

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LOU ANN ROBINSON,

APPELLANT

APPELLATE CASE NO. 2013-000293

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated December 14, 15, 2009)	1
OPENING STATEMENT BY MS. KIMBERLY BARR	3
OPENING STATEMENT BY MR. FLOYD	6
MOTION TO SEQUESTER WITNESSES	16
TESTIMONY	
SCOTT MICHAEL KING	
Direct examination by Ms. Barr	19
Cross-examination by Mr. Jenkinson	33
Redirect examination by Ms. Barr	52
JUDY MCCREA	
Direct examination by Ms. Barr	52
Cross-examination by Mr. Jenkinson	59
Redirect examination by Ms. Barr	63
TYRONE DUNMORE	
Direct examination by Ms. Barr	63
Cross-examination by Mr. Jenkinson	73
Redirect examination by Ms. Barr	81
PATRICIA JUNE DUNMORE	
Direct examination by Ms. Barr	83
JEFFREY SCOTT	
Direct examination by Ms. Barr	91
Cross-examination by Mr. Jenkinson	110
Redirect examination by Ms. Barr	135
Recross examination by Mr. Jenkinson	141
Redirect examination by Mr. Sabb	148
Recross examination by Mr. Jenkinson	153
WILLIE BROWN	
Direct examination by Ms. Barr	154
Cross-examination by Mr. Jenkinson	177
Redirect examination by Ms. Barr	210

Recross examination by Mr. Jenkinson	219
THEODORE HARRISON	
Direct examination by Ms. Barr.....	228
Cross-examination by Mr. Jenkinson	241
DEBRA COLLINS	
Direct examination by Ms. Barr.....	254
Cross-examination by Mr. Jenkinson	264
SUSAN ERIN PRESNELL	
Direct examination by Ms. Barr.....	275
Cross-examination by Mr. Jenkinson	296
Redirect examination by Ms. Barr	313
Recross examination by Mr. Jenkinson.....	320
AL STUCKEY	
Direct examination by Ms. Barr.....	323
Cross-examination by Mr. Jenkinson	329
Redirect examination by Ms. Barr	336
PEARLESTINE DUNMORE	
Direct examination by Ms. Barr.....	337
MOTION FOR A DIRECTED VERDICT.....	344
TESTIMONY	
JOSEPHINE MOUZON	
Direct examination by Mr. Jenkinson.....	359
Cross-examination by Mr. Sabb	380
LOU ANN ROBINSON	
Direct examination by Mr. Jenkinson.....	389
Cross-examination by Mr. Sabb	440
LOIS VERNON	
Direct examination by Mr. Jenkinson.....	485
Cross-examination by Ms. Barr	514
Redirect examination by Mr. Jenkinson	529
Recross examination by Ms. Barr.....	530
CURT GOWDY	
Direct examination by Mr. Jenkinson.....	533
Cross-examination by Mr. Sabb	540

MARY ROSS	
Direct examination by Mr. Jenkinson.....	544
Cross-examination by Ms. Barr	547
Redirect examination by Mr. Jenkinson	551
DANNY MCRAE	
Direct examination by Mr. Jenkinson.....	552
Cross-examination by Ms. Barr	562
Redirect examination by Mr. Jenkinson	573
LESTER HARRISON	
Direct examination by Ms. Sabb.....	576
VERDICT	597
SENTENCING	606
HEARING TRANSCRIPT (dated December 20, 2012)	607
DECISION OF THE COURT OF APPEALS 2012-UP-574.....	647
FACTUAL FINDING ORDER (dated January 24, 2013)	650
INDICTMENTS	656
CERTIFICATE OF COUNSEL.....	660

DR. VERNON ON DIRECT

1 infarct is?

2 A. What is called a . .

3 SOLICITOR: Judge, I don't have any objection
4 if she doesn't go outside that question.

5 THE COURT: You can answer that question.
6 Explain what that diagnosis is.

7 A. Basically what we call a stroke, known as a
8 white stroke.

9 BY MR. JENKINSON:

10 Q. And which part of the brain -- this is within
11 your expertise and this is what you evaluate to
12 understand the problem?

13 A. Well, I evaluated in a different way than how
14 we evaluate what we call neuro-psychological test-
15 ing. Basically, the left hemisphere of our brain
16 is very important to language. If we have some
17 damage in that area, our language and our memory
18 and attention are involved -- all of them.

19 And so based upon learning that, we did a lot
20 of subsequent testing. One test was that of basic
21 intelligence, and what we found out was that be-
22 cause of this stroke, although we can't identify
23 exactly -- you know, among other things, she lost
24 a son . .

25 Q. We'll talk about that in a moment.

DR. VERNON ON DIRECT

1 A. She had a lot of other problems, and so we
2 conducted testing to see what was her base line
3 when she was coming to us.

4 Q. Okay, and let's back up.

5 A. Uh hm.

6 Q. You indicated some past events that had an
7 effect upon her?

8 A. Yes.

9 Q. Okay.

10 A. She had had many traumatic things happen to
11 her in Philadelphia before and prior to this rela-
12 tionship.

13 Q. What was those . .

14 A. Pardon?

15 Q. What was the Philadelphia situation?

16 A. Well, the situation there was that she -- her
17 son was shot and killed when he was twenty years
18 old. It was a sudden, unexpected and traumatic
19 loss to her.

20 She also commenced a relationship with her
21 child's father who was a long term partner. That
22 relationship was violent.

23 She lost a nephew to death, so she had two in-
24 cidents of losses, and some events during that
25 relationship.

DR. VERNON ON DIRECT

1 So she had significant losses and some of those
2 of a very traumatic nature.

3 Q. What condition can be made manifest as a re-
4 sult of those situations that you have just de-
5 scribed to us?

6 A. Well, sudden traumatic losses in which your
7 life is threatened or someone that you love is lost,
8 it brings into play a condition that we know as
9 post-traumatic stress disorder.

10 That means that after the trauma has passed
11 in some ways you will relive that trauma either
12 through disturbing dreams or through intrusive
13 thoughts that might come to them or in terms of
14 a physical reaction.

15 We basically first learned about post-traumatic
16 stress disorder because of Vietnam veterans return-
17 ing. It first came into the diagnostic and statis-
18 tical manuals in 1980.

19 It is also something that we know that women
20 suffer as well because of traumatic events that
21 happen in their lives.

22 So post-traumatic stress disorder is one of
23 the results. She came in with that base line, and
24 another thing she came in with as a base line was
25 repressive disorder concurrent, and that was shown

DR. VERNON ON DIRECT

1 as traumatic depression.

2 Q. Is that documented in the files that you
3 reviewed?

4 A. It is documented.

5 Q. Is it also documented in your own clinical
6 analysis?

7 A. Correct.

8 Q. Okay.

9 A. In the testing that I did, that was also con-
10 sistent.

11 Q. Can you tell us whether or not to a reason-
12 able degree of psychological certainty she was
13 suffering from the conditions you described -- not
14 the stroke but the post-traumatic stress disorder
15 and the depression in 2006?

16 A. To a reasonable degree of psychological cer-
17 tainty to the extent that the disorders continued,
18 yes. I can say she was suffering from those in
19 2006.

20 Q. Let's talk about that first. In 2006 what was
21 -- based upon your hours, eighteen hours, spent
22 with Lou Ann and the tests that you have given to
23 her, things you can look at, do you have an opin-
24 ion as to her psychological state to reasonable
25 degree of psychological certainty in the year of
288

DR. VERNON ON DIRECT

1 2006 and what it was like??

2 A. In my opinion to a reasonable degree of psy-
3 chological certainty, she was desensitized to her
4 situation, to a violent situation.

5 In my opinion to a reasonable degree of psy-
6 chological certainty, . .

7 Q. What does that mean, desensitized?

8 A. Meaning that she might respond to violence
9 in a traumatic reaction which might be heightened
10 fear, might be personalization, it might be a
11 light bright reaction.

12 Any one of those reactions would have been
13 much more likely, given her history.

14 Q. Did you extensively question her on what
15 took place on December 23, 2006?

16 A. I did extensively question her about that.

17 Q. Did you extensively question her about her
18 relationship with Willie Dunmore?

19 A. Yes.

20 Q. Describe what you learned in your opinion
21 about her relationship with Willie leading up to
22 December 23rd?

23 A. . .

24 SOLICITOR: Judge, I would have an objection
25 about that.

DR. VERNON ON DIRECT

1 She can testify about her opinions but I don't
2 think she can testify about facts to support that
3 opinion.

4 MR. JENKINSON: I'm going to ask her about
5 -- to testify about her opinions, but not necessar-
6 ily the facts.

7 SOLICITOR: His question was what did she
8 learn about the relationship between the Defendant
9 and the victim.

10 THE COURT: Okay. She can certainly testify
11 to her opinions.

12 BY MR. JENKINSON:

13 Q. Describe the nature of that relationship be-
14 tween the two of them in the fall of 2006?

15 A. . .

16 SOLICITOR: Same objection, Your Honor. I
17 don't object to her testifying about her opinions,
18 but as to the nature of the relationship or as
19 to specific facts, that is hearsay.

20 A. I found that she was in a violent relation-
21 ship and had a psychological reaction of fear at
22 times, and she had a reaction of times of deper-
23 sonalization, and . .

24 Q. What does depersonalization mean?

25 A. Depersonalization means the person becomes

DR. VERNON ON DIRECT

1 numb, acts like nothing is happening to them, and
2 depersonalization can also be a situation where
3 she herself is experiencing an outside her own body
4 type thing, such as if she were watching a movie.

5 That is a common reaction of people in an
6 intense, violent relationship.

7 Q. Let's back up to the perpetration of violence
8 upon Lou Ann by Willie Dunmore.

9 A. Well, the risk factors that I perceived were
10 that Lou Ann was concerned about him because he
11 had . .

12 SOLICITOR: Objection to hearsay.

13 THE COURT: I would sustain that objection.

14 A. Lou Ann had increased fear about what she
15 felt was . .

16 SOLICITOR: I'm sorry. I hate to keep ob-
17 jecting, but I would have the same objection.

18 MR. JENKINSON: Your Honor, she is allowed to
19 give her opinions and conclusions, and give the
20 bases of her conclusion.

21 THE COURT: She can testify about her opin-
22 ions.

23 MR. JENKINSON: What about how she arrived at
24 them?

25 A. This is just a report of what I perceived at

DR. VERNON ON DIRECT

1 times as risk factors for a continued violent
2 situation.

3 In fact, losing his job, alcohol abuse --
4 both of those factors were things that were given
5 to me as concerns that Lou Ann possessed, about
6 the state of their relationship in late 2006.

7 Q. Can you tell us whether or not to a reasonable
8 degree of psychological certainty Lou Ann Robinson
9 was a battered woman within this defense as of
10 December of 2006?

11 A. In my opinion, she was definitely a battered
12 woman in December of 2006.

13 Q. Explain what you mean by that.

14 A. She had a previous history predating this
15 relationship with Willie Dunmore. She was suffering
16 from post traumatic stress disorder, meaning she
17 is likely to be desensitized to violent situations
18 and be more responsive to them.

19 This can take the form of extra vigilance,
20 but her reaction would be perhaps greater than some-
21 one who did not have a previous violent situa-
22 tion.

23 Q. Did Lou Ann have difficulty in explaining to
24 you how the stabbing occurred?

25 A. There was difficulty with her trying to

DR. VERNON ON DIRECT

1 explain what happened, yes. Great difficulty.

2 Q. Would a battered woman have difficulty in
3 explaining these sorts of things?

4 A. Battered women often have difficulty because
5 at the same time they may be so emotionally aroused
6 or just fearful^{or anxious} that the memory does not work as
7 well to take the steps to take them into stored
8 memory. They can't put them into memory.

9 Sometimes they have to -- sometimes parts of
10 it is recovered and established but sometimes they
11 can't do that.

12 About 1982 there was research about interview-
13 ing victims by the Criminal Justice System, and
14 in that particular setting I said that, you know,
15 you cannot use immediate statements as indications
16 of what has happened.

17 The research has found out later that some-
18 times some of the memory gets recovered later on,
19 but sometimes it doesn't, and there are spaces in
20 the memory, a partial amnesia, and reactions are
21 extremely difficult.

22 Q. Can you tell us whether or not you saw that
23 in her statements to you about what happened?

24 A. Yes, I did.

25 Q. And is that to a reasonable degree of . .

293

DR. VERNON ON DIRECT

1 A. To a reasonable degree of psychological cer-
2 tainty, yes.

3 Q. And you saw the records where Lou Ann had a
4 stroke as you have described?

5 A. Correct.

6 Q. How did that affect her condition, as far as
7 her being able to tell her story to you?

8 A. . .

9 SOLICITOR: Is she offering a medical opin-
10 ion?

11 MR. JENKINSON: It's a clinical psychological
12 opinion.

13 SOLICITOR: Judge, that is related to her
14 medical condition, and I don't think she can tes-
15 tify to that.

16 MR. JENKINSON: Your Honor, she said she did
17 a battery of tests -- I'll ask her about that.

18 THE COURT: She can testify to the results of
19 any tests she administered. Her medical condition
20 is not the area she is qualified in. She can tes-
21 tify based on her tests and research she has done.

22 BY MR. JENKINSON:

23 Q. Dr. Vernon, did you do a series of tests to
24 -- a battery of tests to determine the nature and
25 extent of the stroke damage?

DR. VERNON ON DIRECT

1 A. Yes. I did a neuro-psychological assessment,
2 a Wechsler Adult Intelligence Scale, and what we
3 found is that there was some impairment that was
4 subsequent over what we considered to be her base
5 line.

6 By education she was someone who had finished
7 high school and had one year of college and was a
8 technician.

9 At the time of this assessment in her intel-
10 lectual functioning she was considered to be bor-
11 derline intelligence.

12 So we also looked more specifically, since we
13 saw that she was having difficulty in language in
14 terms of memory and attention -- we found memory
15 impairment.

16 We found her to be -- in one case, ninety-
17 nine percent of the population was better at hold-
18 ing onto memory. She was definitely in the bottom
19 one, three, four and six percent in terms of
20 memory tests.

21 On complex attention tests, sometimes called
22 intellectual functioning -- you have to give one
23 particular response and she was at a very, very
24 low percentage there.

25 So we found significant documented impairment

DR. VERNON ON DIRECT

1 in terms of her memory, in terms of language flu-
2 ency, in terms of ability to name and identify
3 common objects. There was impairment seen there.

4 Also, in terms of attention and concentration,
5 and what we would consider to be perceptual organ-
6 ization.

7 So neuro-psychological testing revealed a
8 very impaired individual.

9 Q. Did Lou Ann in her eighteen hours with you
10 have difficulty in relating what happened on
11 December 23, 2006?

12 A. Yes, she did.

13 Q. In her eighteen hours and testing was she
14 ever able to tell you which knife was used in the
15 stabbing?

16 A. She was not.

17 Q. Could she . .

18 A. At times she said knife. At times she said
19 the -- she wasn't able to accurately and reliably
20 say what knife it was.

21 Q. Was this -- can you tell us whether or not
22 this is a symptom of a battered woman?

23 A. It can be a symptom of a battered woman try-
24 ing to tell a story. It can also be a symptom of
25 somebody who is impaired, somebody suffering from

DR. VERNON ON DIRECT

1 psychological damage.

2 Q. Can you tell us whether or not to a reasonable
3 degree of clinical psychological testing in that
4 battery of tests you gave her, you were able to
5 assess the damage of this person?

6 A. Yes, I was able to assess it very accurately
7 and another assessment done on her today revealed
8 very, very similar results.

9 Q. As you have described to us?

10 A. Correct.

11 Q. What would be the psychological factor that
12 would make Lou Ann fear Willie at one point but
13 yet she would report no serious fear of him to the
14 police when they were questioning her later?

15 A. There are a number of things that could be.
16 I don't know the specific facts but she was with
17 them at the time -- with the police at the time
18 and was she afraid of them -- it depends on how the
19 question came, how she interpreted the question.

20 It could be that her explanation as a woman
21 who loved him was that she didn't want him to be
22 in any trouble so, you know, she would not report
23 that kind of behavior when she perceived he could
24 be arrested or suffer consequences.

