 Myhesa's story because it didn't explain everything like
3 how did the phone get in the car. So then -- so they
4 speak to him several more times.

5 And at this point Myhesa has told you that Carlos is
6 not happy with him for putting his name in this. And he
7 told us as well that Carlos is an influential guy. You
8 heard that Carlos is about 5 years older than all of
9 these other boys involved.

10 So what did he do at that point? He starts leaving
11 Carlos's name out of the story. When he testified on the
12 stand he didn't even mention Carlos, and how Carlos had
13 been encouraging Freddie. I had to point out that in his
14 original statement that is what he had said. But what
15 does that show? It shows that maybe he is afraid of
16 Carlos.

17 And then there are other things about Myhesa's story
18 that don't make sense. Not long ago he told the
19 Solicitor that he saw Freddie with the gun earlier. But
20 then he changed his story and now says no, I never saw
21 him with a gun earlier.

22 Why would he lie about that? Wouldn't it make more
23 sense if he would start out saying I didn't see him with
24 a gun and then later say I did see him with a gun? That
25 doesn't make sense. That shows he's trying to distance

1 himself from the situation. He talks about how Freddie
2 left on a bike to go to his uncle's house. Why would
3 Freddie leave to go on his bike if he was waiting for
4 Tiddy to come over to rob him? That doesn't make any
5 sense.

6 Perhaps Freddie was just riding on his bicycle. Why
7 would Myhesa still go to Freddie's house to borrow a
8 bicycle after this all happened? That makes no sense.

9 During all of his story he maintains he didn't
10 conspire with anybody about an armed robbery. He
11 actually tried to discourage Freddie. When asked why he
12 didn't tell the police the truth originally he admitted
13 one reason was to save myself. He admitted that.

14 You've also heard that Carlos is now claiming again
15 for the first time within a few weeks before trial that
16 it was Myhesa who handed Freddie a gun. And Detective
17 Osborne told you they are considering charging Myhesa
18 with something related to this murder. Myhesa has to
19 work to make sure that doesn't happen so that he can
20 survive and his freedom is not lost.

21 Now I want to go to Myhesa's cousin Reginald
22 Wescott. Originally when Detective Osborne talked to him
23 he kept questioning him did Myhesa tell you Freddie did
24 it? Did Myhesa tell you Freddie did it? Again, not did
25 Myhesa do it or who did it; he just wanted to know about

1 Freddie. But as of last week his story changed. And now
2 he says I was just rolling a blunt. Just rolling a blunt
3 and I don't know anything about anything. However, what
4 we know is that Carlos had accused not only Reggie's
5 cousin and good friend of having a gun and giving it to
6 Freddie; he's accused Reggie of having a gun that day.

7 We also know that there was interaction with
8 Detective Osborne a few months ago when Reggie was
9 arrested on his pending charges. Even though Detective
10 Osborne wasn't involved in that case I guess it's a
11 coincidence that Detective Osborne was the one who drove
12 Reggie to talk to the police of who were involved in that
13 case.

14 So what was said in that interaction? We don't
15 know. We do know that he had pending charges; Attempted
16 Murder is just one of them. It carries up to 30 years in
17 prison. And he tried to tell us that he didn't know --
18 he didn't know that the State would maybe drop charges or
19 reduce charges. He doesn't understand that. He was in
20 jail but he doesn't understand how that works.

21 No, he has a reason not to make the State upset. He
22 does understand how things work; how things work. And he
23 has to say what he has to say in order to survive and
24 save himself. Then there is Michael Quarles. And while
25 he has given multiple stories as well and he's even been

1 convicted of giving false info to police before as well.
2 He sounded like he was telling some story up there. He
3 referred to the victim and his dad as the two suspects
4 drove up. The police were clearly harassing him in the
5 beginning. Not long ago he had been shot in the ankle.

6 He was talking to police about that case and then
7 Detective Osborne comes in and keeps trying to get him to
8 say something about Freddie, but he doesn't. Instead he
9 just talked about recently -- about how yes, I was there.
10 I didn't know anything was going to go down, but Freddie
11 was at the car and there was a shooting when he was at
12 the car.

13 What do we know about Michael? We know that he's
14 closest to Myhesa. He said Myhesa had been accused of
15 having a gun. We know that Carlos had accused Michael of
16 having a gun. We also know that he is in prison under a
17 youthful offender act.

18 And that's not a normal prison sentence where you
19 are given a definite term. It's changeable; it's 10 to
20 13 months originally, but they can keep you in longer if
21 they want to depending on what is going on with your
22 living situation or your behavior. They don't parole.
23 If you mess up they can keep sending you back and back to
24 prison for up to 6 years. He doesn't want to deal with
25 that. He doesn't want to get in trouble or have his

1 buddy Myhesa get in trouble. He's saying what he has to
2 say so he can survive. And then there's Carlos Jones who
3 Mr. DuRant has told you is probably the most truthful.
4 Well, Carlos Jones story didn't even come out at all
5 until within the past couple of weeks.

6 And it's the point in time again in which after he
7 had heard likely from talking to his good buddy, C.J. who
8 he helped raise who had been charged with Obstruction of
9 Justice and who had all the evidence in their case. He
10 heard that Myhesa brought his name into it. And that did
11 not make him happy. Myhesa told me that.

12 Myhesa and Carlos were sitting outside of this
13 courtroom while we were in trial. What we know about
14 Carlos is that certain parts of his story don't match up
15 and don't make sense; and clearly are to protect himself.

16 It starts with earlier in the day. Myhesa had said
17 Carlos was at Freddie's uncle's house earlier in the day.
18 But Carlos he says my ex-girlfriend she drove me there
19 but I never got out the car because she realized she was
20 hungry so we went to Wendy's instead and then she later
21 dropped me off at St. Clair.

22 Does that make sense that she would be going to drop
23 him off at Freddie's and then remember that she's hungry?
24 He says that he was on the porch. But no one's story
25 purports that anyone was on the porch. Mr. Smith didn't

1 testify that he saw someone separate from the group on
2 the porch. And none of the other witnesses mentioned
3 that. He said that because he was trying to distance
4 himself from the trial to make himself sound like he is
5 the innocent party here.

6 He also insisted even though from where he was he
7 wouldn't have been able to see exactly what happened
8 because he was on the porch and the shooter's back would
9 have been covering the door frame. But he insisted that
10 no, no, no I really got a good look at the actual
11 shooting because he's trying to make himself sound like a
12 better witness; that's what he's doing.

13 Carlos says he was yelling at Freddie. However, not
14 everybody purports that. Michael Quarles said he didn't
15 think Carlos had said anything. And Myhesa says it was
16 actually C.J. cursing at Freddie. Again, that's Carlos
17 trying to make himself sound better.

18 And then he gives the magical explanation that the
19 State has been waiting for all along about the phone in
20 the car. Again, Carlos knew from talking to C.J. or
21 whoever that that phone was an issue. He said that
22 Freddie was like talking on the phone and had a gun in
23 his other hand. But that's not supported by Kennedy's
24 statement who says the shooter was kind of walking
25 towards him aggressively. Again, he made up the story to

1 make himself sound like a better witness to give the
2 State the evidence that he knew they wanted. He knew
3 what they wanted from talking to other people. He also
4 said that I stayed at the house because I had nothing to
5 hide.