25 Q. Thank you, Dr. Vernon. I have no further

DR. VERNON ON DIRECT

1 questions at this time.

2 CROSS EXAMINATION

3 BY SOLICITOR BARR:

4 Q. Good evening, Dr. Vernon. Do you have a
5 questionnaire that you prepared when you inter-
6 viewed Ms. Robinson?

7 A. A questionnaire?

8 Q. Yes.

9 A. No.

10 Q. How did you take information from her? Did
11 you have interviews or was there a questionnaire,
12 or . . .

13 A. I have some interview notes. I have some
14 testing that was done. I have some results of
15 . . .

16 Q. Could I see your interview notes, please?

17 A. . .

18 (Brief pause in the proceeding)

19 BY SOLICITOR:

20 Q. And the rest of the interviews?

21 A. . .

22 Q. Just a moment and I'll move on.

23 Have you been paid for your testimony here
24 today?

25 A. Paid for my time.

DR. VERNON ON CROSS

1 Q. How much have you been paid so far?

2 A. I've been paid Fifteen Hundred Dollars.

3 Q. How much are you going to bill after your
4 testimony here today?

5 A. I'm going to bill One Thousand Seven Hundred
6 and Fifty Dollars.

7 Q. What is your hourly rate?

8 A. My rate generally is a Hundred Fifty Dollars
9 an hour.

10 Q. And you have spent eighteen hours in interview-
11 ing her?

12 A. Correct.

13 Q. And you were here on Monday or Tuesday?

14 A. Tuesday.

15 Q. And have you been here all day today?

16 A. Yes.

17 Q. So you expect to be paid around Thirty-five
18 Hundred or Four Thousand Dollars when the case ends
19 up?

20 A. I've been paid Fifteen Hundred and I will send
21 a bill for Seventeen Hundred and Fifty.

22 Q. Now, other than her medical records and the
23 statements from Josephine Mouzon, do you -- did you
24 rely upon any other evidence in reaching your
25 opinion?

DR. VERNON ON CROSS

1 A. The psychiatric history and psychological
2 history.

3 Q. Anything else?

4 A. Interviews.

5 Q. Did you review the police report?

6 A. Yes, I did.

7 Q. Okay.

8 A. And some statements that were given.

9 Q. Did you see the photographs?

10 A. Yes, I did.

11 Q. And you said you reviewed the police report?

12 A. Yes.

13 Q. Were there photographs of the scene where
14 Willie Dunmore was stabbed?

15 A. Yes.

16 Q. Okay, and what else did you review?

17 A. That may be all.

18 Q. Did you see the autopsy report?

19 A. No.

20 Q. Did you see the autopsy photos?

21 A. No.

22 Q. Did you review the DVD?

23 A. No.

24 Q. You haven't seen the DVD?

25 A. No.

DR. VERNON ON CROSS

1 Q. Have you seen a reenactment of this incident?

2 A. No.

3 Q. You were retained initially on what date?

4 A. I was retained in April -- probably early in
5 April.

6 Q. Now, your opinions regarding whether or not
7 the Defendant is, quote/unquote, a battered woman
8 and whether or not the victim in this case was a
9 batterer, is it fair to say it is based solely on
10 what she told you and what Josephine Mouzon told
11 you?

12 A. . .

13 Q. Would that be fair to say?

14 A. No. It was based on her responses to questions
15 and I looked at her traumatic reaction to visualiza-
16 tion experiences.

17 Q. What her responses were?

18 A. Correct, because we know that Ms. Robinson
19 continued to experience affects of the traumatic
20 reaction.

21 Q. So it would be fair to say in order for your
22 opinion to this jury to be reliable today, we
23 have to trust what she told you. Correct?

24 A. You have to trust what she told me as well
25 as my interpretation of testing that was done.

DR. VERNON ON CROSS

1 That is standardized testing that has been done
2 of trauma victims, as well as medical records and
3 the psychiatric records.

4 Q. But in terms of whether or not Willie Dunmore
5 ever committed an act of violence against Lou Ann
6 Robinson, the only two people you can rely on to
7 help you in that regard one way or the other are
8 Lou Ann Robinson and Josephine Mouzon. Is that
9 right?

10 A. That is part of it, yes.

11 Q. What other evidence did you rely on other
12 than what they told you?

13 A. Well, what they told me, but also the reac-
14 tions to the test material. The profile was simi-
15 lar to that of other victims who have suffered
16 domestic violence situations.

17 Q. But didn't you just testify that she had
18 been in an abusive relationship with the father of
19 her son?

20 A. Correct.

21 Q. And so certainly if she gave responses that
22 are consistent with being a battered woman, that
23 could relate to the prior relationship. Correct?

24 A. Yes.

25 Q. Do you have any way of knowing whether her

DR. VERNON ON CROSS

1 responses relate to the prior relationship or the
2 relationship with Willie Dunmore?

3 A. Some aspects of the testing were specific to
4 Willie Dunmore but others were more general.

5 Q. Now, a lot of times you have people who are
6 diagnosed as suffering from what you called a
7 depression disorder.

8 When someone brings a legal action against you
9 or you are charged with murder, that in itself
10 would result in depression. Correct?

11 A. It could.

12 Q. Now, look at the battered woman syndrome. In
13 the thirty some years in your profession, have you
14 ever done any studies that relate to battered men
15 rather than women?

16 A. I have evaluated many individuals who were
17 suffering from reactions that were similar to
18 what we might call battered women that were men.
19 They had fear of partners who were female.

20 Q. What are some of the reasons why men or women
21 stay in that relationship and reasons why they
22 don't report?

23 A. A lot of times they stay in a relationship be-
24 cause they are married.

25 Q. Oftentimes it is not simple to walk away when

DR. VERNON ON CROSS

1 you are married to them. Right?

2 A. Yes.

3 Q. And a lot of times women will stay because of
4 the children. Correct?

5 A. Yes.

6 Q. And it is not often you can just up and leave
7 when you have children. Correct?

8 A. Yes.

9 Q. And oftentimes when you have victims of do-
10 mestic violence they are financially dependent upon
11 the batterer?

12 A. Yes.

13 Q. Do any of those instances apply in this
14 situation?

15 They weren't married?

16 A. No.

17 Q. They didn't have any kids together?

18 A. My understanding and belief is that Willie
19 Dunmore was living in the home of Lou Ann Robinson.

20 Q. She wasn't financially dependent on him be-
21 cause he wasn't working?

22 A. Correct.

23 Q. She wasn't working at the time, correct?

24 A. Correct.

25 Q. He had been out of work for about two months

DR. VERNON ON CROSS

1 before this incident happened?

2 A. Yes.

3 Q. If she was not working and finances were not
4 good, wouldn't that lead to stress in the rela-
5 tionship independent of anything Willie might
6 have done?

7 A. My belief is that . .

8 Q. Please just answer my question.

9 MR. JENKINSON: She's interrupting her
10 answer, Judge.

11 THE COURT: Ask a question and allow her to
12 answer.

13 BY SOLICITOR:

14 Q. Wouldn't it be possible that the fact that
15 she wasn't working placed stress on the relationship
16 independent of anything Willie may have done? Is
17 that possible?

18 A. Yes, it could have caused some stress in the
19 relationship if she was financially dependent on
20 him, but she had other sources of income so she was
21 not financially dependent on him.

22 Q. So she didn't need him anyway?

23 A. She was not dependent on him financially,
24 no, from what I understand.

25

DR. VERNON ON CROSS

1 Q. Now, did she also report to you that she
2 drank?

3 A. Yes, she reported that she drank, and she
4 reported that she used drugs.

5 Q. She reported that she used drugs as well?

6 A. Yes.

7 Q. Okay. When you look at domestic violence --
8 one of the things that I notice in some of the
9 literature is that -- Dr. Lenore Walker, who is
10 considered the mother of the battered woman syn-
11 drome, a well reknown psychologist -- one of the
12 things that I noticed she talked about was how
13 the most dangerous time in a relationship is when
14 the person being abused fights back.

15 Is that fair? Do you agree with that?

16 A. That was among her findings.

17 Q. Do you agree with that?

18 A. No, not totally. There are other instances
19 that have been found to be dangerous.

20 When the person is very, very intoxicated, it
21 is a very dangerous time in a relationship. There
22 is more violence perpetrated at that point.

23 A dangerous time for a woman to strike back
24 during violence may well be in terms of an inci-
25 dent when the children are being threatened.

DR. VERNON ON CROSS

1 The violence has escalated in another area, and he
2 may have been beaten himself when suddenly the
3 batterer turns on the other person. So I would
4 not totally agree with Lenore Walker's . .

5 Q. Well, I'm not suggesting that is the prevail-
6 ing most dangerous times. But it is one of the
7 most dangerous times?

8 Another is when the person is getting ready
9 to leave, right?

10 A. That may be.

11 Q. Because if you are getting ready to end the
12 relationship, the person who inflicts the battery,
13 he or she doesn't want you to leave. Correct?

14 A. That could be.

15 Q. And there is some mentality that if I can't
16 have you, nobody can have you. Right?

17 A. In an extremely tense relationship that can
18 be true.

19 Q. So one of the things that you will counsel
20 people on if they are in those types of relation-
21 ships is that if you are trying to leave you do it
22 secretly. Right?

23 A. . .

24 Q. You leave when the person is not there so you
25 avoid the conflict. Right?

DR. VERNON ON CROSS

1 A. Correct.

2 Q. And that is to protect them because they know
3 the person is jealous and if you end the relation-
4 ship it can result in a potentially fatal situa-
5 tion?

6 A. Yes. There are safety plans that are developed
7 in counseling. A woman should have a plan if she
8 is going to depart from a relationship.

9 Q. You are not here to suggest that only women
10 can be victims of these types of crimes, are you?

11 A. No, I'm not telling you that. I have already
12 told you that.

13 Q. Would it surprise you to know that the vic-
14 tim in this case had decided a week earlier to end
15 his relationship? Would that surprise you that he
16 had decided to end his relationship with the Defen-
17 dant?

18 A. It would surprise me as there are documented
19 calls through that weekend to her residence from
20 him.

21 Q. But certainly if we go with the notion that
22 he wanted to leave and planned to leave, it creates
23 a situation where there is the least amount of
24 conflict?

25 It wouldn't be inconsistent with that, would

DR. VERNON ON CROSS

1 it, the fact that he was there for a week, and
2 that is assuming he was there in the house for that
3 week. We don't know that.

4 A. We know there were documented calls through
5 that week and we know that he was there during . .

6 Q. The time he was stabbed?

7 A. Right. That he was in and out of there.

8 Q. Do you advertise?

9 A. No.

10 Q. How did you get in contact with Lou Ann Robinson
11 or Mr. Jenkinson, her lawyer?

12 A. I have done testimony here and elsewhere over
13 the last thirty years, and so . .

14 Q. So he may have known about you?

15 A. Yes, I may have testified about individuals
16 he may know, or maybe he got a referral. I don't
17 know exactly.

18 Q. You have testified as an expert witness in
19 other murder cases when someone is charged with
20 killing either a boyfriend or husband?

21 A. Right.

22 Q. All right, and so you are reknown in that
23 field in South Carolina and in other States. Cor-
24 rect?

25 A. I have done it a number of times over the

DR. VERNON ON CROSS

1 years, yes.

2 Q. Now, when you talk about the deficits that
3 Ms. Robinson allegedly suffers from, in terms of
4 the stroke, there is no evidence or record to sug-
5 gest that in 2006 she suffered from a stroke.

6 Right?

7 A. Right. Correct.

8 Q. And you wouldn't suggest to this jury that
9 because she had a stroke some eighteen months ago
10 that should have an impact on whether or not justice
11 is rendered in this case if she committed murder?
12 You're not saying that, are you?

13 A. No, but I'm just saying that there are areas
14 in which her testimony is compromised definitely
15 by the deficits that she has.

16 Q. But you don't have any question about her
17 lack of competency?

18 A. I was questioned about her ability to fully
19 explain and answer questions.

20 Q. But you don't think she is incompetent?

21 A. Legal competency -- no.

22 Q. Okay, that's what I mean. The last time you
23 saw her was about six months ago?

24 A. Yes.

25 Q. And, of course, you were not in the Courtroom

DR. VERNON ON CROSS

1 when she testified?

2 A. No.

3 Q. So you don't have any idea whether or not
4 the stroke she allegedly suffered in July of 2008
5 had any impact on her testimony because you weren't
6 in here. Right?

7 A. Correct.

8 Q. And to be quite frank with you, some of her
9 history would suggest that she was at greater risk
10 of being a batterer. Wouldn't you agree with me
11 on that?

12 A. . . .

13 Q. Use of alcohol, drug abuse, desensitization
14 as you call it?

15 A. She had no history of aggression.

16 Q. That you know about?

17 A. Yes. She has no record.

18 Q. That you know about?

19 A. No mental health record. That I know about,
20 but I know of no report of a mental history of
21 aggression.

22 Q. But you are telling this jury that if a man
23 drank, if a man is unemployed, if a man is jealous,
24 that makes him likely to be a batterer.

25 Wouldn't the same hold true for a woman if

DR. VERNON ON CROSS

1 those same factors exist?

2 A. If all other factors were the same, that would
3 be the case, but in my assessment all of the other
4 factors do not exist.

5 Q. Who did you talk to about Willie Dunmore?

6 A. I'm sorry?

7 Q. I'm sorry. Who did you interview to find out
8 about Willie Dunmore's history before you rendered
9 your opinion in this case?

10 A. . . .

11 Q. Other than Lou Ann?

12 A. I made no statement about Willie Dunmore's
13 history.

14 Q. Okay, and this was in reality a relatively
15 short term relationship. Correct?

16 A. . . .

17 Q. They had only been together about a year.
18 Right?

19 A. My understanding was that the relationship
20 began in 2005.

21 Q. Well, if it began in 2005 and he died in
22 2006, wouldn't that be a year?

23 A. Well, the end of 2006, and the beginning of
24 2005.

25 Q. When did she tell you it began?

DR. VERNON ON CROSS

1 A. Well, she first came down here and moved here
2 in late 2004, December of 2004.

3 Q. But they didn't actually start living to-
4 gether until 2006. Would it surprise you to know
5 that?

6 A. No, but I understand he helped her move down
7 here. It doesn't have to be a live-in relation-
8 ship to be an intimate relationship.

9 Q. Oh, sure, but the likelihood is that if you
10 are living with someone, the longer you are in that
11 relationship, if that person is a batterer, that
12 is a factor that you can certainly consider --
13 the length of the relationship. Correct? If you
14 are trying to make that diagnosis?

15 A. Not necessarily. Some relationships are very
16 intense early on.

17 SOLICITOR BARR: Judge, that's all the questions
18 I have.

19 THE COURT: Okay. Mr. Jenkinson, do you have
20 any further questions?

21 MR. JENKINSON: I do have a few in follow-up,
22 Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. JENKINSON:

25 Q. You were asked about women lying, and in

DR. VERNON ON REDIRECT

1 particular about Lou Ann Robinson in that regard.

2 What evidence do you have that Lou Ann Robinson is
3 not lying and making this all up as she goes?

4 A. Well, we have two instruments that look at
5 the validity, and one of those is sort of consistent/
6 inconsistent responses.

7 Another one is based on common response. Peo-
8 ple who are trying to fake a situation such as this
9 will normally pick an unusual response, and she
10 did not.

11 She picked a common response, and she put
12 forth a good effort and was not faking.

13 Q. You can't check to make sure the person is
14 telling the truth?

15 A. Correct.

16 Q. But are you satisfied that Lou Ann . .

17 A. I am satisfied that she was giving us a re-
18 liable statement of her psychological condition,
19 her psychological feelings, and that she was not
20 trying to fake or produce some other thing on our
21 test admission.

22 Q. Thank you. No other questions.

23 RECROSS EXAMINATION

24 BY SOLICITOR:

25 Q. Are you aware that she lied to the police about

DR. VERNON ON RECROSS

1 Mr. Dunmore . . .

2 A. Say that again.

3 Q. Are you aware -- in talking about whether
4 her responses were reliable, are you aware that
5 she had lied to the police about who had possession
6 of the knife and the gun?

7 A. Yes.

8 Q. You were aware that she had?

9 A. Yes. On that particular occasion.

10 SOLICITOR: May we approach?

11 (Conference at the bench between counsel and
12 the Court off the record)

13 THE COURT: Ladies and gentlemen, we will
14 start back at nine thirty in the morning.

15 I would remind you that you will please not
16 discuss this case with anyone, and I apologize for
17 keeping you so late.

18 If you need an escort to your vehicles or have
19 any concerns, please let the bailiff know about
20 them.

21 (Jury excused from Courtroom.)

22 (Court stood in recess until December 17,
23 2009)

24 THE COURT: Everyone ready to proceed?

25 SOLICITOR: Yes, Your Honor.

1 MR. JENKINSON: Defense is ready.

2 THE COURT: Bring in the jury, please.

3 (Jury returned to Courtroom)

4 THE COURT: You may call your next witness,
5 Mr. Jenkinson.

6 MR. JENKINSON: Your Honor, we would call Mr..
7 Curt Gowdy to the stand.

8 THE COURT: Wait a minute. I haven't quali-
9 fied on him yet.

10 Ladies and gentlemen, are any of you close
11 personal friends or have social relations or related
12 in any way to Curt Gowdy? I did not qualify him
13 initially as a potential witness.

14 Anybody -- you know him?

15 (Reply not audible)

16 THE COURT: The fact that you know him, would
17 that prevent you from being able to give the De-
18 fendant and the State a fair and impartial trial?

19 JUROR: No.

20 THE COURT: You all want to be heard on this
21 issue?

22 SOLICITOR: No, sir.

23 THE COURT: Thank you. You can go ahead and
24 swear him.

25 CURT GOWDY, being duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. JENKINSON:

4 Q. State your full name for the record, if you
5 would, please?

6 A. Curtis M. Gowdy.

7 Q. Where are you employed, Mr. Gowdy?

8 A. Farmers Telephone Cooperative.

9 Q. How long have you been employed there?

10 A. Approximately eight years.

11 Q. And what is your position at Farmers Tele-
12 phone?

13 A. Security manager. Safety and security manager.

14 Q. Prior to being employed at Farmers Telephone,
15 who were you with?

16 A. I was a special agent with the State Law En-
17 forcement Division, commonly referred to as SLED,
18 for approximately five years.

19 Q. And what did you do while working for SLED?

20 A. Investigation.

21 Q. What does being a security manager entail on
22 a daily basis?

23 A. Various functions on the safety and security
24 side, to include safety under OSHA, and security
25 functions that are normal with any telephone

MR. GOWDY ON DIRECT

1 cooperative. That includes the legal process,
2 court orders, search warrants, subpoenas, and in-
3 terpreting phone records.

4 Q. And do you have special skill, knowledge,
5 education and training in interpreting phone re-
6 cords and carrying out your position?

7 A. I do.

8 Q. I want to show you what has previously been
9 marked as State's Exhibit 26. Can you tell me
10 what that is?

11 A. Detailed records from a singular wireless
12 telephone.

13 Q. And do you have the skills and education to
14 interpret that document?

15 A. I do.

16 Q. Can you tell me if . .

17 MR. JENKINSON: First of all, Your Honor, I'd
18 like to move to qualify Mr. Gowdy as an expert in
19 the area of safety and security, and in particular
20 in phone record interpretation.

21 THE COURT: What say you?

22 SOLICITOR SABB: No objection.

23 THE COURT: So qualified, without objection.

24 BY MR. JENKINSON:

25 Q. Mr. Gowdy, tell the ladies and gentlemen of

MR. GOWDY ON DIRECT

1 the jury what that is.

2 A. This is a phone record called a detail record
3 of a wireless number of a subscriber. It lists the
4 time of day of the call, the duration or billing
5 duration on the call, the number, and different
6 other features.

7 Q. Let me turn your attention to telephone num-
8 ber -- the last phone call on that record. Can
9 you read for the ladies and gentlemen of the jury
10 when that call was made and how long it lasted?
11 Well, what number it was made to, how long it
12 lasted?

13 A. Item number 156 is a call made on the 23rd
14 of December of 2006 at 8:55 P.M. The number called
15 was 843 . There was a billing duration of
16 two minutes.

17 Q. Now, let me ask you, is it possible that the
18 conversation that took place on that call could
19 have lasted less than two minutes?

20 A. It is.

21 Q. How so?

22 A. There are a couple of factors that come into
23 play between the actual calling time and also the
24 billing.

25 When you make a phone call and press -- call

MR. GOWDY ON DIRECT

1 on a wireless phone and you press the send but-
2 ton, . . .

3 Q. Let me stop you there. Does it appear that
4 this call was made from a wireless phone?

5 A. It does. It is.

6 Q. All right.

7 A. When you press that send button and immediately
8 that call is answered, although it may last ten
9 seconds or thirty seconds before that phone is
10 actually answered, that is automatically going to
11 be rounded up in billing so once you receive that
12 phone bill of one minute.

13 Then the other factor is also even though
14 -- the duration of the phone call conversation and
15 then how the phone call is disconnected come
16 into play on the billing.

17 Q. What about at the end of the call, is there
18 such a thing as a disconnect supervision that
19 would extend the call as well?

20 A. There is.

21 Q. Can you explain that to the ladies and gentle-
22 men of the jury?

23 A. This disconnect supervision is a phone pro-
24 vision in a wireless switch that basically -- say,
25 for example, a wireless phone calls a land line or

MR. GOWDY ON DIRECT

1 vice versa, your home phone for example, you con-
2 duct a conversation and that land line -- when you
3 hang up that land line, that home phone, but the
4 individual on the other side that has the wireless
5 cel phone does not press end to end that call,
6 then there is a switch that after a certain time
7 it will detect that and terminate the phone call
8 for you.

9 That can last anywhere from fifteen to twenty-
10 five seconds, and I have actually had that
11 happen that lasted twenty-four or twenty-five
12 seconds.

13 Q. So you have made test calls?

14 A. I have.

15 Q. What -- are you telling us that on the front
16 end you can send from a cel phone, like I have, to
17 a land line, and it rings and someone picks it
18 up and says, I'm going to get you, I'm going to
19 get you, and you hang up, how long does the bill
20 reflect?

21 A. Two minutes, and then the wireless company
22 too will round up to the next minute. Although it
23 may last sixty-one seconds, it will round out to
24 two minutes.

25 So two minutes and one second would be rounded

MR. GOWDY ON DIRECT

1 up to three minutes.

2 Q. Is it possible for someone to pick up a call
3 from a wireless phone to a land line -- they could
4 answer, and hang up before a minute is up and it
5 still bill two minutes?

6 A. Would you ask that again?

7 Q. Let me rephrase that question.

8 A. Okay.

9 Q. If I were on my cel phone and I hit send, and
10 I called your land line, and let's say in forty-
11 five or fifty seconds you pick it up and I speak
12 to you -- okay, and you hung up and I failed to
13 hit the end button on my phone, could it bill for
14 two minutes?

15 A. Yes.

16 Q. How?

17 A. If you failed to hit that end button after
18 forty-five or fifty seconds as you said -- if you
19 fail to hit the end button, that service disconnec-
20 tion will not end until several seconds later, and
21 then you go over one minute and once you receive
22 the bill, the bill will still reflect it rounded
23 up to the next minute, which would be two minutes

24 Q. So basically the phone company always rounds
25 up to the next minute if it's one second over?

MR. GOWDY ON DIRECT

1 A. Correct.

2 Q. Without knowing the time the phone was an-
3 swered, or whether the call was hung up on the cel
4 phone, is it's impossible to tell the duration of
5 that conversation, isn't it?

6 A. That's correct.

7 MR. JENKINSON: Court's indulgence.

8 THE COURT: Okay.

9 BY MR. JENKINSON:

10 Q. Is it possible that that phone call conver-
11 sation could have lasted ten seconds or less?

12 A. It is possible.

13 Q. And have you performed simulator tests to
14 check it and see?

15 A. I have.

16 Q. And if that phone call comes -- if it were
17 placed in the Farmers Telephone area, would it
18 have come through the Farmers Telephone tower?

19 A. It would have.

20 Q. With Cingular A T and T?

21 A. It would have.

22 Q. And would it have found the same network and
23 same wireless capabilities and ended up the same
24 location at Farmers Telephone?

25 A. Correct.

MR. GOWDY ON DIRECT

1 Q. I have no further questions.

2 THE COURT: Okay. Solicitor?

3 CROSS EXAMINATION

4 BY SOLICITOR SABB:

5 Q. You and I have known each other for a long
6 time, haven't we?

7 Since back in the days when you worked with
8 SLED and I was still a prosecutor?

9 A. Yes, sir.

10 Q. It's always good to see you.

11 Help me out a little bit. On page one of that par-
12 ticular Exhibit -- what number is it? What num-
13 ber is that Exhibit?

14 A. Exhibit 26.

15 Q. Okay, Exhibit 26, for purposes of the record.

16 When we look at the duration of the call, I
17 note that starting with item 237 on down, we
18 basically have one minute calls, two minutes calls,
19 and one three minute call.

20 A. Yes, sir.

21 Q. What we know from the one minute call is that
22 those calls lasted no more than sixty seconds?

23 A. Evidently, yes, sir.

24 Q. We know on the two minute calls that those
25 calls lasted no longer than one hundred twenty

MR. GOWDY ON CROSS

1 seconds?

2 A. Yes, sir. Let me interrupt you for just one
3 second. The one minute phone call is reflected
4 as a call. There is a certain point, for example,
5 when a phone is ringing for so long, although it
6 is not answered, depending on the carrier, it can
7 be billed as a one minute phone call, without any
8 connection whatsoever.

9 Q. How about Farmers?

10 A. It will be billed after a certain period of
11 time.

12 Q. That's if the phone just rings and rings and
13 rings?

14 A. Correct.

15 Q. And slip over to the second page, and, of
16 course, those are items 237 through 247.

17 When you look at page two of State's Exhibit
18 Number 26, and we look at item 248 through 278,
19 all of those calls are one or two minutes, except
20 one call that was four minutes, another calls that
21 is five minutes, another call that is seven minutes,
22 and one other call that is three minutes?

23 A. Yes, sir.

24 Q. And so what we know is that all of those
25 calls, whether or not they were placed to Lou Ann

MR. GOWDY ON CROSS

1 Robinson or some other person that is identified
2 on this, the one minute call did not last any more
3 than sixty seconds?

4 A. We don't know that for sure. It could be
5 a period of ninety seconds and still be billed as
6 a one minute call, although no connection was
7 made, and it still be backed up to a one minute
8 phone call.

9 Q. That's if nobody answers the phone?

10 A. Correct.

11 Q. But where a person answered the phone, what
12 we know is that the one minute call did not last
13 any more than sixty seconds?

14 A. Yes.

15 Q. The two minute call did not last any more than
16 a hundred and twenty seconds, and if we go over to
17 the third page, items one through two, of all the
18 calls made to that page, all of those calls are
19 either one minute or two minutes except three three
20 minute calls and one seven minute call and one six
21 minute call?

22 A. That's correct.

23 Q. And we know the same thing with regard to
24 somebody answering on the other line?

25 A. That's correct.

MR. GOWDY ON CROSS

1 Q. So when you look at item number 155, . .

2 A. Yes, sir.

3 Q. . . 155 is a call made to a land line,

4 , and that call is a three minute call?

5 A. It's billed as three minutes.

6 Q. And then item 156 -- and for the record, the

7 item 155 --the date is 12 23, December 23rd, at

8 7:17 P.M., to that number, and that is the one

9 that is billed as three minutes. Right?

10 A. That's correct.

11 Q. And item 156 is December 23 at 8:55 P.M., to

12 the same number, and that call is billed at two

13 minutes?

14 A. Correct.

15 Q. And so to make certain we know for sure what

16 you're telling us and not telling us, you are not

17 telling us that the conversation was not a con-

18 versation that was more than sixty seconds?

19 A. Repeat your question, please.

20 Q. Sure, and I'm going to have a follow-up to

21 this.

22 You are not telling us that the conversation

23 that took place on December 23rd at 8:55 P.M. was

24 not a conversation that lasted more than sixty sec-

25 onds? You're not telling us that?

MR. GOWDY ON CROSS

1 A. I don't know how long the conversation lasted.

2 Q. That's right. Thank you.

3 MR. JENKINSON: Nothing further.

4 THE COURT: You can step down.

5 (Witness excused from stand)

6 THE COURT: Do you wish to excuse Mr. Gowder?

7 SOLICITOR: No objection.

8 MR. JENKINSON: Yes, sir.

9 THE COURT: You are excused, sir. Call your
10 next witness.

11 MR. JENKINSON: The Defense would call Ms.
12 Mary Ross to the stand.

13 MARY ROSS, being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. JENKINSON:

17 Q. Ms. Ross, state your full name for the record,
18 if you would, please.

19 A. Mary M. Ross.

20 Q. Where do you live?

21 A. (Inaudible)

22 Q. Are you married?

23 A. Yes.

24 Q. You have children?

25 A. Yes.

MS. ROSS ON DIRECT

1 A. Is one of your children Jennifer Callahan?

2 A. Yes, sir.

3 Q. Of Jenkinson, Garrett and Callahan?

4 A. Yes.

5 Q. And are you currently employed?

6 A. Yes, sir.

7 Q. Prior to being employed, what did you do for
8 a living?

9 A. I worked as a nurse.

10 Q. So you -- are you a registered nurse?

11 A. Yes, sir.

12 Q. Do you remember being called by myself to meet
13 us at the jail on December 28th, I think it was?

14 A. Yes, sir.

15 Q. And did you come to the jail?

16 A. Yes, sir.

17 Q. Did you have an opportunity to look at some
18 stitched bruises and cuts on Ms. Lou Ann Robinson?

19 A. I did.

20 MR. JENKINSON: Your Honor, I don't think
21 there is any objection, but I would like to offer
22 into evidence without any objection Defendant's 12,
23 13 -- 10, 11, 12 and 13.

24 THE COURT: What says the State?

25 SOLICITOR SABB: We have no objection to the

MS. ROSS ON DIRECT

1 photographs, Judge.

2 THE COURT: They are in without objection.

3 (Defense Exhibits 10, 11, 12, 13, admitted
4 in evidence without objection, being photographs)

5 BY MR. JENKINSON:

6 Q. Let me show you the photograph that is Ex-
7 hibit Number 10. Tell the ladies and gentlemen
8 of the jury what that photograph shows.

9 A. I am pointing to an area of what appears
10 to be bruising in the area of the right forearm.

11 MR. JENKINSON: Your Honor, I would request
12 to publish the photograph to the jury.

13 THE COURT: All right.

14 (Photograph shown to the jury)

15 Q. And that is Lou Ann Robinson?

16 A. Yes, sir.

17 Q. Number 11 -- tell the ladies and gentlemen
18 of the jury what that is.

19 A. Yes. Ms. Robinson was exposing an area that
20 appears to be a healing laceration on her upper
21 left chest.

22 Q. And Number 12, what does that show?

23 A. It is a raised area on the inner aspect of
24 her right foot. I'm pointing to a swollen area
25 there.

MS. ROSS ON DIRECT

1 Q. And Number 13?

2 A. That was an area that appeared to be a bruise
3 on -- I guess over here on the left wrist area.

4 Q. And you don't know when those bruises or
5 abrasions occurred or how they occurred?

6 A. No.

7 Q. You are not here to tell this jury that?

8 A. No.

9 Q. You are just here to tell the jury what you
10 observed?

11 A. Yes, sir.

12 Q. And what date was that?

13 A. December 28th of 2006.

14 Q. And where was that?

15 A. At the detention center here in Williamsburg
16 County.

17 Q. No further questions.

18 CROSS EXAMINATION

19 BY SOLICITOR BARR:

20 Q. Where was the laceration?

21 A. An area that had been cut or torn here in this
22 area.

23 Q. May I look at the photographs? I'll give them
24 right back.

25 (Brief pause in the proceeding)

MS. ROSS ON CROSS

- 1 Q. Tell me your last name again.
- 2 A. Ross.
- 3 Q. And tell me again where you work?
- 4 A. At the Jenkinson law firm.
- 5 Q. You work for the Defendant's lawyer?
- 6 A. Yes.
- 7 Q. And what do you do?
- 8 A. I'm a legal assistant.
- 9 Q. How long have you been employed there?
- 10 A. About eleven years.
- 11 Q. Did I understand you to testify as to what
- 12 you described as bruising on the Defendant's left
- 13 wrist?
- 14 A. That's right.
- 15 Q. Maam, that bruise as you call it, that ap-
- 16 pears to be very old, doesn't it?
- 17 A. I can't make a judgment as to that. I can't
- 18 testify how old it was.
- 19 Q. And it wasn't red?
- 20 A. No.
- 21 Q. And if a bruise, as we call it, was red,
- 22 that would mean it was a recent injury. Right?
- 23 A. I can't really say. Bruises appear differ-
- 24 ently in different people.
- 25 Q. Showing you what has been marked as Defendant's

MS. ROSS ON CROSS

1 Exhibit 13, and I'll be extra careful with the
2 cords here.

3 Show me where the bruise is supposed to be on
4 her wrist.

5 A. I'm pointing to a darkened area that appears
6 to be bruising.

7 Q. Where? Where is the darkened area?

8 A. Just right along in there.

9 Q. Where your fingers are?

10 A. Obviously they are. That was in 2006 and I
11 can't really verify what I'm seeing on that photo-
12 graph, but I saw it when I was there.