6 Okay, so then is he that cold blooded and heartless
7 that he just watched someone murdered, someone he knows,
8 and the police come to the house and he is able to sit
9 there stone faced and without raising that much suspicion
10 just say no, I didn't see anything.

11 So is that what he's trying to portray himself of
12 because that's not good either. But perhaps he stayed
13 there for other reasons; other than well, I didn't do
14 anything wrong. Perhaps he stayed there as sort of an
15 alibi if you will.

16 Perhaps he stayed there to intimidate people into
17 not saying things to see what was going to be said.
18 There are a lot of reasons he could have stayed there.
19 Maybe he had nowhere else to go. He also talked about a
20 call to Mr. Wilder.

21 However, even though we heard about the phone
22 records that has not been supported by evidence. And you
23 may have noticed that when Mr. DuRant asked him who
24 called Tiddy he said Myhesa and then he said oh, Freddie.
25 But first he said Myhesa. But he realized that was the

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1 wrong answer. There has been talk of arresting Myhesa
2 and maybe C.J. for a charge related to this murder. But
3 there was no talk of mentioning -- no talk of arresting
4 Carlos; even though according to Myhesa's story given
5 over a year ago that Carlos was the one encouraging
6 Freddie.

7 There is no talk of that because the State likes
8 what they hear from Carlos because it ties up the loose
9 ends. Carlos Jones is saying what he has to say to
10 benefit Carlos Jones and no other so he can survive; so
11 none of these people are believable.

12 And it's not believable either that they would
13 somehow care more about Freddie Flowers than they would
14 care about themselves or each other. Yet they all have
15 in common their story. The one thing they have in common
16 is that it was Freddie who shot Tiddy.

17 However, what they also have in common is that they
18 all are completely innocent of anything and they
19 themselves didn't do anything. Maybe the others did some
20 stuff but they themselves are completely innocent. They
21 are clearly out for themselves, their survival.

22 The State would have you believe that these boys are
23 trying to protect Freddie. Why would they cop on their
24 friends? None of them said they were great close buddies
25 with Freddie. You heard that Freddie didn't even really

1 live in the area. His uncle lived there but he just
2 stayed there but that his Aunt and Mom lived in Goose
3 Creek. You heard that Myhesa and Reggie are cousins and
4 good friends.

5 You heard Carlos say he helped raise C.J. You heard
6 Michael Quarles say Freddie was just an associate of his
7 and that he was really closest to Myhesa. There has been
8 no indication that any of these boys have great love for
9 Freddie Flowers and that they wouldn't want to say
10 something against him; whether it's the truth or not.

11 Did any of them -- Mr. DuRant pointed out that none
12 of them seemed like they wanted to be here. But did any
13 of them seem like they were up there torn apart that they
14 were having to testify against their friend? No. Did
15 any of them seem like they were up there because the
16 burden of everything finally got to them and they wanted
17 to see justice for Tiddy or they couldn't live with it
18 anymore? No. None of them seemed like that. Instead
19 each of them got up there and told a story.

20 And we know that they all can't be true because all
21 of their stories are different. They had to protect
22 themselves and that's why they testified. So from the
23 beginning you know there was a name, Freddie's phone, the
24 day before there had been this incident Carlos told you a
25 little about that. Jennifer Myers was there but the

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1 State didn't put her up. But she described someone she
2 saw that she thought was Freddie, short and muscular.
3 That certainly is not Freddie Flowers. There are some
4 other possibilities too in this case and the police
5 didn't really look into them.

6 Detective Osborne told you about Big Head that there
7 were multiple calls between the Cricket phone and Big
8 Head. I'm sorry -- not the Cricket phone, Tiddy's phone
9 and Big Head that he called him once but he never heard
10 back so he just didn't pursue that any further.

11 Detective Osborne again he didn't ask about anyone
12 else possibly doing anything. Mr. Smith told us that
13 there were 9 people out there. So perhaps there were
14 other people out there; other people who have not been
15 named because people don't want to name them because they
16 are on the street and they don't want to fear retribution
17 from that person.

18 There are unaccounted for fingerprints on the car.
19 They didn't belong to Freddie. They didn't belong to Mr.
20 Smith or Tiddy. There is unaccounted for D-N-A on the
21 phone as we heard about.

22 The State didn't even test the D-N-A of the other
23 boys involved. They just looked at Freddie and Tiddy.
24 The State -- they've also been playing a game a lot with
25 this Obstruction of Justice charge. Mr. Smith was

1 arrested in part for that charge and because supposedly
2 he lied and said he picked his son up from the gas
3 station but he really picked his son up from Brandon
4 Smalls' house. So Brandon Smalls or someone indicated
5 that that was the truth.

6 And so Detective Osborne arrested Kennedy for that
7 charge. However, later when he did his investigation
8 after arresting Kennedy Smith and he got the video from
9 the store he learned that that was true. So he arrested
10 the person who had said originally that Tiddy was picked
11 up from his house.

12 Detective Osborne admitted that from the evidence he
13 had he could have charged each and every single person
14 with something but he didn't. The State can pick and
15 choose. They are just doing at random; I don't know what
16 their reasons are.

17 What happened here is that Freddie Flowers was
18 arrested on weak evidence. And then a bunch of boys were
19 harassed and intimidated to say a certain thing. They
20 weren't told -- I'm not saying they said tell us this. I
21 want you to say A, B, C, D, E. They weren't told that.

22 But they were told tell us Freddie did it. Tell us
23 you saw Freddie do it. Tell us you saw -- somebody told
24 you they saw Freddie do it. They are not Freddie's dear
25 friends. They are not trying to -- they never were

1 trying to be nice or help him out. Several people,
2 Michael Quarles and Reggie they were reluctant to say
3 that Freddie was the actual shooter. And Mr. DuRant gave
4 them a hard time.

5 They said that Freddie walked to the car and then
6 there were shots. I didn't actually see Freddie shoot
7 anyone. And it was actually true when they said I didn't
8 see Freddie shoot anyone because I couldn't really see.
9 Well, possibly they were reluctant on the stand to say
10 Freddie Flowers -- they didn't see Freddie Flowers shoot
11 Tiddy because they didn't -- because it's not true.

12 And don't forget Tiddy himself. Tiddy did not die
13 immediately. He was able to talk a little. And he said
14 I've been shot. But at no point when the shooter
15 approached him did he say a name. At no point after he
16 had been shot did he say a name. That purports that
17 maybe he didn't even know the shooter.

18 There is doubt in this case. There is very real
19 doubt. And Mr. DuRant said that this should be easy for
20 y'all. This is a very hard job that y'all have. It's a
21 very heavy burden. And I don't think it would be easy.
22 I don't know.

23 But these witnesses they have determined that
24 Freddie Flowers -- they can throw him away. That he is
25 interchangeable with whoever. He's not. He is a real

1 human. And while Tiddy deserves justice so does Freddie
2 Flowers. He did not shoot and kill Tiddy on March 1st of
3 last year. He is an easy target, a scapegoat. And when
4 you look at all the evidence, the lack of evidence, when
5 you look at the credibility of witnesses; because that is
6 key in this case it all does not support finding Freddie
7 guilty. It supports finding him not guilty. Thank you.
8 Thank you, sir.

9 CHARGE OF THE COURT

10 Madame Forelady and ladies and gentlemen of the jury
11 I'm going to instruct you on the law that is applicable
12 in this particular case.