13 Q. Okay, so what you're telling me today is that
14 based on that particular photograph, Defendant's
15 13, you can't show the jury where the bruising
16 is there?

17 A. I can't say. I'm showing with my fingers
18 the area where it appeared when these photographs
19 were taken.

20 Q. So you were just pointing to places and
21 telling them to take pictures. Right?

22 A. I wasn't taking pictures, no.

23 Q. Who took the pictures?

24 A. I honestly don't remember. Someone was in
25 the room with me but I don't remember who was taking

MS. ROSS ON CROSS

1 the pictures.

2 Q. Who all was in the room with you? We'll
3 start there.

4 A. Mr. Fuller and Mr. Jenkinson, Ms. Robinson.

5 Q. Okay. You were in the room, the Defendant is
6 in the room and the Defendant's lawyers?

7 A. Yes.

8 Q. So I'm assuming Ms. Robinson didn't take the
9 pictures. Right?

10 A. No.

11 Q. You didn't take the pictures. Right?

12 A. No.

13 Q. So Mr. Fuller or Mr. Jenkinson would have
14 taken the pictures?

15 A. I guess so, yes.

16 Q. But we are not showing any bruise in this
17 picture? Right?

18 A. I really can't tell from that. I'm sorry.
19 I was pointing out what I saw then.

20 (Brief pause in the proceeding)

21 BY SOLICITOR:

22 Q. Ms. Ross, there has been testimony in this
23 case that a call was placed by an employee in the
24 Sheriff's Department regarding the location of a
25 knife in this case.

MS. ROSS ON CROSS

1 Did you accompany Mr. Fuller out to the home
2 of the Defendant when the knife was recovered?

3 A. I may have. I'm not sure.

4 Q. Do you know that the day the knife was recov-
5 ered was the same day these pictures were taken?

6 A. I have no knowledge of that, no.

7 Q. No further questions.

8 REDIRECT EXAMINATION

9 BY MR. JENKINSON:

10 Q. Did you see bruising on Lou Ann Robinson on
11 the day you went to the jail?

12 A. In my opinion, there was bruising on her.

13 Q. Okay. Is it more difficult to see a bruise
14 on an African-American than a Caucasian?

15 A. I'm sorry. I don't believe I can testify to
16 that. They appear different on different people.

17 Q. But you are one hundred percent certain that
18 you saw bruising?

19 A. Yes, sir, I did.

20 Q. And these pictures may not depict that as
21 clearly as you would like, but you're sure you saw
22 them?

23 A. I did see bruising, and I know what bruising
24 looks like.

25 Q. You have seen many a bruise?

MS. ROSS ON REDIRECT

1 A. . .

2 SOLICITOR: Objection to leading.

3 MR. JENKINSON: No further questions, Your
4 Honor.

5 THE COURT: You can step down.

6 MR. JENKINSON: I would ask that this witness
7 be excused so she can go back to work.

8 SOLICITOR: No objection at all.

9 (Witness excused)

10 MR. JENKINSON: We would call Danny McCrae to
11 the stand.

12 DANNY McCRAE, being duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. JENKINSON:

16 Q. State your full name for the record, if you
17 would, Officer McCrae.

18 A. Thomas Daniel McCrae.

19 Q. And what is your rank?

20 A. Sergeant.

21 Q. Where are you currently employed?

22 A. Kingstree Police Department.

23 Q. How long have you been employed at the
24 Kingstree Police Department?

25 A. I returned there about twelve years ago.

MR. McCRAE ON DIRECT

1 Q. Prior to being employed at the Kingstree Po-
2 lice Department, where were you employed?

3 A. Sheriff's Office.

4 Q. Were you ever employed as an EMS worker?

5 A. Yes. Here in Williamsburg County and in
6 Richland County.

7 Q. And what training did you receive then to be-
8 come employed as an EMS worker?

9 A. I started out with basic EMT.

10 Q. Okay.

11 A. From there I went to (inaudible) and from
12 there I went to the ACLS to receive my certifica-
13 tion.

14 Q. What does that mean? Tell us what that
15 allows you to do or what you can do with that.

16 A. ACLS is advanced cardiac life support, and
17 you use the monitor, the defibrillator, the basic
18 life support.

19 Basic life support on CLS deals with sudden
20 injury, car accidents, any type of trauma to the
21 body.

22 Q. Is that as high as you can go as an EMS
23 worker, certification-wise?

24 A. Yes.

25 Q. Did you ever have an opportunity to be an

MR. McCRAE ON DIRECT

1 instructor?

2 A. Yes, sir.

3 Q. Where?

4 A. I was an instructor for the Red Cross in
5 first aid and CPR.

6 Q. Were you ever an instructor for the National
7 Heart Association?

8 A. In first aid and CPR, yes.

9 Q. Now, you stated you were employed in Richland
10 County?

11 A. Yes, sir.

12 Q. Did you ride an ambulance there?

13 A. Yes.

14 Q. Did you ever have an opportunity to witness
15 someone dying?

16 A. Yes, sir.

17 Q. And how many people do you say you saw die
18 while you were employed with EMS?

19 A. I would say probably a hundred twenty-five to
20 a hundred and fifty.

21 Q. Actually people dying, not people you . .

22 A. Dying, yes.

23 Q. I think you told me you have actually had
24 the pleasure of seeing the beginning stages of
25 life too, haven't you?

MR. McCRAE ON DIRECT

1 A. Yes.

2 Q. Tell the jury about that.

3 A. I have delivered seventeen babies.

4 Q. And two of those are pretty special to you,
5 aren't they?

6 A. Yes, they are mine.

7 Q. Were you working on the evening of December
8 23rd of 2006?

9 A. Yes.

10 Q. Did you respond to a call to go to the
11 Williamsburg County Hospital?

12 A. I went -- I was not dispatched to the hos-
13 pital.

14 Q. Okay, tell me what happened.

15 A. I heard on the radio that the EMS was bring-
16 ing in a subject that had been stabbed. That they
17 had responded to a car accident, and somehow after
18 they got there they learned he had been stabbed.

19 So I went to the hospital to await their ar-
20 rival there.

21 Q. And what was your purpose in going to the
22 hospital?

23 A. Any time someone has been stabbed or shot or
24 has a major assault, a police officer needs to be
25 there in case the subject makes a statement that

MR. McCRAE ON DIRECT

1 they may not be able to make later.

2 So I went to the ER to wait until a deputy
3 could get there because it was county jurisdic-
4 tion and not mine.

5 Q. Were you there when the ambulance arrived?

6 A. Yes, I was.

7 Q. And did you have the opportunity -- were you
8 waiting for the ambulance to get there?

9 A. I was standing inside the ER.

10 Q. And did you have an opportunity to speak
11 to Mr. Willie Dunmore?

12 A. Yes, sir, I did.

13 Q. Tell the ladies and gentlemen of the jury
14 what you asked him and what he said?

15 A. . .

16 Q. Before you begin, let me ask you this. Was
17 he conscious when he got there?

18 A. He was.

19 Q. Were there any medical restrictions that you
20 could determine to prevent him from communicating
21 with you?

22 A. No.

23 Q. Did he have an oxygen mask on?

24 A. No.

25 Q. Was he having difficulty breathing?

MS. McCRAE ON DIRECT

1 A. No, sir.

2 Q. Do you know of any reason that prevented him
3 from communicating with you?

4 A. No.

5 Q. Tell the ladies and gentlemen of the jury
6 the conversation you had or conversations you had
7 with Willie Dunmore?

8 A. When they first brought him in, they put him
9 one of the beds in the ER. I stepped up to speak
10 to him and asked him who he was.

11 Q. Did he answer you?

12 A. Yes, and I asked him where he lived?

13 Q. Did he answer that?

14 A. Yes.

15 Q. Did he give you an address?

16 A. Yes.

17 Q. Okay.

18 A. He told me how old he was, how tall he was,
19 how much he weighed. He gave me all the personal
20 information that I asked for.

21 Q. Was there a purpose behind that? Were you
22 filling out a report?

23 A. That was information the County would need
24 to fill out a standard incident report. One that
25 I would have filled out if he had been injured in

MR. McCRAE ON DIRECT

1 my jurisdiction.

2 Q. Okay.

3 A. All the information I asked for he gave me.

4 When I asked him what happened, he wouldn't answer.

5 He wouldn't tell me.

6 I asked him how he got stabbed, and he wouldn't
7 tell me.

8 I asked him who stabbed me, and he wouldn't
9 tell me. He just chose not to give me any in-
10 formation on the injury.

11 Q. How much time did you spend with him that
12 night?

13 A. About twenty minutes.

14 Q. Were you ever in there alone with him?

15 A. Yes, sir.

16 Q. Tell the ladies and gentlemen of the jury a
17 time line or how it transpired from the doctors
18 working on him to you being alone with him, and him
19 dying.

20 Were you there when he died?

21 A. Yes.

22 Q. You were by his bed?

23 A. Yes.

24 Q. Okay.

25 A. When he first came in, of course, the doctors

MR. McCRAE ON DIRECT

1 -- the nurses had put him on a stretcher with the
2 EMS. They were asking the same information basic-
3 ally that I was getting, and they also wanted to
4 know if he was allergic to anything and that type
5 of questions.

6 Q. Did he respond to those?

7 A. Yes, he did.

8 Q. Okay.

9 A. After they got him on the bed -- after they
10 transferred him from the ambulance stretcher onto
11 the bed, they talked with him for a few minutes
12 and the nurse and doctor stepped away.

13 I stepped back up to the end of the bed and
14 was speaking with him. That's when I got his
15 personal information, and when I started asking
16 him what had happened to him he refused to tell
17 me.

18 Q. Did you ask him numerous times?

19 A. I asked him why, and he don't want to tell me
20 why it happened, and I went into, like, was it a
21 buddy of yours that you are scared is going to get
22 in trouble, and he wouldn't tell me.

23 I asked him had he been attacked by somebody
24 or had somebody robbed him, and was he scared if
25 he told me who it was that they would retaliate

MR. McCRAE ON DIRECT

1 against him later, and he still wouldn't tell me.

2 I asked him if he could at least tell me where
3 it happened, and he wouldn't tell me that. The
4 only thing he finally said to me was somewhere in
5 Salters.

6 He would not tell me how he got stabbed or
7 where he was when he got stabbed, why he got
8 stabbed, or who did it.

9 There was nothing to keep him from telling me,
10 but he just chose not to tell me.

11 Q. Did you witness him pass?

12 A. Yes.

13 Q. Were you by his side?

14 A. I was four or five feet away from him.

15 Q. Was it a sudden thing? A gradual thing?

16 A. It was sudden.

17 Q. Can you explain to the ladies and gentlemen
18 of the jury what you witnessed?

19 A. He had started complaining of his back, that
20 it was hurting and he wanted to sit up. When he
21 finally got one of the nurses or the doctor to
22 agree that he could sit up, as soon as they came
23 to him and started raising the back position so he
24 could sit up, his head dropped and he was gone.

25 Q. Was he conscious prior to his head dropping?

MR. McCREA ON DIRECT

1 A. He was. He said his back was hurting and he
2 thought it would be better if he could sit up.

3 Q. So were you the last person to ever ask
4 Willie Dunmore a question while he was alive?

5 A. Yes, unless the nurse asked him something.
6 She was right up to the bed there.

7 Q. What was the response to the last question,
8 Officer McCrae, that you asked him?

9 A. He just would not tell me anything.

10 Q. Did you provide to the Williamsburg County
11 Sheriff's Department the information that you were
12 telling us about?

13 A. Yes.

14 Q. Did you ever receive a call from Willie Brown
15 or anyone making inquiry about what you know?

16 A. I do not remember that. I know I talked with
17 the deputy who came in, and I told him that I was
18 trying to get information from Mr. Dunmore but he
19 would not tell me anything; that he refused to
20 tell me anything.

21 Q. Do you recognize this writing?

22 A. Yes, that's my notes.

23 Q. Okay.

24 A. That's my notes that I had wrote down and
25 that I gave to the deputy who came to the ER.

MR. McCRAE ON DIRECT

1 Yes.

2 Q. You gave it to the deputy?

3 A. Yes.

4 Q. No further questions.

5 CROSS EXAMINATION

6 BY SOLICITOR BARR:

7 Q. Good morning, Officer McCrae. How are you
8 doing?

9 A. All right.

10 Q. Good. I just have a few questions I need to
11 follow up on if I may.

12 Have you seen the EMS flow report in this
13 case?

14 A. No, maam, I have not.

15 Q. All right, I'm going to hand you what's been
16 marked as Defendant's Exhibit Number 1. Now, that
17 is the EMS patient care form on Mr. Willie Dunmore
18 back on December 23, 2006. Is that correct?

19 A. It's on Willie Dunmore -- yes, maam.

20 Q. All right, and this form tells us, does it
21 not, that the call was received on December 23rd
22 at 2115, or nine fifteen P.M., is that correct?

23 A. Yes, maam.

24 Q. And it was dispatched two minutes later at
25 nine seventeen. Correct?

MR. McCRAE ON CROSS

1 A. Yes, maam.

2 Q. And then departed their base at nine eighteen,
3 is that correct?

4 A. Yes, maam.

5 Q. They arrived at what they thought to be a
6 motor vehicle accident at nine twenty-six?

7 A. Yes.

8 Q. And it looks like they loaded him up, got
9 him in the ambulance and left the scene at nine
10 thirty-two P.M.?

11 A. Yes, maam. That's what it says.

12 Q. And also they arrived -- EMS arrived at the
13 destination of the hospital at twenty-one forty-nine, or
14 or at nine forty-nine P.M. Is that correct?

15 A. Yes, maam.

16 Q. So it looks like the transport time from the
17 scene of the accident to the hospital was about
18 ~~seven~~ seventeen minutes. Is that correct?

19 A. Yes, maam.

20 Q. And would it surprise you to know that while
21 he was reaching the hospital that Mr. Dunmore had
22 a difficult time breathing?

23 A. No.

24 Q. It wouldn't surprise you based on the injury,
25 a stab wound to the heart? That wouldn't be unusual at

MR. McCRAE ON CROSS

1 all, would it?

2 A. No, maam.

3 Q. And obviously if you are an EMS worker and
4 you are attending to a patient with a serious in-
5 jury like that, your primary concern is to treat
6 him medically as opposed to get him talking.

7 Would that be fair to say?

8 A. Yes, maam.

9 Q. And you would consider a stab wound to the
10 heart a life-threatening injury, wouldn't you?

11 A. Of course.

12 Q. And, of course, we know it was a life threat-
13 ening and ultimately a life-ending injury. Is
14 that correct?

15 A. Yes.

16 Q. Okay. Now, you would agree with me that the
17 longer the person goes with medical attention and
18 without being in the hospital in that type injury,
19 his condition is going to worsen?

20 A. Yes, maam.

21 Q. And it would mean that based on what you saw
22 and based on your medical training had he not
23 gotten any care at all, he would have ^{likely} died at the
24 car scene, at the wreck scene. Right?

25 A. Yes, maam.

MR. McCRAE ON CROSS

1 Q. Now, you indicated that you were with him for
2 about twenty minutes. Correct?

3 A. Yes.

4 Q. Does that include the time the nurses would
5 have been treating him?

6 A. Yes, maam.

7 Q. Now, if he arrived at the hospital at nine
8 forty-nine P.M., that just simply means that that's
9 the time that EMS parked the truck in front of
10 the hospital?

11 A. That's the time they called the dispatcher to
12 tell them they were there.

13 Q. Okay. Do you know whether or not they would
14 have been at the hospital and had the patient un-
15 loaded at nine forty-nine P.M., or were they . .

16 A. No, maam. They would have called it in be-
17 fore they ever came in to the hospital. They
18 would call in that they were turning into the
19 parking lot. At the time that was called in, he
20 was probably still in the back of the truck.

21 Q. You didn't get in the ambulance and talk
22 with him. Right?

23 A. No, maam.

24 Q. And so they would call it in and if they were
25 on the way or right around the corner, do you think

MR. McCRAE ON CROSS

1 that would have been the time that is reflected as
2 nine forty-nine P.M.?

3 A. Normally, when you tell them you are twenty-
4 three or tell them you are at the hospital, it is
5 either when you are turning into the parking lot
6 or pulling up to the back door and stopped.

7 You are calling to tell them you are here
8 and you have to unhook your patient from whatever
9 you have him hooked to so you can take him in.
10 You don't normally wait until you get inside the
11 hospital before you call.

12 Q. I see. So it is likely if not probable that
13 when Mr. Dunmore's body was actually inside the
14 hospital, that time was closer to nine fifty-five?

15 A. It could have been a couple of minutes from
16 the time they called in.

17 Q. All right, and the first time you would have
18 seen Mr. Dunmore was actually when the paramedic
19 actually brought him into the hospital?

20 A. Right, when they came through the door.

21 Q. Okay. Does this appear to be the hospital
22 record on Willie Dunmore on the night of the 23rd
23 of December of '06?

24 A. That's what it looks like.

25 Q. Okay, and the . . .

MR. McCRAE ON CROSS

1 MR. JENKINSON: Objection to questioning him
2 on a document that is not a part of the record.

3 THE COURT: Is that a part of the record?

4 SOLICITOR BARR: Judge, I know it was marked
5 as an exhibit. I don't know if it was entered
6 into evidence.

7 BY SOLICITOR:

8 Q. Let me just rephrase the question. Officer
9 McCrae, is it likely that the patient was in the
10 ER at approximately four or five minutes to ten?

11 A. Yes.

12 Q. And do you know what time he was placed in
13 cardiac arrest?

14 A. No, maam. I'm just going by my recollection
15 of how long it was, but as far as the actual time
16 I wouldn't know. No.

17 Q. Would it surprise you to know that he was in
18 full cardiac arrest at three minutes after ten that
19 night?

20 A. I don't know. I don't have a clue what time
21 he died.

22 Q. Well, if a patient is in cardiac arrest, would
23 you agree that makes it real hard for him to
24 speak?

25 A. Oh, yes.

MR. McCRAE ON CROSS

1 Q. Okay.

2 A. It's impossible, yes, maam.

3 Q. So if he were in cardiac arrest at ten O
4 three P.M., that would have been within ten minutes
5 after him actually getting inside the hospital?

6 A. Yes, maam.

7 Q. Okay, and do you know he was pronounced dead
8 at ten thirty-six P.M. that night?

9 A. No, maam.

10 Q. So within forty-five minutes of EMS calling
11 to say they were arriving at the hospital, Willie
12 Dunmore was dead?

13 A. Yes, maam. If that's when he was pronounced.

14 (Brief pause in the proceeding)

15 BY SOLICITOR:

16 Q. Officer McCrae, can I get you to step down
17 for me?

18 A. Sure.

19 Q. Tell me what is in Mr. Dunmore's mouth when
20 -- you are blocking those jurors -- what is in his
21 mouth?

22 A. Oropharyngeal airway.

23 Q. What?

24 A. An oropharyngeal airway.

25 Q. What is that?

MR. McCRAE ON CROSS

1 A. It opens . .

2 Q. What is the purpose of that?

3 A. It opens the airway.

4 Q. Okay, to help breathing?

5 A. Yes, maam.

6 Q. Okay. Who would have placed that in his
7 mouth?

8 A. One of the doctors in the emergency room
9 probably.

10 Q. Okay, and is that -- is what is around his
11 neck what is called the C collar to immobilize
12 him?

13 A. Yes, maam. That was probably put on by EMS.

14 Q. It looks like he's got these two round patches
15 on his chest. What is that?

16 A. The heart monitor.

17 Q. Okay, who would have put that on?

18 A. Once they got -- well, those were probably
19 put on at the hospital because of where they are.
20 The ambulance uses a three point lead, and that is a
21 -- it looks like it was part of a twelve point
22 lead. So that was probably put on at the hospital.

23 Q. And there appears to be an item with a red
24 tip on the end that is placed inside his chest, I
25 guess, to the right of the stab wound.

MR. McCRAE ON CROSS

1 Can you tell me what that is?

2 A. I can't be positive but it looks like it may
3 be a needle that was used to decompress his chest
4 to see if it is blood or air inside the chest.

5 Q. So that was for medical purposes?

6 A. Yes, maam.

7 Q. And the tubing, what is that for that is on
8 the patient?

9 A. That could either be a suction tube or an oxy-
10 gen tube, but I believe it is a suction tube. It
11 looks kind of thick to be an oxygen line.

12 Q. And all of these items that are on the body
13 of Mr. Dunmore were placed on him to help with his
14 care, help with his breathing, help his condition.
15 Correct?

16 A. The airway that is put in would not have been
17 put in until after he had gone unconscious.

18 Q. Okay.

19 A. This particular airway is not the hollow
20 tube that you see in a hospital that goes all the
21 way down. This is more a solid piece that has a
22 groove in place. If you tried to put that in a
23 conscious patient, the gag reflex -- it would be
24 like taking your finger and putting it down and
25 trying to hold it down.

MR. McCRAE ON CROSS

1 Q. Sure, but the heart monitoring, the respira-
2 tion monitoring and the tubes placed in him, those
3 would have been for his care. Correct?

4 A. Yes. The heart monitors would have been so,
5 they could see what his heart . .

6 Q. Was doing?

7 A. . . was doing. Yes. The needle, if that is
8 what that is -- I believe that's what it is -- if
9 they thought he had air coming in through the cut,
10 that would have been to let the air out, or if
11 they thought he had blood building up around the
12 lungs, that would have . .

13 Q. Taken the blood out?

14 A. . . let the blood out.

15 Q. All right, because certainly if somebody has
16 been stabbed in the heart, you expect internal
17 bleeding?

18 A. Yes, maam.

19 Q. All right. You can have a seat.

20 How long have you been in law enforcement?

21 A. I believe about seventeen years total.

22 Q. Okay, and you say you worked with the Sher-
23 iff's Office for a period of time?

24 A. Yes, maam.

25 Q. So you would know about Harry Hughes?

MR. McCRAE ON CROSS

1 A. Yes, maam.

2 Q. The infamous Harry Hughes?

3 A. . .

4 Q. The night stop in the Blakely area?

5 A. I am familiar with it.

6 Q. You are familiar with it because as a law
7 enforcement officer you have gotten numerous com-
8 plaints there?

9 A. Yes.

10 Q. Okay, about criminal activity?

11 A. Yes, maam.

12 Q. Complaints about drug activity?

13 A. Yes, maam.

14 Q. In fact, that place appears on a number of
15 police reports as instances where a drug buy was
16 found?

17 A. Sheriff's Office reports. Yes, maam.

18 Q. Is that one of those places where just about
19 any time of the day you can go and get alcohol.

20 Right?

21 A. . .

22 Q. I'm not asking you personally, but in the law
23 enforcement area.

24 A. Any time it's open, there is alcohol there.

25 Q. You can go there about any time of day to

1 get drugs?

2 A. Yes. I know we have lots of complaints about
3 drugs being there but I don't know about buying
4 drugs there.

5 Q. Buying is there and use is there.

6 MR. JENKINSON: I object. This line of ques-
7 tions has no relevance. He hasn't been employed
8 with the county in years.

9 SOLICITOR: Judge, I'll withdraw the last ques-
10 tion.

11 BY SOLICITOR:

12 Q. While you were there with the Sheriff's Of-
13 fice -- you talked about your knowledge about the
14 drug activity at Harry Hughes -- has anything
15 changed since you left there?

16 A. Not that I know of. No, maam.

17 Q. No other questions, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. JENKINSON:

20 Q. Officer McCrae, is there any doubt in your
21 mind that Willie Dunmore had ample opportunity to
22 tell you everything that happened to him on the
23 evening of December 23rd, 2006?

24 A. . .

25 SOLICITOR: Objection to leading.

1. That was asked and answered.

2 Q. Did he have ample time to answer your ques-

3 tions?

4 A. . .

5 THE COURT: I'll let him answer it one more

6 time.

7 Q. Was Willie Dunmore conscious when he arrived?

8 A. Yes.

9 Q. Was his airway restricted then?

10 A. No.

11 Q. Did you ask him a series of questions?

12 A. Yes.

13 Q. Those questions you have already answered?

14 A. Yes.

15 Q. And was he capable of answering those if he

16 had chose to?

17 A. Yes.

18 Q. In 2006, you were not employed by the

19 Williamsburg County Sheriff's Department, were you?

20 A. No.

21 Q. You don't know what was going on out at

22 Harry Hughes, do you?

23 A. No.

24 Q. Nothing further.

25 THE COURT: You can step down.

1 (Witness excused from stand)

2 MR. JENKINSON: May he be excused?

3 SOLICITOR: Without objection.

4 THE COURT: Okay. You may leave.

5 MR. JENKINSON: Defense rests, Your Honor.

6 THE COURT: Okay. Ladies and gentlemen, we're
7 going to take a ten minute recess, and we will be
8 back with you then.

9 I would again remind you that you are not to
10 discuss the case with anyone.

11 (Jury excused from Courtroom)(Jury returned)

12 THE COURT: Ladies and gentlemen, we want this
13 case to flow so that we get it to you this after-
14 noon, and we are going to take a lunch break. I
15 know it's a little early but it seems to work out
16 better at this time than any other.

17 Will one hour be enough? I'm going to ask
18 you to go to lunch now. I have some matters to
19 deal with, and I'll ask you to be back in your jury
20 room at twelve thirty. We're going to finish the
21 case today.

22 I remind you not to discuss the case among
23 yourselves or allow anyone to discuss it with you.
24 See you back at twelve thirty.

25 (Jury excused for the lunch period.)

1 THE COURT: Anything to take up before we
2 break for lunch?

3 SOLICITOR: Nothing from the State.

4 MR. JENKINSON: No, sir.

5 THE COURT: Then we'll break for lunch.

6 (Whereupon, the Court took a recess, after
7 which the case resumed.)

8 THE COURT: Where is the Defendant?

9 MR. JENKINSON: I believe they are bringing
10 her in now.

11 THE COURT: All right, bring the jury.

12 (Jury returned to the Courtroom)

13 THE COURT: The Defense has rested. Is there
14 any reply from the State?

15 SOLICITOR: Yes, sir. We would call Lester
16 Harrison to the stand.

17 LESTER HARRISON, being duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR SABB:

21 Q. Would you please introduce yourself to the
22 folks on the jury?

23 A. Lester Harrison.

24 Q. And where are you from?

25 A. Williamsburg County.

MR. HARRISON ON DIRECT

1 Q. Pretty much a resident of Williamsburg County
2 all of your life?

3 A. Yes.

4 Q. And do you know Ted Harrison?

5 A. Yes.

6 Q. Ted Harrison is your brother. Right?

7 A. Yes.

8 Q. Did you know Willie Dunmore?

9 A. Yes, my first cousin.

10 Q. And do you know Lou Ann Robinson?

11 A. Second cousin.

12 Q. Do you know Josephine -- what is her last
13 name?

14 A. Mouzon.

15 Q. Do you know Josephine Mouzon?

16 A. Yes, sir.

17 Q. Now, tell the folks on the jury about how you
18 know Josephine Mouzon?

19 A. Girlfriend.

20 Q. Josephine was your girlfriend?

21 A. Right.

22 Q. Is she currently your girlfriend?

23 A. Yes.

24 Q. Do you all still date and see each other?

25 A. Yes.

MR. L. HARRISON ON DIRECT

1 Q. Share intimate moments and those kinds of
2 things?

3 A. Yes.

4 Q. What kind of a relationship did Josephine
5 share with Lou Ann Robinson back in the year 2006?

6 A. They were friends.

7 Q. Okay. I understand that you and Willie Dunmore
8 -- beyond first cousins, would you describe your
9 relationship for us with Willie Dunmore?

10 A. Close friends.

11 Q. And with you and Willie being close friends
12 with Lou Ann, and Josephine being close friends
13 with you, tell the jurors about you all's mutual
14 relationship in terms of whether or not you all got
15 together?

16 A. We would get together over at Josephine's
17 house sometimes.

18 Q. And had you been to Lou Ann's house?

19 A. Yes.

20 Q. And so nothing was unusual about the four of
21 you all getting together?

22 A. No.

23 Q. All right. Now, Willie died on December 23rd
24 of 2006. Up until the point that Willie died,
25 would you share with the jurors what the relationship

MR. HARRISON ON DIRECT

1 was between you, Josephine, Willie and Lou Ann?

2 A. We were friends.

3 Q. Was there ever a point in time prior to
4 Willie's death where there were any kind of restric-
5 tions in terms of you all getting together, having
6 fun and enjoying yourselves?

7 A. No, sir.

8 Q. That relationship never changed?

9 A. No.

10 Q. Now, as part of the socializing that you all
11 did during that period of time, was there any use
12 of alcoholic beverages involved?

13 A. Yes.

14 Q. Was there any use of illegal drugs . .

15 MR. JENKINSON: Judge, I object to this.

16 THE COURT: Approach.

17 (Conference at the bench between counsel and
18 the Court off the record)

19 THE COURT: I'm going to ask you to go to your
20 jury room for just a minute. Please don't discuss
21 the case.

22 (Jury excused from Courtroom)

23 MR. JENKINSON: Your Honor, I would like to
24 state my objection for the record.

25 THE COURT: All right.

MR. HARRISON ON DIRECT

1 MR. JENKINSON: I have been advised this tes-
2 timony is in rebuttal. The only -- the only testi-
3 mony about drugs was that she had some history of
4 drug use by -- on cross examination of the psychia-
5 trist yesterday, mention was made of some history
6 in the past of Lou Ann Robinson with drugs.

7 This witness did not even see Lou Ann Robinson.
8 If they are going to give an implication that she
9 was on drugs or using drugs on December 23rd, it
10 is totally false, and it is totally improper and
11 prejudicial to her.

12 It is absolutely no relevance whatsoever.

13 Secondly, this is not reply, Your Honor.
14 This is a witness who was on their list. This
15 witness is on the list and they have known what he
16 was going to testify to for the last three years.

17 All of this is something new that they could
18 have put in their case in chief if they wanted to
19 or desired to, and they did not do that.

20 I can give multiple reasons. First, it is
21 not proper for reply. Second, it is highly preju-
22 dicial. No probative value and only being intro-
23 duced for prejudice.

24 It has no place in this case, no place in the
25 trial.

MR. HARRISON ON DIRECT

1 THE COURT: Solicitor?

2 SOLICITOR: If the Court please, it is true
3 that the gentleman's name was listed on the witness
4 list. As we advised the Court in Chambers, we
5 were calling this witness who was listed as a
6 witness. We had no idea that Josephine Mouzon
7 would come in here and not be candid with the Court
8 regarding his relationship with this gentleman.

9 She testified that it was over and done with
10 and he was gone. The reality is that they still
11 maintain an intimate relationship.

12 The other part of it is that Josephine said
13 I couldn't call her any more. I couldn't be around
14 her any more. Any time I did, there was a prob-
15 lem.

16 The fact in this case according to this wit-
17 ness is that they continued to socialize, that they
18 continued to spend a lot of time together even up
19 to the day that he died.