13 I instructed you and stated earlier and emphasized
14 the fact that the defendant did not elect to testify on
15 his own behalf is not a factor to be considered by you in
16 any way in your deliberations and in your consideration
17 of the question of the guilt or innocence of the
18 defendant. It must not be considered by you in any
19 manner whatsoever.

20 A defendant has a constitutional right to remain
21 silent. And the assertion of this right must not be
22 considered by you in your deliberations. I repeat under
23 your oath you are to draw no conclusion whatsoever from
24 the fact that the defendant in this case did not testify.
25 The fact that this defendant did not testify should not

1 even be discussed in the jury room. The burden of proof
2 as I will state to you is on the State. The defendant is
3 not required to prove his innocence. The burden of proof
4 remains on the State to prove guilt beyond a reasonable
5 doubt.

6 I've allowed you to take jurors -- notes during the
7 course of the trial. You have not been obligated to take
8 notes but if you have taken notes they should be used
9 only as memory aids. You should not give your notes
10 precedent over your independent recollection of the
11 evidence.

12 If you've chosen not to take notes, you should rely
13 on your own independent recollection of the proceedings
14 and should not be influenced by the notes of other
15 jurors. I emphasize that the notes are not entitled to
16 any greater weight than the recollection or impression of
17 each juror as to what the testimony may have been.

18 Further, these notes are your notes. You may
19 destroy them, keep them, or the court will destroy them
20 for you. I will give a copy of these instructions in
21 written form. During your deliberations you may refer to
22 the instructions to guide your decision making. You must
23 consider the instructions as a whole and not follow some
24 but not others. Madame Forelady, please return the
25 instructions to the court after your verdict has been

1 rendered. The defendant has pled not guilty to these
2 indictments, which places the burden on the State to
3 prove the defendant guilty. A person charged with
4 committing a criminal offense in South Carolina is never
5 required to prove himself innocent.

6 I charge you that it is a vital and important rule
7 of law that the defendant in a criminal trial no matter
8 what the seriousness of the charge must always be
9 presumed to be innocent until his guilt has been proven
10 beyond a reasonable doubt.

11 His presumption of innocence remains with the
12 defendant at all times from the moment he appears in the
13 court throughout the trial until you, the jury reach a
14 verdict of guilt beyond a reasonable doubt based on the
15 testimony and evidence presented.

16 The presumption of innocence is the substantial
17 right to which every defendant is entitled unless and
18 until you reach a verdict of guilty beyond a reasonable
19 doubt. If you, the jury do not find the defendant
20 guilty beyond a reasonable doubt it is your duty to
21 acquit the defendant.

22 Now what is reasonable doubt? A reasonable doubt is
23 the kind of doubt that would cause a reasonable person to
24 hesitate to act. The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt. Some of you

1 may have served as jurors in civil cases where you were
2 told it's only necessary to prove a fact is more likely
3 true than not, such as a greater weight of preponderance
4 of the evidence.

5 In criminal cases the 'State's proof must be more
6 powerful than that. It must be beyond a reasonable
7 doubt. Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced of the defendant's guilt.

9 There are very few things in this world that we know
10 with absolute certainty. And in criminal cases the law
11 does not require proof that overcomes every possible
12 doubt. If based on your consideration of the evidence
13 you are firmly convinced the defendant is guilty of the
14 crime charged you must find the defendant guilty.

15 On the other hand if you think there is a real
16 possibility the defendant is not guilty you must give the
17 defendant the benefit of the doubt and find the defendant
18 not guilty.

19 There are two types of evidence which is generally
20 presented during trial. Direct testimony is the
21 testimony of a person who claims to have actual knowledge
22 of a fact such as an eyewitness. It is evidence which
23 immediately establishes the main fact to be proved.
24 Circumstantial evidence is proof of a chain of facts and
25 circumstances that indicate the existence of a fact. It

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

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

13 The evidence or lack of evidence on which you are to
14 decide the facts include the following: the sworn
15 testimony of a witness both on direct and cross
16 examination regardless of which side called the witness,
17 the exhibits that have been received into evidence by the
18 court and any facts agreed or stipulated to by the
19 lawyers.

20 The following facts -- excuse me -- the following
21 things are not evidence and you may not consider them in
22 deciding the facts: arguments and statements made by the
23 lawyers are not evidence. The lawyers are not witnesses.
24 Their opening statements, closing arguments and their
25 statements are intended to help you interpret the

1 evidence but are not evidence. If the facts as you
2 remember them differ from the lawyers statement your
3 memory controls. Questions and objections by the lawyers
4 are not evidence.

5 Lawyers have a duty to their clients to make an
6 objection when they believe the question is improper
7 under the rules of evidence. You should not allow any
8 objection, or the court ruling on the objection to
9 influence you. Testimony that has been stricken that
10 you've been instructed to disregard is not evidence and
11 must not be considered.

12 Anything you may have seen on television, read in
13 the newspaper or on the Internet or heard from others
14 when court is not in session is not evidence. You should
15 base your decisions solely on the sworn testimony of
16 witnesses, exhibits received into evidence by the court,
17 and any facts agreed or stipulated to by all the lawyers.

18 The fact that the defendant was arrested, charged,
19 and indicted in this case is not evidence and cannot be
20 considered as evidence of guilt, nor does it create any
21 presumption or reference of guilt.

22 The indictment is simply the formal written
23 instrument which contains the charge made against the
24 defendant. Now under our Constitution and Code of Laws
25 only you the jury can make findings of facts in this

1 case. I'm not permitted to indicate to you how I may
2 feel about the testimony or evidence which has been
3 presented throughout the trial. It's been my intention
4 to be fair and impartial towards each of the parties
5 involved.

6 Necessarily you must determine the creditability of
7 the witnesses who has testified in this case.
8 Creditability simply means believability. It's your duty
9 as jurors to analyze and evaluate the evidence to
10 determine which evidence convinces you of its truth.

11 In deciding whether or not to believe a witness's
12 testimony about a particular matter you may consider the
13 following: the manner and appearance of the witness
14 while on the witness stand. Was he or she straight
15 forward or hesitant in answering?

16 The testimony of a witness; was it consistent or
17 inconsistent? How the witness came to know the facts
18 that he or she testified to? Was the witness present
19 during the incident? Did the witness happen on the scene
20 after the incident occurred?

21 The reason the witness would want to give testimony
22 which would help or hurt one side or the other. Has the
23 witness exhibited to you any interest, bias, prejudice or
24 other motive in the case unless you may consider whether
25 a particular witness may gain some reward, payment,

1 personal advantage, or vindication through his or her
2 testimony, the strength of the witness and the testimony
3 of the witness. Was the testimony of the witness
4 strengthened or weakened by other testimony or evidence.

5 The duration and length of time between the incident
6 and when they were reported. Would the duration or
7 length of time weaken or strengthen the witness's memory
8 of the incident. All prior statements; were prior
9 statements made by the witness consistent or inconsistent
10 with the witness's testimony.

11 In determining the believability of a witness who
12 has testified in this case you may believe one witness
13 over several witnesses or several over one. You may
14 believe a part of the testimony of a witness and reject
15 the remaining part of the testimony of the same witness.
16 You may believe the testimony of a witness in its
17 entirety or reject the testimony of a witness in its
18 entirety.

19 Of course you do not determine the truth by merely
20 counting the number of witnesses presented. Throughout
21 this process you have but one objective; to seek the
22 truth regardless of its source. The rules of evidence
23 ordinarily do not permit witnesses to testify to opinions
24 or conclusions. An exception to this rule exists for
25 witnesses called expert witnesses; witnesses who by

1 education or experience have become an expert in some
2 art, science, or profession are permitted to give their
3 opinion in certain areas if the court qualifies them as
4 expert witnesses.