20 And so those matters are clearly proper.

21 Now, . .

22 THE COURT: His objection was as to drug
23 use.

24 MR. JENKINSON: It was to drug use, and when
25 he suggests to the Court that Dr. Vernon testified

MR. HARRISON ON DIRECT

1 about a history of drug use that is wrong. She
2 simply said that she has a record concerning a
3 past history of drug use. Yeah, yeah.

4 SOLICITOR: Well, there was mention of a his-
5 tory of drug use, and that doesn't have to mean
6 twenty years ago.

7 It is proper to be able establish that not
8 only did the relationship continue in a social
9 atmosphere but this continued up until the day he
10 died.

11 The other thing is, Judge, that we don't mean
12 that -- he said the reply is improper based upon
13 anything the Defense does. The entire Defense that
14 was presented -- and obviously this is an important
15 issue because their people were not really candid
16 with us about this issue as well as her not being
17 candid with us about other issues.

18 You know, it was also presented in a way to
19 infer that every problem she was having kind of
20 relates to our guy being a battering spouse.

21 MR. JENKINSON: Judge, no witness has testified
22 she was under the influence of alcohol or drugs that
23 night. No drugs were found in her house. Drugs
24 are not there. Drugs were not a part of this inci-
25 dent, nor did anybody testify to that.

MR. HARRISON ON DIRECT

1 So we would object to his trying to introduce
2 that.

3 SOLICITOR: That is absolutely incorrect.

4 MR. JENKINSON: The only time drugs were men-
5 tioned -- the only time drugs were mentioned was
6 a mention of something from her history, and the
7 history goes back her entire life.

8 There was no follow-up question on that.
9 They had ample opportunity to say, Dr. Vernon,
10 does that include this night? Was she still hav-
11 ing a problem with drugs? They didn't do any of
12 that.

13 They didn't even go there when they had ample
14 opportunity to do it then, and they never asked
15 anything about it.

16 They have known about this all along and did
17 not mention it until now, so it's nothing but
18 prejudice.

19 Certainly if they want to go into her mental
20 state, they can certainly do that without going
21 into drug use.

22 It's our position there has been no evidence
23 other than one cross examination answer by the
24 doctor about any drugs, and it appears they could
25 have found out about that before now.

MR. HARRISON ON DIRECT

1 But there have been no allegations of drugs
2 being involved in any way in this incident, Your
3 Honor.

4 SOLICITOR: Your Honor, here's the thing.
5 If she's got anxiety and all of those things the
6 doctor talked about, that is something that can
7 be inferred from that.

8 MR. JENKINSON: This man is not capable of
9 testifying to that. There has been a lot of dis-
10 cussion about alcohol. She even testified that
11 she got up that morning and drank gin. She said
12 she consumed half a bottle of gin, and later that
13 day went and got beer, so there is plenty of tes-
14 timony about alcohol.

15 But no testimony about use of drugs connected
16 with this incident, and under 403, 404, I just
17 don't think he can go there.

18 I believe the prejudicial value outweighs the
19 probative. It's too late to bring it up now.

20 If he wanted to ask him a couple more questions
21 but I don't see how prior drug use -- it just seems
22 the prejudice of bringing in drugs into the case
23 is nothing but prejudice.

24 In many cases we have where drugs are a part
25 of the incident, where everybody uses drugs

MR. HARRISON ON DIRECT

1 and someone goes out to robs a convenience store,
2 but that hasn't been in this case at all.

3 SOLICITOR: As I read the eight or nine cases
4 on this battered spouse syndrome, Judge, it is
5 pretty powerful stuff, that we've got to overcome
6 in this case.

7 The question they would have the State limit
8 their information to is whether or not he walked
9 in the house and said, I heard you were out at such
10 and such place with a man, and he hit her, which
11 makes no sense.

12 THE COURT: I understand that, but do you have
13 any evidence that she was on drugs?

14 SOLICITOR: Well, there certainly was an oppor-
15 tunity.

16 THE COURT: I also understand that you want
17 to speculate that she was out there doing crack
18 cocaine, but without any evidence that she was I
19 don't think you can go there.

20 I think you would be speculating. If you
21 have evidence that on the night Josephine was de-
22 scribing and the night where they were in the bar
23 and the victim got mad, and both nights or either
24 night was all about drugs, that would be different.

25 MR. JENKINSON: I thought that Your Honor had

MR. HARRISON ON DIRECT

1 ruled on that, but I may be mistaken.

2 THE COURT: The State can go into the rela-
3 tionship this man had with Josephine and with the
4 Defendant, without mentioning drugs, unless he
5 knows something about drugs. Just to mention that
6 in the past something happened, it seems more pre-
7 judicial than probative, that in the past we got
8 drunk together and used drugs together.

9 SOLICITOR: I understand. Let me ask this.

10 BY SOLICITOR:

11 Q. On the day Willie died, do you know whether
12 or not Josephine and Lou Ann purchased crack cocaine
13 from Harry Hughes?

14 A. No, I don't.

15 Q. All right.

16 SOLICITOR: We understand the Court's ruling,
17 Judge.

18 THE COURT: Are we ready for the jury?
19 Bring in the jury.

20 (Jury returned to Courtroom)

21 SOLICITOR: May it please the Court?

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR SABB.

25 Q. Mr. Harrison, have you ever seen Lou Ann

MR. HARRISON ON DIRECT

1 Robinson drive?

2 A. Yes.

3 Q. All right. What kind of car did she drive?

4 A. (Inaudible)

5 Q. Now, a couple more questions and then I'll
6 finish.

7 During the time when you all were at either
8 Josephine's house or Lou Ann Robinson's house, or
9 any place else, have you ever seen Willie use any
10 sort of violence or anything like that?

11 A. No, I haven't.

12 Q. He was a pretty good guy, wasn't he?

13 A. He was all right.

14 Q. One of your best friends?

15 A. Yes.

16 Q. Nothing further.

17 MR. JENKINSON: We have no questions.

18 THE COURT: All right. You can step down.

19 (Witness excused from stand)

20 THE COURT: Anything further?

21 SOLICITOR SABB: Nothing further, Your Honor.

22 Thank you very much.

23 That concludes the State's reply.

24 THE COURT: Ladies and gentlemen, you have
25 heard all the evidence you will hear in this case.

1 by the use of a deadly weapon, the jury shall not
2 be charged that malice may be inferred from the
3 use of a deadly weapon. We think that would apply
4 to this as well.

5 THE COURT: Okay. And I remember the
6 Belcher case.

7 MR. JENKINSON: Opinion No. 2.

8 THE COURT: Okay. Then I---

9 MR. JENKINSON: And the second thing,
10 while I am on this, Your Honor, I would also like
11 the record to reflect in the charge conference,
12 we requested that malice -- that manslaughter,
13 voluntary manslaughter, not be charged.
14 Particularly as for murder and possession of a
15 weapon during a violent crime.

16 THE COURT: And you did do that. And I
17 will note that for the record. And based on my
18 research of the law, there is evidence in the
19 record that would support a charge requested. And
20 the State did request it. And I find there is
21 evidence in the record to support.

22 MR. SABB: That is correct, Judge. I just
23 rose to speak on behalf of the State. For the
24 record, I am Ronnie Sabb. We did in fact ask the
25 court to charge that.

1 THE COURT: I will bring them back out.

2 In dealing with the definition of murder, and tell
3 them to strike that portion as far as malice is
4 concerned.

5 (Whereupon, Alternates excused.)

6 THE COURT: Have you all looked through
7 the evidence?

8 THE REPORTER: Judge, everything is in
9 order.

10 THE COURT: I am going to bring the jury
11 back in and simply tell them that I charged them
12 in error. I charged them that inferred malice may
13 also be arrived at when the deed is done with a
14 deadly weapon. And I will instruct them that that
15 is not currently the law in this state to them to
16 disregard that.

17 MR. SABB: Are you going to then just read
18 the law. And just leave it at that?

19 THE COURT: And leave it at that. Because
20 the law in that case says that in homicides that
21 where the evidence is presented that would reduce,
22 mitigate, excuse or justify a homicide caused by
23 the use of a deadly weapon, the jury shall not be
24 charged that malice may be inferred. I don't need
25 to explain that to them. I am just simply saying

1 that -- I am simply stating that I instructed you
2 that malice may be inferred when the deed is done
3 with a deadly weapon. I tell you now to disregard
4 that. That is not the law in this state. Does
5 that satisfy everybody?

6 MR. JENKINSON: Yes, sir.

7 THE COURT: Bring them back in.

8 (Whereupon, the following takes place
9 within the presence of the jury.)

10 THE COURT: Ladies and gentlemen, I need
11 to clear up one point. I instructed you that
12 inferred malice may also arise when the deed is
13 done with a deadly weapon. That is no longer the
14 law in this case. That is an error. You are to
15 disregard that. So It may not inferred in this
16 case. It simply the use of a deadly weapon. It
17 may not necessarily infer malice. Now, I am going
18 to send the verdict form, and as well as the
19 evidence back in the jury room with you so can
20 begin your deliberations. And be sure to knock on
21 the door. I had a situation one time I was trying
22 a case, and the judge forgot to tell the jury to
23 knock on the door. We sat there 8 hours. We
24 never heard anything from the jury. Finally the
25 judge brought the jury back out. And he said can

1 I help you all. And they said judge we reached a
2 verdict in 15 minutes. Nobody told us what to do
3 when we reached it. So we've been sitting in that
4 jury room for 8 hours waiting on a verdict. So I
5 always tell the jury to knock on the door. You
6 all can return to your jury room and start your
7 deliberations and as we wait on the verdict.

8 (Whereupon, the following takes place
9 outside the presence of the jury.)

10 (At 4:03 p.m. jury deliberates.)

11 (Whereupon, at 4:37 p.m. the jury asks a
12 question.)

13 THE COURT: The jury's question is, what
14 is the definition of voluntary manslaughter. So
15 what I propose to do is bring them back in and
16 recharge them on voluntary manslaughter. I
17 probably confused them with all that. Maybe I can
18 clear it up. You may bring them in.

19 (Whereupon, at 4:58 p.m. judge recharges
20 the jury.)

21 (Whereupon, the following takes place
22 within the presence of the jury.)

23 THE COURT: Mr. Foreman, and, Ladies and
24 Gentlemen, I have a question. And the question
25 is: "What is the definition of voluntary

1 manslaughter." I will recharge you on the law of
2 voluntary manslaughter as explained under the law
3 what it is. To prove voluntary manslaughter, the
4 State must proof beyond a reasonable doubt, that
5 the defendant took the life of another in sudden
6 heat or passion based on sufficient legal
7 provocation. Both heat of passion and sufficient
8 provocation must be present. You have got two
9 things. When somebody is acting under the heat of
10 passion and there is a legal provocation, a legal
11 cause that provoked that heat of passion. And
12 both of them must be present to constitute
13 voluntary manslaughter.

14 Sudden heat of passion may for a time
15 affect a person's self control and temporarily
16 disturb a person's reason. Sudden heat of passion
17 must be the type that would make an ordinary
18 person unable to coolly reflect on his or her
19 actions, and produce the uncontrollable impulse to
20 do violence. Sufficient legal provocation.
21 Sufficient legal provocation, the sufficient legal
22 act that provoked the heat of passion.

23 Sufficient legal provocation must be the
24 type that would make a person of ordinary reason
25 and caution to become enraged and lose control

1 temporarily. The provocation needed for voluntary
2 manslaughter must come from the act or related to
3 the victim. Words alone, however vulgar or
4 insulting, are not enough to be legal provocation.
5 Where the death is caused by the use of a deadly
6 weapon, the words must be accompanied by some
7 overt threatening act which would have produced
8 heat of passion. The exercise of a legal right no
9 matter how offensive it is to another, is never
10 sufficient legal provocation for voluntary
11 manslaughter. If the heat of passion had cooled
12 or there was enough time between the provocation
13 if any, and the killing of the passion of a
14 reasonable person to cool, the killing would not
15 be voluntary manslaughter.

16 In deciding whether a reasonable person
17 would have had enough time to cool off, you should
18 consider all of the circumstances surrounding the
19 killing. You may consider the nature of the
20 provocation, if any, the defendant's
21 mental and physical state, and the circumstances
22 and relationships between the parties.

23 So it is, manslaughter is the unlawful
24 killing of another person with heat of passion
25 without sufficient legal provocation or with

1 sufficient legal provocation. So, it must be, a
2 person must be acting under heat of passion and
3 not have time to cool off. And in that heat of
4 passion, the thing that caused them be upset must
5 be a sufficient legal provocation that provoked
6 that heat of passion. Okay. I understand
7 sometimes the law is confusing, but that's what it
8 says. I have to leave it like it is written.

9 But if you will go back in your jury room
10 and continue your deliberations. And if you have
11 another question, and I can tell you this. I can
12 answer questions of law. If you have a question
13 of law, I can recharge you on the law. I can't
14 answer questions of fact. You have heard all the
15 evidence in this case, and I can't comment on the
16 facts. If you have a legal question, I can try to
17 answer. But go back and continue deliberations.
18 And knock on the door, if you have a verdict. Or
19 if you have another question. Verdict or you
20 have another question.

21 (Whereupon at 5:03 p.m. jury commences
22 deliberations.)

23 (Whereupon, the following takes place
24 outside the presence of the jury.)

25 THE COURT: Any exceptions or additions

1 from the State?

2 MS. BARR: No, Your Honor.

3 THE COURT: The defense?

4 MR. JENKINSON: Yes, sir. We would ask
5 that you explain the charge of self defense is a
6 complete defense.

7 THE COURT: And I explained that to them
8 in the initial charge. And they didn't ask for
9 that definition. But when I said, self -- I think
10 I charged them initially self defense was a
11 complete defense both murder and manslaughter.

12 MS. BARR: You did, judge.

13 MR. JENKINSON: We requested that, Your
14 Honor.

15 THE COURT: I understand. They didn't --
16 I simply answered that question. And if they had
17 asked me what the ground of self defense at all, I
18 certainly would have given the entire charge of
19 self defense.

20 MR. SABB: I think Mr. Jenkinson also was
21 kind enough, Judge, to show it to them writing
22 when he did closing argument.

23 THE COURT: You did a better job than I
24 did. It's hard to follow. I mean you did an
25 excellent job in explaining. I understand your

1 request, but I am going to deny it simply because
2 I want to respond to what they asked me. If they
3 come back again on the law of self defense.

4 MR. SABB: Thank you, judge.

5 (Whereupon, the jury reached a verdict at 5:51
6 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Jury returned to Courtroom with its verdict.)

2 CLERK: State v. Lou Ann Robinson. We find
3 the Defendant, Lou Ann Robinson, not guilty as to
4 murder.

5 We, the jury, unanimously find the Defendant,
6 Lou Ann Robinson, guilty of voluntary manslaughter.

7 We, the jury, unanimously find the Defendant,
8 Lou Ann Robinson, guilty of possession of a weapon
9 during a violent crime.

10 If this is your verdict, so say you all.
11 Please let me know by raising your right hands.

12 Thank you.

13 THE COURT: Anything from the State?

14 SOLICITOR: No, sir.

15 THE COURT: From the Defense?

16 MR. JENKINSON: Please poll the jury, Your
17 Honor.

18 (Whereupon, the jury was polled individually
19 which indicated the verdict is to stand.)

20 (Jury excused by the Court.)

21 THE COURT: Anything from the Defendant at
22 this time?

23 MR. JENKINSON: We have some motions, Your
24 Honor.

25 On behalf of the Defendant, we would move for

1 a new trial or judgment notwithstanding the ver-
2 dict, on the following grounds:

3 First, that the preponderance of the prosecu-
4 tion's case there is no evidence or testimony from
5 which this jury could find all the elements of this
6 crime with which she was charged.

7 I have articulated in great detail our posi-
8 tion as to that. There was no evidence of murder
9 or manslaughter presented during the prosecution's
10 case in chief.

11 There was no mention of Lou Ann Robinson's
12 name in connection with the death of Willie
13 Dunmore.

14 Never was Willie Dunmore proven to be at her
15 residence during the commission of the crime.
16 Never was Lou Ann Robinson proven to be in the
17 proximity of Willie Dunmore during the commission
18 of the crime.