5 An expert witness may also give the reasons for
6 their opinion. And expert opinion is evidence for you to
7 use in any way you see fit. You should give the evidence
8 the weight and creditability you believe is appropriate.

9 If you decide that an expert witness's opinion is
10 not based on sufficient education or experience or decide
11 that the reasons given in support of the opinion are not
12 sound or that the opinion is outweighed by other evidence
13 you may disregard the opinion entirely.

14 Now the same Constitution and laws which designate
15 to make you the finders of the fact make me the sole
16 instructor of the law. It's my duty to charge you on the
17 law applicable to this case and it's your duty as jurors
18 to accept and apply the law as I now state it to you.

19 The lawyers are not the instructors of the law. You
20 must accept the law and apply the law exactly as I state
21 it to you. You must not base your decision making on
22 your idea of what the law is or what you think the law
23 should be. The defendant is charged with Murder. The
24 State must prove beyond a reasonable doubt that the
25 defendant killed another person with malice aforethought.

1 Malice is hatred, ill will, or hostility towards
2 another person. It is the intentional doing of a
3 wrongful act without just cause or excuse and with the
4 intention to inflict an injury or other under
5 circumstances of the law will infer an evil intent.

6 Malice aforethought does not require that malice
7 exists at any particular time before the act is
8 committed. But malice must exist in the mind of the
9 defendant just before and at the time the act is
10 committed.

11 Therefore there must a combination of the previous
12 evil intent and the act. Malice aforethought may be
13 expressed or inferred. These terms expressed and
14 inferred do not mean different kinds of malice but merely
15 the manner in which malice may be shown to exist. It is
16 either by direct evidence or by inference from the facts
17 and circumstances which are proved.

18 Expressed Malice is shown when a person speaks words
19 which express hate or ill will for another or when a
20 person prepared beforehand to do the act which was later
21 accomplished.

22 For example, lying in wait for a person or any other
23 acts of preparation going to show the deed was within the
24 defendant's mind would be Expressed Malice. Malice may
25 be inferred from conduct showing a total disregard for

1 human life. Inferred Malice may also arise when the deed
2 is done with a deadly weapon. A deadly weapon is any
3 article, instrument, or substance which is likely to
4 cause death or great bodily harm.

5 Whether the instrument has been used as the deadly
6 weapon depends on the facts and circumstances of the
7 case. The following are examples of instruments which
8 may be deadly weapons: a pistol, a shotgun, a rifle, a
9 dirk, a dagger, a knife, a slingshot, metal knuckles, a
10 razor, gasoline, a firebomb, Molotov cocktail, and
11 lighter fluid. A gun may be a deadly weapon even if it
12 is not operating, possession of a weapon during the
13 commission of or attempt to commit a violent crime.

14 The defendant is charged with Possession of a Weapon
15 during the Commission of or Attempt to Commit a Violent
16 Crime. The State must prove beyond a reasonable doubt
17 the defendant was in possession of a firearm or visibly
18 displayed what appeared to be a firearm during the
19 commission of a violent crime.

20 A firearm means any machine gun, automatic rifle,
21 revolver, or pistol. In order to find the defendant
22 guilty of Possession of a Weapon during the Commission of
23 a Violent Crime you must first find the defendant guilty
24 of either committing a violent crime or attempt to commit
25 a violent crime. Assault and Battery with Intent to

1 Kill, Murder, First Degree Burglary, Armed Robbery, and
2 Kidnapping are all defined as violent crimes in the state
3 of South Carolina.

4 An issue in this case is the identification of the
5 defendant as the person who committed the crime charged.
6 The State has the burden of proving identity beyond a
7 reasonable doubt. You must be satisfied beyond a
8 reasonable doubt of the accuracy of the identification of
9 the defendant before you may convict the defendant.

10 Identification testimony is an expression or belief
11 or impression by a witness. You must determine the
12 accuracy of identification of the defendant. You must
13 consider the believability of each identification witness
14 in the same manner as any other witness. You may
15 consider whether the witness had the adequate opportunity
16 to observe the defendant at the time of the offense.

17 This will be affected by things like how long or
18 short a time was available, how far or close the witness
19 was, the lighting conditions, and whether the witness had
20 the chance to see or know the person in the past.

21 Once again I instruct you that the burden of proof
22 on the State extends to every element. The crime charged
23 in this specifically includes the burden of proving
24 beyond a reasonable doubt the identity of the defendant
25 as the person who committed the crime. If after

1 examining the testimony you have a reasonable doubt as to
2 the accuracy of the identification, you must find the
3 defendant not guilty.

4 You've been selected as fair and impartial jurors
5 sworn to impartiality to try and determine the facts of
6 this case. And when you comply with your oath to do so
7 no one will have the right to criticize your verdict and
8 you have fully discharged your duties as jurors.

9 You will decide this case according to testimony
10 that you've heard from the lips of sworn witnesses along
11 with the other evidence introduced. I charge you as
12 jurors you must make your decision in this case without
13 bias, without prejudice to any party. You cannot allow
14 yourself to be governed by sympathy, prejudice, passion,
15 public opinion, or any other arbitrary factor.

16 The State and the defendant have the right to expect
17 that each one of you will carefully and impartially
18 consider all the evidence in this case and to follow the
19 law as I explain it to you.

20 Nothing I may have said or done during the course of
21 this trial has been in any way intended to express or
22 suggest the view of this case or opinion as to the facts,
23 the weight of the evidence, to creditability of the
24 witnesses. If you believe any of my actions or words
25 have indicated otherwise you must disregard such and form

1 your own view of this case or your own opinion as to the
2 facts, the weight of the evidence, and creditability of
3 the witnesses.

4 Madame Forelady, I have prepared two verdict forms.
5 It has the State of South Carolina versus Frederick L.
6 Flowers and has the indictment number. It says as to
7 indictment number 2011-GS-10-04314 we the jury by
8 unanimous consent find the defendant guilty of Murder or
9 not guilty. There is a place for the foreperson to sign
10 and date.

11 Now the second indictment as to the Commission of --
12 excuse me, Possession of a Firearm during the Commission
13 of a Crime, we the jury by unanimous consent find the
14 defendant guilty of Possession of a Firearm during the
15 Commission of a Violent Crime or not guilty and a place
16 to sign.

17 As I said earlier if you find the defendant not
18 guilty of Murder then you cannot find him guilty of
19 Possession of a Firearm during the Commission of a Crime.
20 However you can find the defendant guilty of Murder and
21 not guilty of the Possession of a Firearm during the
22 Commission of a Crime.

23 Now, as I said several times Madame Forelady and
24 members of the jury your verdict has to be unanimous.
25 All 12 of you have to agree. I will tell you it is

1 collective reasoning and collective decision on all 12's
2 part. I would ask you to respect each other's opinions,
3 evaluate the opinions, review the evidence and reach a
4 fair and just verdict.

5 Now Madame Forelady, I'm going to ask you to go to
6 the jury room but I don't want you to begin your
7 deliberations until the Bailiff brings the verdict forms,
8 the charge book, and all the evidence and instruct you to
9 begin your deliberations.

10 I have to take my charge up with the lawyers and
11 bring you back and change something I said or add
12 something to my charge. So I don't want you to actually
13 begin your deliberations until the Bailiff instructs you.
14 You may take your notes with you to the jury room.

15 The two alternates Ms. -- excuse me, Mr. Edward T.
16 Kassinger and Natalya Pais if y'all will just keep your
17 seats while the other 12 jurors go to the jury room. If
18 you'll follow the Bailiff please?

19 MADAME FORELADY: Excuse me, Your Honor?

20 THE COURT: Pardon?

21 MADAME FORELADY: I have a question.

22 THE COURT: Write it down and give it to the
23 Bailiff, okay.

24 [Whereupon, the jury exits the courtroom at 11:22
25 a.m.]

1 THE COURT: All right. The defendant had
2 requested charge number 1, which was previously discussed
3 on the record and I've marked that as Court's exhibit
4 number 1. I'll be glad to -- any exceptions to the
5 charge from the State?

6 MR. DURANT: No, sir.

7 THE COURT: Any exceptions to the charge from the
8 defendant? Give her a chance to mark this request for
9 charge. And the court -- number 2? Okay. Court's
10 exhibit number 2 is your request to charge, which the
11 court did not charge.

12 [Whereupon, Court's exhibit numbers 1 and 2 are
13 marked by the court reporter]

14 MS. FORD: Thank you, Your Honor.

15 THE COURT: Any other exceptions to the charge?

16 MR. BUTLER: Just those that were previously
17 stated. And for the record in case I have to say these
18 magic words I was also asking to argue against precedent.

19 THE COURT: Okay. Anything else?

20 MR. BUTLER: No, sir.

21 THE COURT: Would the parties come forward and make
22 sure all the exhibits are present? What do you want to
23 do about the phone? Have y'all checked it or you just
24 want to take the batteries out of it?

25 MR. DURANT: It's the only thing that's in that I

1 don't think has actually been checked yet.

2 THE COURT: Do y'all just want to take the
3 batteries out of the phone?

4 MR. DURANT: That's fine.

5 THE COURT: I mean that's the easiest thing to do
6 is take the batteries out of the phone.

7 [Whereupon, counsel review documents]

8 MR. DURANT: Are you satisfied?

9 MS. FORD: Yes.

10 [Whereupon, the evidence goes to the jury at 11:31
11 a.m.]

12 [Whereupon, court is in recess from 11:31 a.m. to
13 2:06 p.m.]

14 THE COURT: Let me see the attorneys.

15 [Whereupon, an off the record bench conference is
16 held]

17 [Whereupon, court is in recess from 2:06 p.m. to
18 2:21 p.m.]

19 THE COURT: Bring us the jury, please?

20 [Whereupon, the jury enters the courtroom at 2:24
21 p.m.]

22 VERDICT

23 THE COURT: Madame Forelady, I understand you've
24 reached a verdict. Is that correct?

25 MADAME FORELADY: Yes, sir.

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1 THE COURT: Would you give the verdict forms to the
2 Bailiff, please?

3 [Whereupon, verdict forms are proffered to the
4 court]

5 [Court reviews documents]

6 THE COURT: Madame Forelady, I have filled out on
7 the indictment for your verdict and dated today August
8 31, 2012 and I'm going to give it to the Bailiff and ask
9 you to sign where it says Foreperson, please?

10 MADAME FORELADY: Yes, sir.

11 [Whereupon, Madame Forelady complies]

12 THE COURT: If you'll mark that as Court's exhibit
13 number 3, please? Thank you.

14 [Whereupon, Court's exhibit number 3 is marked by
15 the court reporter]

16 THE COURT: Thank you, very much. Madame Clerk,
17 if you will publish the verdict, please?

18 CLERK OF COURT: Case number 2011-GS-10-4314 State
19 of South Carolina versus Frederick Flowers. As to
20 indictment number 2011-GS-10-4314 we the jury by
21 unanimous consent find the defendant guilty of Murder.
22 Signed Foreperson Lisa K. Schlesinger.

23 As to indictment number 2011-GS-10-4317 we the jury
24 by unanimous consent find the defendant guilty of
25 Possession of a Firearm during the Commission of a

1 Violent Crime. Madame Forelady, ladies and gentlemen of
2 the jury if this is your verdict please raise your right
3 hand.

4 THE COURT: Let the record reflect all 12 jurors
5 raised their right hand. Anything from the State as far
6 as the jury? Do you want the jury polled?

7 MR. DURANT: Yes sir, Your Honor.

8 THE COURT: Does the defense want the jury polled?

9 MS. FORD: Yes, Your Honor, we do.

10 THE COURT: Madame Clerk would you poll the jury
11 and explain to the jury very briefly what you're doing.

12 CLERK OF COURT: I'm going to ask you each two
13 questions please answer both of them. Starting with
14 Forelady, juror number 234 Ms. Schlesinger is this your
15 verdict?

16 MS. SCHLESINGER: Pardon?

17 CLERK OF COURT: Is this your verdict?

18 MS. SCHLESINGER: Yes, ma'am.

19 CLERK OF COURT: Is this still your verdict?

20 MS. SCHLESINGER: Yes, ma'am.

21 CLERK OF COURT: Juror number 7, Bradley Ames. Is
22 this your verdict?

23 MR. AMES: Yes.

24 CLERK OF COURT: Is this still your verdict?

25 MR. AMES: Yes.

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1 CLERK OF COURT: Juror number 104 Jeffrey Heatley.
2 Is this your verdict?
3 MR. HEATLEY: Yes.
4 CLERK OF COURT: Is this still your verdict?
5 MR. HEATLEY: Yes.
6 CLERK OF COURT: Juror number 209 Vernon Rhodan.
7 Is this your verdict?
8 MR. RHODAN: Yes.
9 CLERK OF COURT: Is this still your verdict?
10 MR. RHODAN: Yes.
11 CLERK OF COURT: Juror number 42 Margot Campos. Is
12 this your verdict?
13 MS. CAMPOS: Yes.
14 CLERK OF COURT: Is this still your verdict?
15 MS. CAMPOS: Yes.
16 CLERK OF COURT: Juror number 211 Eleanor Richberg.
17 Is this your verdict?
18 MS. RICHBERG: Yes.
19 CLERK OF COURT: Is this still your verdict?
20 MS. RICHBERG: Yes.
21 CLERK OF COURT: Juror number 182 Roger Newman. Is
22 this your verdict?
23 MR. NEWMAN: Yes.
24 CLERK OF COURT: Is this still your verdict?
25 MR. NEWMAN: Yes.

1 CLERK OF COURT: Juror number 154 Allegra Litvin.
2 Is this your verdict?
3 MS. LITVIN: Yes.
4 CLERK OF COURT: Is this still your verdict?
5 MS. LITVIN: Yes.
6 CLERK OF COURT: Juror number 167 Fritz Meyer. Is
7 this your verdict?
8 MR. MEYER: Yes.
9 CLERK OF COURT: Is this still your verdict?
10 MR. MEYER: Yes.
11 CLERK OF COURT: Juror number 125 Kimberly Johnson.
12 Is this your verdict?
13 MS. JOHNSON: Yes.
14 CLERK OF COURT: Is this still your verdict?
15 MS. JOHNSON: Yes.
16 CLERK OF COURT: Juror number 48 Betsy Jane Clary.
17 Is this your verdict?
18 MS. CLARY: Yes.
19 CLERK OF COURT: Is this still your verdict?
20 MS. CLARY: Yes.
21 CLERK OF COURT: Juror number 93 Kevin Hammer. Is
22 this your verdict?
23 MR. HAMMER: Yes.
24 CLERK OF COURT: Is this still your verdict?
25 MR. HAMMER: Yes.