19 There was no evidence of a crime being com-
20 mitted that was presented against her, and no evi-
21 dence of malice. There was no evidence of any
22 heat of passion in this case to give rise to the
23 elements for manslaughter.

24 The only evidence was that there was evidence
25 of self defense.

1 (Brief pause in the proceeding)

2 MR. JENKINSON: There was no evidence of mal-
3 ice, and as to manslaughter there was no evidence
4 of any heat of passion in this case to give rise
5 to that.

6 We would ask for a new trial or for a judg-
7 ment notwithstanding the verdict.

8 We don't believe there was sufficient evidence
9 to implicate her on any of these charges, Your
10 Honor.

11 (Brief pause)

12 THE COURT: I would deny those motions. I
13 found that there was sufficient evidence for the
14 case to go to the jury.

15 Among other things, there was evidence the
16 Defendant was the girlfriend of the victim and he
17 named the girlfriend as the perpetrator of this
18 crime.

19 At the end of the case, there was sufficient
20 evidence in my opinion for the verdict.

21 The jury did not find the Defendant guilty of
22 murder. Based on the fact that it was her own
23 statement that she was the one who inflicted the
24 fatal blow that caused the death of the victim,
25 they obviously felt she acted with heat of passion.

1 They found her guilty of manslaughter based
2 on the facts and circumstances presented in this
3 case.

4 They also found her guilty of possession of
5 a weapon during the commission of a violent crime,
6 and I would let the verdict stand.

7 I would respectfully deny your motion for
8 judgment notwithstanding the verdict and for a
9 new trial.

10 Anything before sentence is passed?

11 Any other information?

12 MR. JENKINSON: Other than an additional motion
13 regarding expenditures.

14 THE COURT: Okay. Any information from the
15 State?

16 SOLICITOR BARR: Yes, Your Honor, the De-
17 fendant's criminal history.

18 The Defendant has no record in South Carolina.
19 She was charged with possession with intent to
20 distribute and possession of a controlled substance.
21 That was back in 1980, but we have no disposition
22 on those things.

23 (Portion not audible on tape)

24 THE COURT: All right. Maam, identify yourself
25 first.

1 (Members of victim's family speaking to the
2 Court.) (Friends of family speaking to the Court.)

3 THE COURT: Anything else?

4 MR. JENKINSON: Thank you, Your Honor. You
5 have heard from the Defendant, Lou Ann Robinson.
6 She is fifty-six years old and she's never been
7 in any serious trouble in her life.

8 She has been a faithful parent. She has
9 lived an abusive relationship for many years. She
10 suffered the murder of a child.

11 She suffers from depression, she suffers from
12 diagnosed post-traumatic stress syndrome.

13 She came to South Carolina with the sole in-
14 tention of taking care of her eighty year old mother.
15 She has been the sole care-giver of her mother now
16 since 2004 up until today. She lives alone with
17 her mother, taking care of her, and providing care
18 for her.

19 This is truly an unfortunate circumstance,
20 Your Honor. We would ask that you consider her age,
21 consider all the circumstances and be as lenient
22 as possible, considering the facts and circumstances
23 as well of this relationship, because I think we
24 can probably all agree, Your Honor, that it is
25 probably the most difficult thing to wrestle with

1 from both sides of the aisle for a long time --
2 difficult for a lot of reasons.

3 We have good people involved who got into an
4 awful situation.

5 I beg to differ with the State because there
6 are no facts to justify his feelings. We would
7 ask that you sentence her pursuant to 16-5-90.

8 That provision is that your sentence given be
9 subject to presentation of credible evidence that
10 there is a history of domestic violence that has
11 been presented in this Court.

12 If you find that is the case, based upon the
13 evidence and testimony presented, that you sentence
14 her pursuant to those provisions.

15 We would ask that you make a finding as to
16 that provision.

17 THE COURT: Does the State have a position
18 as to that?

19 SOLICITOR SABB: There is no credible evidence
20 as to that issue. That issue in our view is akin
21 to the battered companion syndrome that was clearly
22 rejected by the jury in this case.

23 THE COURT: You think this Court can make a
24 separate finding based upon the findings of the
25 circumstances in this case?

1 SOLICITOR: I don't question that His Honor
2 has the authority to do that. I just think we
3 have gotten the benefit of the twelve jurors who
4 heard the same things Your Honor heard, and there
5 could be no additional findings as to that.

6 THE COURT: Just a moment, please.

7 (Brief pause in proceeding)

8 THE COURT: The statute reads upon presentation
9 of credible evidence or a history of domestic vio-
10 lence.

11 In this case, outside of one witness and the
12 testimony of your client, the Defendant, there is
13 no history of domestic violence.

14 MR. JENKINSON: Your Honor, there is the tes-
15 timony of Dr. Vernon after eighteen hours of inter-
16 views and tests. She found that she suffered from
17 domestic violence.

18 Not saying she is the gold standard, but she
19 certainly was credible, and she has been found cred-
20 ible by our Supreme Court as an expert. There was
21 credible evidence presented through her, an impar-
22 tial and highly qualified person.

23 We have a case where the history was signifi-
24 cant as well, and she testified to that prior
25 history of domestic violence.

1 SOLICITOR SABB: But the problem in this case
2 was that the underlying facts that are typically
3 there quite frankly were not present, as found by
4 this jury.

5 MR. JENKINSON: But the jury is not the determiner
6 under this statute, Your Honor.

7 SOLICITOR: And neither is the person who was
8 paid almost Five Thousand Dollars for her opinion,
9 Judge.

10 THE COURT: The section refers back to 16-25-20
11 which spells out and impacts the statute on crim-
12 inal domestic violence. Years of psychological
13 abuse doesn't come under that statute, doesn't come
14 under 16-25-20.

15 MR. JENKINSON: This is referring to criminal
16 law of South Carolina and disposition. A separate
17 statute provides that regardless of any other pro-
18 visions of law, an inmate guilty of an offense as
19 against a household member is eligible to be con-
20 sidered for parole after serving one-fourth of a
21 sentence on proof that she suffered a history of
22 criminal domestic violence at the hands of a house-
23 hold member.

24 THE COURT: I understand, but that is a issue
25 for a parole hearing. It doesn't say a Judge has to

1 make that finding. It seems to me that is an
2 issue for the parole board, as to whether she is
3 eligible for parole under that statute.

4 This is a matter of parole eligibility.

5 She may be eligible for parole based on the
6 statute, but I don't think it is a finding that I
7 make to lock the parole board in.

8 MR. JENKINSON: You are not denying it? You
9 are just saying it is for some other time?

10 THE COURT: I think it is a parole board issue,
11 yes.

12 See, the standard is different there, so that
13 is something I think has to be litigated there.
14 That is their call, and they may find her eligible
15 for parole after one-fourth based on those issues.
16 Nobody has ever asked me to do that before.

17 I think that is a parole board issue as to her,
18 so I don't think I would make that finding.

19 MR. JENKINSON: Thank you for your considera-
20 tion.

21 THE COURT: I understand that it has been a
22 difficult case for everyone involved. The attorneys
23 on both sides have done a very good job and have
24 been strong advocates for their positions.

25 The jury has spoken in this case, and I take

1 into consideration her lack of a prior record.

2 I also understand the loss of this family in
3 this case, and how serious that is.

4 The sentence of the Court on voluntary man-
5 slaughter is that she be confined to the Depart-
6 ment of Corrections for a term of twelve years.

7 On possession of a weapon, five years, to run
8 concurrent.

9 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

State of South Carolina)
)
 County of Williamsburg)
)

The State of South Carolina)
 Plaintiffs

Transcript of Record
 2007-GS-45-00152

vs.)

Lou Ann Robinson,)
 Defendants)

December 20, 2012
 Kingstree, S.C.

Before the Honorable R. Ferrell Cothran, Judge.

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

Ms. Kimberly V. Barr,
 Assistant Solicitor for the State

Mr. W. E. Jenkinson, III,
 Attorney for Defendant

Margaret T. Sullivan,
 Court Reporter

1 THE COURT: Okay. Are you ready, Margaret?

2 MR. JENKINSON: Your Honor, please we are.

3 First I would pass up briefly the defendant on the
4 issue before the court. I have marked the original as
5 O, and I have a copy for your clerk as well. Attached
6 to the brief are the excerpts referred to in our brief
7 rather than the voluminous record that we have. I do
8 have the record in case some issue of question comes
9 up---

10 THE COURT: Okay.

11 MR. JENKINSON: ---about additional testimony.
12 Your Honor, knows the procedural history of this. We
13 tried it in Williamsburg County there years ago, and the
14 jury returned a verdict three years ago this past
15 Friday. This Friday may not be the exact date, but it
16 was a week of December 16th in Kingstree. At the
17 conclusion of the case, the jury found the defendant
18 guilty of voluntary manslaughter and the weapons charge.
19 The possession of a weapon during a violent crime. That
20 was a concurrent sentence.

21 She appealed that case and our Court of Appeals
22 in an unpublished opinion found that pursuant to Section
23 16-25-90, the court did not rule upon the defendant's
24 request that she have consideration of whether or not
25 she's eligible for parole after serving 1/4th of her

1 present sentence for the inmates convicted of a crime
2 against a household member and presents credible
3 evidence of a history of criminal domestic violence
4 suffered at the hands of a household member.

5 The defendant has the burden of proof by a
6 preponderance of the evidence of showing she suffered
7 criminal domestic violence at the hands of the victim.
8 The attendant facts of the date of the crime here,
9 December 23rd 2006, have some bearing, but that's not
10 historical. What history led up to that, and I think,
11 you know, corroborates and ratifies what occurred, It
12 all must be considered. And we have addressed all of
13 that in our brief.

14 In this particular instance, Lou Ann Robinson
15 never denied the fight between she and Willie Dunmore.
16 She did not deny the facts and circumstances. What she
17 put up was a defense of self defense and battered
18 woman's syndrome. The relevant facts at the trial
19 showed that Willie Dunmore was 11 years younger than she
20 was. He was 6 feet tall. Weighed 200 pounds. And on
21 the night of the event had a blood alcohol of .15. He
22 was intoxicated. There is no evidence that Lou Ann
23 Robinson was intoxicated. There is evidence that
24 earlier in the day, in the morning, she had consumed
25 some gin. But the evidence and testimony presented was

1 that she was not drinking in the afternoon or evening
2 hours when this incident occurred around 8:30, 8:45 p.m.
3 in her bedroom.

4 If Your Honor recalls those facts, it was very
5 cold that December. She was fixing food in her bedroom,
6 in the bed. And there was the occasion of having the
7 knife there. There is no question that she and Willie
8 Dunmore had been living together for some time. There
9 is no question he had a shotgun and shells in the
10 bedroom. The facts are that she did testify she cut him
11 with a knife, after being assaulted with a shotgun,
12 shoving her, pointing at her, threatening her. And she
13 also got cut in the fray in the -- on her chest. She
14 had multiple bruises.

15 In this fight with Willie Dunmore, he was mad
16 apparently because she had left earlier. He had learned
17 from this Lester who is the boyfriend of Josephine
18 Mouzon, that they had gone up to Harry Huell's to buy
19 some cigarettes and some beer. And the reason Josephine
20 Mouzon was involved was Lou Ann had no transportation.
21 She never did. And one of the issues in this case
22 historically, was his controlling, jealous attitude. He
23 didn't like her to leave the house. He didn't like
24 Josephine Mouzon, but Josephine was her friend. And I
25 guess, for lack of a better description, sort of like a

1 taxi cab driver. She takes her out and takes her.

2 And when he found out she had gone to Harry
3 Huell's he came in, in a rage. And that's what led up
4 to this circumstance. That was documented both by Lou
5 Ann Robinson and Josephine of this incident and the fact
6 it did happen. Josephine Mouzon testified about
7 historical evidence and testimony. Of course the
8 defendant Lou Ann Robinson testified about it. What was
9 most important in this particular case was Dr. Veronen
10 who testified. Dr. Veronen as the court knows, Louis
11 Veronen, is a nationally recognized expert in the
12 battered woman's syndrome defense.

13 Interestingly enough she has worked with the
14 prosecution in this case, Mr. Sabb, when he was
15 prosecutor and Ms. Barr in helping prosecute cases. She
16 assists in criminal cases where there are victims of
17 abuse. And she testified in those cases. But she also
18 has testified in cases for the defense. She has worked
19 on about 80 some odd cases. She's actually testified in
20 about 70 some odd cases. Our State Supreme Court has
21 recognized her individually in State vs. Grubbs as an
22 authority on this subject, and as a national expert.
23 And she's also -- this defense of course was adopted by
24 our courts many years ago in the case interestingly
25 enough, the State vs. Robinson. Not being Lou Ann

1 Robinson. But that defense is well recognized, Your
2 Honor.

3 Now in the particular instance, let's go
4 directly to the heart of the issue. The heart of the
5 issue is whether or not there is or by a preponderance
6 of the evidence was it shown during the trial, was there
7 evidence of historical abuse. And that wraps into what
8 occurred on that particular night as forming the basis
9 of it. The witnesses in that particular instance were
10 Josephine Mouzon. Josephine testified that Willie
11 Dunmore was controlling. He did not want Lou Ann
12 Robinson to do anything. He didn't want her to leave
13 the house, he was jealous of her. Lou Ann talked about
14 it in her testimony about going to clubs where he got
15 mad because she even spoke to another man. He was
16 controlling and physically abusive to her.

17 I saw on two occasions from Thanksgiving until
18 Thanksgiving and Christmas when this occurred, two
19 violent arguments where he slapped her up side the head
20 as she described on one occasion. The second occasion
21 at her house, shoved her because he went to her house,
22 and didn't want her there. And shoved her towards the
23 door. Shoving her to get her out of the house. And she
24 said it was physically abusive and he was controlling.
25 And that was why they would have to sneak around. She

(1 said basically I just carried her out to get cigarettes
2 sometimes, or buy a few groceries or do something when
3 Willie Dunmore was not around.

4 What happened to change the environment, because
5 drinking more right around Thanksgiving. And that
6 really progressively got worse this abuse, because he
7 was staying around the house, drinking, not working and
8 not doing anything. It just got to be a much
9 progressively worse situation during October, November,
10 and December leading up to his death. Well before he
11 had controlling, but it wasn't bad because he was gone
12 working at Shaw Air Force base.

(13 Lou Ann Robinson said he really -- he was bad,
14 but he was much worse when he was drinking. Why is that
15 important, because of this particular night when he came
16 in, his blood alcohol level was .15, which is highly
17 intoxicated. He was jealous. He would also be checking
18 on her. He even recorded conversations. He had a
19 recorder in the house. He did everything he could do to
20 control who she talked to on the telephone. She only
21 had a land line. She could not go anywhere. And those
22 are all characteristic and classic of spousal abuse.
23 That's according to the testimony of Dr. Veronen.

(24 He kept that weapon and shotgun shell right in
25 the bedroom so she could see it. You know, this is

1 something you would be aware of. And the only time he
2 ever used it was against her when he pulled it out.
3 Now, Your Honor, please, you can take that lay testimony
4 and, but it does corroborate each other. But what to me
5 and our position would be, Dr. Lois Veronen' testimony
6 in and of itself meets the burden of proof in this case.
7 No. 1, because she is an expert. No. 2, she's been
8 recognized as an expert not only by the prosecution, but
9 the defense. The prosecution and the defense have used
10 her in the past.

11 She's been recognized as a preeminent expert by
12 our Supreme Court. She was engaged to investigate this
13 case to determine whether or not this was a battered
14 syndrome, battered woman syndrome case. What she did
15 and what she described in her testimony is significant.
16 She said that -- I met with her on three different
17 occasions. I interviewed her for 18 and a half hours.
18 I found it difficult because of her memory was
19 somewhat impaired for two reasons. The first one was,
20 women who are subject to abuse have mental lapses. They
21 have a form of amnesia that occurs, because they want to
22 put it out of their minds. And it makes it difficult to
23 extract information out of it. And definitely in this
24 particular instance, Lou Ann Robinson manifested those
25 symptoms. Exasperated by the fact that after the crime

1 was committed, Lou Ann Robinson had a stroke, which was
2 verified by scans and medical records.

3 And Dr. Veronen said it was important not just
4 to interview somebody, not just to look at the arrest
5 records and the circumstances of the crime, but also to
6 test the person; to look at their medical records, to
7 look at their criminal past, to look at their medical
8 past, and to most importantly, do testing. And it's the
9 the culmination of all of those circumstances she used
10 in making her determination and providing her opinion.
11 In this particular case, her work was extensive. And
12 she testified at length about that extensive information
13 from psychological records, criminal background,
14 interviews and the like.

15 She said that in cases where women have been
16 involved in fights and arguments and their husbands
17 died; shot, she's testified in those cases. You know,
18 and I am sure, Your Honor, has experienced, you know,
19 most criminal domestic or a lot of murder cases, a high
20 percentage of them are between spouses and husbands. Or
21 between spouses, husband and wife. A boyfriend and
22 girlfriend.

23 Back in the late 90's and early 2000's, South
24 Carolina was Number 1 in the nation in murder involving
25 criminal domestic violence. High instances were

1 reported in African Women that suffered from this type
2 of violence. So with the culmination of those both
3 factors, it just demonstrates it's a huge problem as we
4 all know it. And it was huge problem in this
5 particular case.

6 In this instance, she offered several opinions
7 to a reasonable degree of medical certainty. First, it
8 was her opinion that Lou Ann Robinson was desensitized
9 to the situation about the situation. By this she meant
10 that she would respond to violence in a traumatic
11 reaction, which might heighten because of her fear; a
12 much greater fear. And it may be a light, bright
13 reaction, which would have been more likely given the
14 history. And she said this was a potential for an
15 explosive situation. She had a previous history of
16 mental issues and problems existing before she came to
17 South Carolina.

18 She had problems because she had been
19 traumatized before in other relationships. She was
20 vulnerable to begin with. And then couple it with the
21 circumstances that occurred here, it just made it even
22 worse. She said that her reaction was like a person
23 becoming numb, like nothing really had happened. She
24 said to reasonably degree of medical certainty and
25 psychological certainty Lou Ann Robinson was a battered

1 women within the defense as of December 2006, describing
2 her as definitely a battered woman. You can't get any
3 stronger than that. What evidence existed that she had
4 been actually battered in this, came from Glen Rose.

5 Now the record calls Glen Rose, Dr. Veronen,
6 Mr. Floyd by different last names. The record got
7 nulled. But Dr. Veronen is there. But Glen Rose
8 actually was my law partner's Jennifer's mother, who
9 worked with her. And she's also a registered nurse.
10 And when we took this case in on December 28th, which
11 would have been five days afterwards, we took it to the
12 jail to photograph and document as a registered nurse.
13 The apparent evidence of physical abuse that existed on
14 our client Lou Ann Robinson.

15 Now obviously, you can't tell the source
16 of it. Obviously you can't say it occurred that
17 night, but obviously you can certainly describe
18 what occurred and what she had and whether or not
19 it was consistent with what she testified about.
20 She testified that she had bruising on her right
21 forearm. A healing laceration on her upper left
22 chest. A raised area on the inner aspect of her
23 right foot. A swollen area there. And a bruise
24 on her left wrist area.

25 All of those were consistent with the

1 combat that took place in that bedroom when the
2 stabbing occurred. And of evidence of abuse,
3 which corroborates Lou Ann Robinson's testimony
4 and in the effect the historical abuse that had
5 been taking place that was documented by Dr.
6 Veronen and in fact Ms. Mouzon. An interesting
7 little tidbit in this case, and the reason we put
8 Officer Dean McCrea, Kingstree Police Department,
9 on this stand, he interviewed the deceased at the
10 jail. He said I happened to be there, and I just
11 thought it was important the man may die in the
12 hospital. Well in the hospital. And right before
13 he died, and to see if he could get a dying
14 declaration to see what happened.

15 He said, you know, a lot of times, people
16 will be willing to talk and you can get some very
17 valuable information. I felt as a police officer
18 and the only one on the scene, it was important to
19 at least take advantage of this opportunity. He
20 had been an EMS worker for I think at least 11
21 years. And seen a lot of people die. And he had
22 done this on numerous occasions. And he tried to
23 get Willie Dunmore to make a statement. He said,
24 who did this to you. Why did it happen. He said
25 he was perfectly lucid. And he wouldn't tell you.

1 He said he just would not tell him who did it. He
2 said, well is somebody threatening you, are you
3 scared. Or is there any reason why. He said he
4 wouldn't tell him. He just no, he wouldn't answer
5 the question.

6 Now why is that significant? Well if you
7 knew he was dying, and he obviously was because he
8 died within minutes, if not seconds, after this
9 conversation. He knew that he had abused his
10 girlfriend. He knew that he had put her in harm's
11 way. He knew he was drunk. He knew he had come
12 home and caused a fight. And he knew it wasn't
13 her fault. All he had to do was say, she stabbed
14 me or she killed me. None of those words which
15 are indicative again of someone who had been
16 abusing in this particular instance and didn't
17 want to talk.

18 It's just coincidental, and it's
19 interesting for the court to consider and that's
20 why we put Officer McCrea. Because normally you
21 would expect a person to identify who stabbed him.
22 And he would not do it in this particular
23 instance. If, Your Honor, please, I think perhaps
24 the most important testimony, I've reviewed most
25 of it, are the opinions of Dr. Veronen. They

1 start on page 530 of the excerpts, and I would ask
2 the court to visit that testimony. She testified
3 at length as to her investigation as to what
4 battered syndrome means. There are records that
5 she reviewed. She of course is very credible. I
6 think even the solicitor found her credible. And
7 she's work for and hired her before. She's
8 testified in many cases as we will find on page
9 532. There are a number of cases. And 533. I am
10 referring to the heavy bold numbers, and not the
11 transcript numbers. This is a Transcript of
12 Record, bold numbers; small typed letters of a
13 transcript of record.

14 THE COURT: Right.

15 MR. JENKINSON: But we can key to the big
16 ones. She then talked about South Carolina being
17 Number 1, in terms of men killing women. How
18 common it occurs. She defines as criminal
19 domestic violence and what it is. And the
20 acceptability of African American women being
21 susceptible to this type of violence. I would
22 call the court's attention to the evidence that
23 she considered of the stroke and the previous
24 problems.

25 Her first opinion appears on page 546.

1 She said that to a reasonable degree of
2 psychological certainty to the extent that this
3 onus continued, and she's talking about the
4 previous traumatic stress disorder she had, the
5 depression that she suffered prior to 2006, her
6 psychological profile was that she was damaged
7 goods coming into this relationship and this
8 relationship was such that made it much -- made
9 her much more susceptible to the violence that
10 occurred her.

11 The opinion Number 2, appears on Page 547.
12 And her opinion to a reasonable degree of
13 psychological certainty, she was desensitized as
14 she described desensitization. And opinion Number
15 3, appears on 548. I found that she was in a
16 violent relationship and had a psychological
17 reaction of fear at times. And she had a reaction
18 of times of depersonalization. Which means a
19 person becomes numb. Acts like nothing is
20 happening to them. And depersonalization can also
21 be a situation where she herself is experiencing
22 an outside of her own body type thing; such as, if
23 she were watching a movie. That is a common
24 reaction to people in intense violent
25 relationships.

1 One of the -- she also talks about
2 Mr. Dunmore on page 550. She said in fact losing
3 his job for alcohol abuse, were both factors, were
4 things that were given to me as concerns that Lou
5 Ann possessed about the state of their
6 relationship in late 2006. I asked her if she
7 could tell us to a reasonable degree of
8 psychological certainty if Lou Ann Robinson was a
9 battered woman in preparing for this defense, and
10 she responded on 550, in my opinion she was
11 definitely a battered women in December of 2006.

12 She goes on to describe Lou Ann's
13 difficulty in testifying. If you recall, Your
14 Honor, she was not a good witness. She described
15 in her testimony why she wasn't a good witness,
16 because she was battered, because she had the
17 stroke. And because the degree of being battered
18 created a type of amnesia which made it difficult
19 for her to connect up in part, events and
20 circumstances. And she said this is classic,
21 classic evidence of a battered woman and described
22 that in detail.

23 So and it creates what she described on page 551
24 as partial amnesia. She said I saw it at length in the
25 18 hours I spent with her. I saw it in her testimony.

1 This is a classic case of a battered woman based upon
2 her evidence and testimony that you could present.
3 Obviously the jury thought otherwise for other reasons.
4 Or for whatever reason found her guilty.

5 I remember the solicitor making a comment
6 at the end of the case when we were having a
7 colloquy about whether or not this 1/4th statute
8 applied. And she said, Your Honor, it's not
9 anything credible been presented. And she said
10 that it's not credible because the jury didn't
11 believe it. Well, Your Honor, please every single
12 person who is before the court under this statute,
13 is guilty. And wouldn't be in court arguing under
14 this motion for one more sentence if they weren't
15 found guilty. So that does not fly at all in
16 terms of an argument.

17 What the court must look at is simply is
18 the record in this case as Your Honor knows. And
19 the record in this case is lengthy, voluminous,
20 and extremely credible, given not just lay
21 testimony, but layers of witness' testimony,
22 which in turn corroborated each other as we have
23 laid out. Coupled with the fact Dr. Veronen,
24 Dr. Lois Veronen, has so exclusively testified
25 about the historical abuse that has taken place

1 and what happened here. And we would ask the
2 court to apply the statute and the 1/4th rule.
3 Thank you Your Honor.

4 THE COURT: Thank you. Ms. Barr.

5 MS. BARR: Thank you, Your Honor. May it
6 Please the Court. Of course, I agree with counsel
7 as to the burden and what the statute provides;
8 however, obviously, I would disagree as to a
9 number of his recitation of the facts. First, Dr.
10 Veronen has never been used as an expert witness
11 in any case that I prosecuted. When I tried the
12 case against the defendant Ms Robinson, that's the
13 first time I've met. Mr. Sabb has been an
14 assistant solicitor in Williamsburg County for
15 20 years. That was the first time he's ever met
16 her.

17 So I don't want the court to be of the
18 impression that she has in fact testified on both
19 sides of the fence; therefore, she is more
20 believable or more credible. If she has testified
21 on both sides of the fence, it hasn't been in
22 Williamsburg County. Well, Judge, the statute
23 requires that the court make a finding that the
24 defendant has established by a preponderance of
25 the evidence a credible history of domestic abuse

1 at the hands of the decedent. And I emphasize the
2 use of the word credible, because I submit to the
3 court that anybody in that trial listening to Lou
4 Ann Robinson testify, could not say with a
5 straight face that she was credible.

6 Judge, just kind of briefly, to go through
7 the facts of the case, and I'll make references to
8 the record that was graciously provided to me by
9 counsel. This was a case where the victim had
10 been at a cook out or a barbecue of some sort
11 earlier that day. There was testimony in the
12 record that the defendant and the victim were not
13 getting along at this time. There was testimony
14 from a family member of the victim, that a week
15 before that the victim had confided in his
16 brother, that he could not deal with the
17 relationship anymore. He was going to leave the
18 defendant.

19 Cell phone records were placed into
20 evidence showing that within the week, well, I
21 guess, within a month prior to his death, the
22 victim had actually started communicating with his
23 wife again, Ms. Dunmore. There was a cell phone
24 call placed by the victim to his wife at 3 or 4
25 o'clock in the morning. She testified at trial

1 that they had talked about reconciling their
2 relationship. And it was -- the evidence was
3 proffered under the state of mind exception.

4 Well the victim according to the people
5 who saw him at the cook out, leave. He's in a
6 good mood. He had been drinking. Of course a lot
7 of people had been drinking at the cook out. He
8 is on the side of the road. Judge, I don't know
9 if you remember or not, but when the victim was
10 stabbed, he got in his car and left. Apparently
11 lost control of the vehicle and crashed it into a
12 ditch. He goes to the hospital. He's treated.
13 He tells the EMS worker that his girlfriend
14 stabbed him. Or makes reference to his girlfriend
15 when he points to the wound. The police officers
16 come out to Ms. Robinson's house, some three hours
17 after the stabbing happened. It was 12:00
18 o'clock, 12:30 in the morning. They knock on the
19 door. She doesn't answer the door. They blow the
20 horn, sound the horn. She doesn't come to the
21 door. They leave and go to her neighbor's house.
22 Calls her. Lou Ann Robinson answers the phone and
23 says, I am sorry you have got the wrong number.
24 Or Lou Ann Robinson doesn't live here.

25 There is testimony in the record that she

(1 lied to the the police and said, that, you know,
2 you have my wrong residence. So they then get her
3 to finally come to the door. Take her down to the
4 police station. She gives this bizarre statement
5 to the police that the victim came home, was in
6 some sort of bad mood; that he has alternatively
7 assaulted her with a pocket knife. Then turns
8 around and assaults her with a shotgun. She
9 allegedly stabs him in self defense. He leaves
10 the residence. All of a sudden she is so
11 frightened that he's going to come back. She
12 takes the shotgun, she takes the knife that she
13 stabbed him with, goes out of her house, throws
14 both of those weapons in a wooded area. And then
15 comes back in the house, and I guess she goes
16 back to bed.

17 At the trial of the case, it was really
18 interesting, her testimony, because a lot of times
19 in trial you expect there to be some contradiction
20 on cross examination. I mean that's the nature of
21 cross examination. But I have never seen a
22 witness contradict her own testimony in direct as
23 much as I saw the defendant contradict herself in
24 her testimony. Judge, and this was what was kind
25 of interesting. She says on direct examination

1 through her lawyer, that at first the victim came
2 into the room, he was happy. Then all of a sudden
3 he asked her, well I tried to call you, why didn't
4 you answer the phone. She said she went out to
5 get some cigarettes and went to the store.

6 And the interesting thing about that
7 story, Judge, she went to this place called Harry
8 Huell's. Mr. Jenkinson referenced that. Harry
9 Huell's is one of these little hole in the wall
10 nightclubs in Williamsburg County. That place
11 appears on a lot of police reports. But she goes
12 there purportedly to get cigarettes and beer. Now
13 one of the witnesses who testified on behalf of
14 the state said that one of the reasons why the
15 victim wanted to break up with her is because she
16 was using drugs. An objection was made during
17 that testimony. Your Honor instructed the jury to
18 disregard it. But her expert witness, the one
19 Dr. Veronen that they kept referring to, testified
20 that she told her that she had a history of drug
21 use.

22 So it was consistent with that. But in
23 any event, she says he comes into the house. She
24 -- he then goes to the bathroom. After he goes to
25 the bathroom, he comes and he pulls his pocket

1 knife on her. She doesn't know where it came
2 from. He pulls his pocket knife on her. Cuts
3 her. Then picks up the gun. Then hits her with
4 the butt of the gun and she stabs him in self
5 defense. She later comes back in the same direct
6 testimony and says, no, he doesn't go to the
7 bathroom first. He stabs me first. Then he goes
8 to the bathroom. Then he gets the gun. And then
9 all this assault supposedly happened.

10 The pathologist testified that the victim
11 was stabbed in the heart. Essentially bled to
12 death. There were also defensive cuts to the
13 victim's left hand. When she -- he leaves out,
14 she says he calls back after having been stabbed
15 in the heart, after having been so injured that he
16 apparently lost control of his vehicle and
17 crashed, she says he calls back and says, I am
18 going to get you.

19 Mr. Sabb on cross examination asked her,
20 wait a minute, our cell phone records show that
21 the call lasted 2 minutes right. She acknowledged
22 that. He said, well what all did he say. He
23 said, I am going to get you. He said, well that
24 doesn't take 10 minutes. And she recognized at
25 that point, wait a minute. And it was bizarre,

1 because she then decides to say, well he was
2 stuttering and he was saying, I, I, I am going to
3 get you. Trying to stretch it out to 2 minutes
4 to account for the time frame and the phone call.
5 So there are all of these inconsistencies on her
6 direct testimony and on her examination which
7 makes her testimony not worthy to be believed.

8 Now when we talk about the statute
9 requiring that there be a credible history of
10 domestic violence, Judge, under Section 16-25-20
11 domestic violence is defined as a person guilty of
12 domestic violence if a person causes physical harm
13 or injury to the person's own household member.
14 Now they will attempt to say that her, the history