1 THE COURT: Let the record reflect all 12 jurors
2 answered in the affirmative.

3 SENTENCING

4 THE COURT: Do you have a sentencing sheet?

5 Solicitor, I understand he has no prior criminal
6 record but he has some pending charges is that correct?

7 MR. DURANT: That's correct, Your Honor.

8 THE COURT: What are the pending charges?

9 MR. DURANT: He's got charges pending for Armed
10 Robbery. He was released on bond for that. Was
11 rearrested for Possession of a Firearm and Assaulting a
12 Police Officer and released on bond for that and was
13 arrested for Murder.

14 THE COURT: Okay. Ms. Ford do you want -- will
15 you sign these please ma'am if you would?

16 [Whereupon, Ms. Ford complies]

17 THE COURT: All right. Solicitor, I will be glad
18 to hear anything you would like to tell me concerning
19 sentencing.

20 MR. DURANT: Your Honor, as you know I've related
21 his pending charges. He's been spiraling in this
22 direction for a while. I sincerely believe Mr. Flowers
23 would be a threat to this community and I would ask Your
24 Honor to impose a life sentence.

25 THE COURT: I'll be glad to hear from any of the

1 victim's family if they would like to speak.

2 MR. DURANT: I don't believe they want to speak,
3 Your Honor.

4 THE COURT: I'll be glad to hear anything from the
5 defendant, the defendant's attorneys or any of their
6 family if they would like to speak.

7 MS. FORD: Yes, Your Honor. May it please the
8 court?

9 THE COURT: Yes, ma'am.

10 MS. FORD: I've been Freddie's lawyer since 2009
11 and I can say that it has been a pleasure to work with
12 him. I've known Freddie to be a very sweet boy. He's
13 always been a gentleman with me. Whenever he were to
14 curse for example he would apologize. He's never given
15 me any attitude or anything like that. He's never
16 demonstrated himself as anything other than a gentleman.

17 I also think there are some other things that you
18 need to know a little about him. He clearly has a lot of
19 people who love him and they're here today. His father
20 wasn't around.

21 He has a big family, but his Mom is schizophrenic
22 and so that's just a lot for a kid to be raised around.
23 But she clearly -- he is close to his Mom but it's hard.
24 So a lot of times he's been with his Aunt Evette and
25 Uncle Benjamin who are here. Freddie -- he actually has

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1 a learning disability and a speech issue. And I raised
2 that because I think that's where a lot of his problems
3 come from and I'll tell you why I think that.

4 What's interesting about a lot of interviews being
5 recorded is that you get to see a lot of what people
6 think of people. And for example there is one person
7 they spoke to, Brittany Mack.

8 She's not a witness to the crime or anything but
9 they were asking her about Freddie. And she went on and
10 on and on about how dumb Freddie is meaning that -- she
11 said Freddie, he can't even spell his own name. I would
12 always just sit there and ask him to spell things like
13 apple and he can't spell it. And we'll just all laugh at
14 him.

15 And -- but she said Freddie did take it -- it's not
16 like he would get mad and lose his temper. She said
17 Freddie would just laugh it off and Freddie -- from what
18 all of these witnesses have said when the police were
19 asking him about Freddie all of them would say Freddie
20 just smokes weed; that's all Freddie does. That is all
21 of their attitudes about Freddie.

22 THE COURT: What was his learning disability?

23 MS. FORD: Reading, Your Honor.

24 THE COURT: Okay.

25 MS. FORD: And you know ---

1 THE COURT: --- was he dyslexic or what?

2 MS. FORD: I know he has Attention Deficit
3 Disorder. And I'm not -- I've gotten his school records
4 and I reviewed them. I didn't bring my file Your Honor.
5 But like -- for example in 2009 I had a letter from
6 his speech pathologist at school and she was just saying
7 they were working with him being able to express himself.
8 She too said it was a joy to work with him.

9 But I only say that because I don't even think
10 Freddie is -- his I.Q. is actually average. But because
11 of his learning disability and actually primarily because
12 of some speech issues and his Mom actually has some
13 speech issues as well. People I think they always just
14 made fun of him..

15 And so if anything what I think happened, and my
16 client maintains his innocence Your Honor, but I think we
17 have a case where we heard from four individuals who
18 basically -- none of them were charged as co-defendants.
19 But they easily could have been charged as co-defendants
20 under the hand of one is the hand of all theory and the
21 felony murder.

22 So basically it would have been very easy for each
23 and every one of them to be charged with Murder as well.
24 I don't know what's going to happen with that Your Honor
25 but I can say that according to some witnesses, and I

1 really do think this is true that if indeed it was
2 Freddie it's because he was encouraged by others. And
3 yes maybe he did a very stupid thing. Maybe he was
4 trying to be cool or something. But there is one
5 individual, Carlos Jones, he's about five years older,
6 contributing to the delinquency of a minor charge hanging
7 out with all these younger boys.

8 One witness said how influential he is. And he said
9 that Carlos was encouraging Freddie to do an armed
10 robbery and so that would make sense. So I'm just saying
11 that I think he was encouraged. It wasn't like he's just
12 like I'm going to do a lick and just cold bloodedly
13 murder someone. There's some talk that it was like an
14 accident; maybe that gun went off that first time and he
15 freaked out. Possibly it was a situation like that, Your
16 Honor.

17 THE COURT: Well, it sure didn't go off
18 accidentally the second time.

19 MS. FORD: No, I understand. He became scared is
20 what I'm saying. And I think that makes sense from the
21 evidence. But I don't know exactly what happened because
22 -- and I don't think anyone would disagree with this; the
23 witnesses all gave a different story. And they all were
24 protecting themselves but I guess the jury felt that they
25 were credible when it came to saying who did the murder.

1 But I just think that's important to note. I don't
2 think Freddie deserves life, Your Honor. As far as his
3 other charges there is a reason. The Armed Robbery
4 charge is when he was 16. There is a reason why it's
5 from 2009 and it has not been tried; it's not a good
6 case.

7 I have a witness for example who knows Freddie.
8 He's an older gentleman, he's not like his friend, and he
9 said I saw the robber leaving. He had talked to police
10 it's just they didn't ask him about Freddie that day, and
11 he says it wasn't Freddie. So we're not here to try
12 that. I'm just saying ---

13 THE COURT: --- I understand ---

14 MS. FORD: --- Your Honor he hasn't been convicted
15 of that. I would just ask you that there was an offer of
16 25 years on the table to voluntary. And of course he
17 exercised his right to go to trial. He did not testify
18 so there would be no issue of perhaps that if he lied on
19 the stand or anything like that.

20 So I just think there is a lot of truth that has yet
21 to be determined in this case Your Honor as far as the
22 other people involved. But I can say that Freddie, he is
23 not mean spirited. He's not cold hearted. He's always
24 again been very complimentary towards me. He cares about
25 his family as they do him. So we would ask if you would

1 consider the minimum. That's 30 years so it's day for
2 day so obviously he has a lot of time, Your Honor. So
3 that's just what we would ask you.

4 THE COURT: Okay. How far did he go in school?

5 MS. FORD: 10th grade, Your Honor.

6 THE COURT: Did he complete the 10th?

7 MS. FORD: No, Your Honor. He went as far as 2009
8 because that's where the records were asked. It sounded
9 like he got frustrated you know working with a speech
10 pathologist and all that, Your Honor.

11 THE COURT: When was -- how long has he been in
12 jail?

13 MS. FORD: Since March 11th of last year.

14 THE COURT: March of 2011?

15 MS. FORD: Yes, Your Honor.

16 THE COURT: March -- you said March the 11th?

17 MS. FORD: Yes, Your Honor.

18 THE COURT: Okay. Do you want me to hear from
19 anyone else? Someone else has stood up back there..

20 MR. FLOWERS: Your Honor, my name is Benjamin
21 Flowers, Jr. I'm Freddie's uncle. I was the one who
22 actually took Freddie the day that we went in to talk
23 with Detective Osborne. That day about 40 times I asked
24 Freddie, I said Freddie did you do this? Did you do
25 this? Freddie swore on my father and his grandmother

1 that he didn't. Now I understand and I respect the
2 jury's decision. I'm really sorry for the loss of
3 family. I just want you to know something about Freddie.
4 I believe that Carlos, just like the testimony said,
5 has played a part in ruining his life. They knew Freddie
6 was going to come into court and not say nothing about
7 what happened out there.

8 Just like the attorney said nothing is known about
9 what happened out there to this jury and to this
10 courtroom. But based on the evidence they had to make a
11 decision. But I would ask the City of Charleston, the
12 detectives and anybody else to pursue the truth ---

13 THE COURT: --- let me say this to you. I'm not
14 here to listen to you dispute what these 12 people said.
15 In this court's opinion he committed the murder, it's
16 been proven. He walked up and killed somebody
17 maliciously okay.

18 If you want to tell me something about him to
19 mitigate the crime I'll be glad to hear it. But don't
20 sit there and argue with the jury about whether he's
21 guilty or not guilty. That's over.

22 MR. FLOWERS: No I'm not, Your Honor.

23 THE COURT: That doesn't impress this court at all.

24 MR. FLOWERS: I understand.

25 THE COURT: Now if you want to tell me something

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1 about your nephew I'll be glad to hear it if it's
2 constructive.

3 MR. FLOWERS: Yes, sir.

4 THE COURT: Okay?

5 MR. FLOWERS: Yes, sir.

6 THE COURT: Please proceed.

7 MR. FLOWERS: Yes, sir. I would hope you consider
8 the fact that Freddie just like the attorney has said has
9 some difficulties. And some of his difficulties has
10 given him -- made a victim of other boys in the
11 community, sir without a father; and he's had some
12 problems growing up in life. And I would just hope that
13 you will consider ---

14 THE COURT: --- well, what makes somebody go up to
15 a car and waste them?

16 MR. FLOWERS: You're asking me the question, sir?

17 THE COURT: Yes, sir?

18 MR. FLOWERS: In his community, in his situation if
19 he actually did that it was more than just him at that
20 car. It was more than him at that car. And the people
21 at that car made him the fall guy.

22 So yes, the pressure of his peers that testified
23 against him sir that came in here and cut deals, got out
24 of court and gave it to him could cause something like
25 that when a person that is not thinking on the same level

1 as everybody else, sir.

2 THE COURT: Okay.

3 MR. FLOWERS: Thank you.

4 THE COURT: Thank you so very much. Anybody else?

5 MS. FLOWERS: Hi. My name is Evette Flowers. I'm
6 Freddie's aunt.

7 THE COURT: His aunt? Yes, ma'am?

8 MS. FLOWERS: I just want to tell you about our
9 Freddie.

10 THE COURT: About what?

11 MS. FLOWERS: Freddie is a gentle giant.

12 THE COURT: Okay.

13 MS. FLOWERS: I know that the jury made the
14 decision. I have to respect that. And again, we
15 apologize to the family. But this guy, this young man,
16 he has always been an active part in our family. He's
17 had some challenges, various challenges in his life. We
18 understood that.

19 We tried to be there for him; always tried to be
20 there for him. And he has always tried to be there for
21 us. He has always been the guy that we can depend on to
22 help at the house to do anything we ask him to. He's not
23 that guy. He's a good hearted guy. I don't know what
24 happened. I'm not going to judge that. All I ask is for
25 lenience. Don't take him away from us for the rest of

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1 his life.. We love this boy. I don't know how I can do
2 without him ---

3 THE COURT: --- well unfortunately ---

4 MS. FLOWERS: --- I know that ---

5 THE COURT: --- unfortunately it's a tragedy on
6 both sides ---

7 MS. FLOWERS: --- I know it's a tragedy ---

8 THE COURT: --- his family as well as the victim's
9 family..

10 MS. FLOWERS: I just want you to just consider your
11 decision; that's all.

12 THE COURT: Okay. I want to thank you so very
13 much for your comments.

14 MS. FLOWERS: My name is Deidra Flowers and I'm his
15 sister. And I just wanted to say that the person that
16 did this -- but is not him. He really is a loving person
17 as everybody else has said in this courtroom.

18 It's been -- time -- my brother done took my own
19 daughter in as his daughter, as his child and has
20 protected her and loved her. He is not a bad person; he
21 really is not. And I'd ask you to please don't take him
22 away from my kids. Please. Please don't take him.
23 Please don't take him.

24 THE COURT: Thank you so very much. Anyone else?

25 MS. FLOWERS: Your Honor, I want to say ---

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

2 MR. FLOWERS: Jamal Flowers.

3 THE COURT: Okay Mr. Flowers. I'll be glad to
4 hear you. What's your relation to Mr. Freddie Flowers?

5 MR. FLOWERS: My cousin.

6 THE COURT: A cousin? Okay, I'll be glad to hear
7 you.

8 MR. FLOWERS: Justice is a deep word you know. To
9 what level -- Freddie is being the defendant I don't feel
10 like we looked at the situation from a wide screen you
11 know. Your Honor, I played in those streets you know.
12 And I know don't really apply to law but I'm going to
13 give you the other side of the book.

14 You've got a crew. These young kids today they go
15 out and they listen to this music and watch these images
16 that is portrayed on T.V. And when things go down they
17 are not prepared for the consequences that come from that
18 you know.

19 And I honestly believe, I'm not just saying it
20 because this is my cousin, that there is more to the
21 story and we just rest on that. The only story we had
22 was from a group of criminals themselves you know. So I
23 just don't see how it can be the only creditability to
24 get this young man's life behind bars on hearsay. We sat
25 -- I sat here all week and the only thing that has been

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1 proven to me is that the statements have changed. And
2 one started at this direction and went this direction.
3 Freddie is the only one who gave the same story from the
4 time it happened. And I just don't see a fair defense
5 for him.

6 The only picture that has been painted from this
7 court from everybody in here is what came from
8 individuals out there and they walked scott free you
9 know.

10 THE COURT: Well, I don't know if they are going to
11 walk scott free or not. That's not for -- to decide
12 today. Anything else? Anything else Mr. Flowers?

13 MR. FLOWERS: No, sir.

14 THE COURT: All right. Thank you so very much.
15 Yes ma'am, your name?

16 MS. FLOWERS: My name is Tanya Flowers.

17 THE COURT: Speak up so I can hear you.

18 MS. FLOWERS: My name is Tanya Flowers.

19 THE COURT: And what's your relation to Mr. Freddie
20 Flowers?

21 MS. FLOWERS: I'm his mother.

22 THE COURT: Pardon?

23 MS. FLOWERS: I'm his mother.

24 THE COURT: Okay. I'll be glad to hear you, Ms.
25 Flowers.

1 MS. FLOWERS: I know my son didn't do that. I've
2 known it from the day they said he did do it. I know he
3 didn't do it.

4 THE COURT: Anything else?

5 MS. FLOWERS: There is things about this case that
6 hasn't really come out okay that's stating that he didn't
7 do it okay. And we were urging and urging for those
8 things to come out.

9 Freddie might have been around there at the time and
10 he might have heard the shots. But he was at -- and if
11 you look at the call logs it shows that he has been
12 calling his family all day to try to come get him. His
13 mindset wasn't on doing anything like that. His mindset
14 was trying to leave.

15 He called me a couple of times. I called back that
16 number because the fact that that's the only number I had
17 for him, okay. Then I called my sister to ask what
18 number he called me from or what was his -- the other
19 cell phone number. And you know it's just he did not do
20 it. He did not do it.

21 THE COURT: Okay. Thank you so very much. Mr.
22 Flowers, Mr. Freddie Flowers is there anything you'd like
23 to say ---

24 MR. DURANT: --- I don't want to interrupt but Mr.
25 Kennedy Smith has indicated that he would like to ---

1 THE COURT: --- All right. Just tell him to have
2 a seat right now. Mr. Freddie Flowers, is there anything
3 else you would like to tell -- say to the court?

4 MR. FLOWERS: [Inaudible]

5 THE COURT: Pardon? I want you to understand this
6 is the last opportunity you'll have to tell the court --
7 if you want to say something I'll be glad to hear it.

8 MR. FLOWERS: Other than being innocent I --

9 THE COURT: Pardon?

10 MS. FORD: He maintains his innocence, Your Honor.

11 THE COURT: Okay. That's fine. Anything else,
12 Ms. Ford?

13 MS. FORD: No, Your Honor.

14 THE COURT: You wanted to say something?

15 MR. SMITH: Yes, sir.

16 THE COURT: State your name, please?

17 MR. SMITH: Kennedy Smith.

18 THE COURT: All right. Mr. Smith I will be glad
19 to hear you.

20 MR. SMITH: To the court, to the jury, the police
21 department I would like to thank you for allowing the
22 system to work. I deeply appreciate it. I haven't fully
23 mourned my son's death and I feel bad. Now I can
24 completely finish mourning my son's death and put it in
25 the past. You know these are some big words but from a

1 religious standpoint I forgive Flowers for a religious
2 basis so that I can move on spiritually also. And it
3 took some counseling and some help to be able to try to
4 get to that state.

5 Yet also I'd like to say that I think the true
6 message is truly sent even though there are messages that
7 have been sent before I think we should send a message
8 that it is time for violence to truly stop. And I must
9 say in my community ---

10 THE COURT: --- well Mr. Smith if you can figure
11 out a way for me to do that I would love to do it because
12 I sit here day after day and look at it, okay.

13 MR. SMITH: Yes, sir.

14 THE COURT: But go ahead.

15 MR. SMITH: And one way to send a message is to send
16 a message with the sentence and the time.

17 THE COURT: Okay. Anything else?

18 MR. SMITH: No, sir.

19 THE COURT: Thank you so very much, Mr. Smith.
20 Solicitor, anything else from the State?

21 MR. DURANT: No sir, Your Honor.

22 THE COURT: Anything else from the defense?

23 MS. FORD: No, Your Honor.

24 THE COURT: All right. Thank you very much.

25 All right Mr. Flowers, indictment number 41 114

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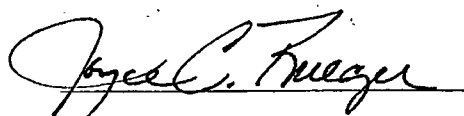
1 [phonetic] Murder. You are sentenced to the State
2 Department of Corrections for a period of 40 years. I'll
3 give you credit from June -- March 11, 2011.
4 Indictment number 4317 Possession of a Firearm
5 during the Commission of a Crime; I sentence you to the
6 State Department of Corrections for a period of 5 years.
7 Run that concurrent. Give you credit since March the
8 11th, 2011. Thank you very much.
9 Do y'all want -- I didn't ask you do y'all want your
10 10 days?
11 MS. FORD: I'm sorry?
12 THE COURT: Your motions?
13 MS. FORD: Oh. No, Your Honor.
14 THE COURT: Do you want to make them today?
15 MS. FORD: No, Your Honor.
16 THE COURT: Pardon?
17 MS. FORD: No, Your Honor.
18 THE COURT: Okay. Madame Forelady and ladies and
19 gentlemen of the jury y'all may go to the jury room to
20 collect your belongings.
21 Anything else?
22 MR. DURANT: Nothing from the State, Your Honor.
23 THE COURT: All right. Thank you very much.
24 MR. DURANT: Thank you.
25 [Whereupon, the jury trial concludes at 2:53 p.m.]

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Family Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Susan Mia Perron in the Court of General Sessions for Charleston County, South Carolina on the 31st day of August, 2012.

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

December 12, 2012



Joyce C. Rueger, CVR-M

Court Reporter

DBD20110301436

WITNESSES

David Osborne

Charleston City Police Department

AGENCY CASE NUMBER

1103225

ARREST WARRANT NUMBER

M640046

DATE OF ARREST

March 12, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUL 12 2011

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS1004314

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July 2011 Term

THE STATE

VS.

FREDERICK L. FLOWERS

B/M

Indictment for

MURDER

717

INDICT.DOT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

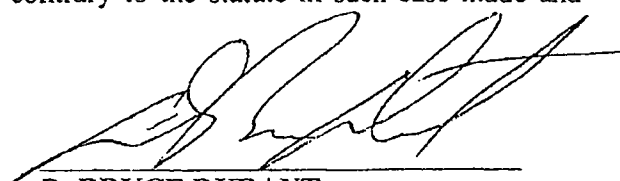
INDICTMENT

At a Court of General Sessions, convened on July 11, 2011, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about March 1, 2011, with malice aforethought, **FREDERICK L. FLOWERS** did kill and murder Javon Smith by means of shooting him, and that Javon Smith did die in Charleston County as a proximate result thereof on March 1, 2011; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

DBD20110301436

WITNESSES

David Osborne

Charleston City Police Department

AGENCY CASE NUMBER

1103225

ARREST WARRANT NUMBER

M640047

DATE OF ARREST

March 12, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUL 12 2011

VERDICT

Guilty

Foreperson of Petit Jury

Date:

8/31/12

INDICT.DOT

DOCKET NO. 2011GS1004317

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July 2011 Term

THE STATE

vs.

FREDERICK L. FLOWERS

B/M

Indictment for

POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME

719

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

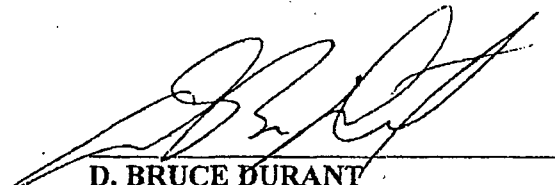
INDICTMENT

At a Court of General Sessions, convened on July 11, 2011, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about March 1, 2011, the Defendant, **FREDERICK L. FLOWERS**, did possess a firearm or visibly display what appeared to be a firearm during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

July 26, 2013


Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT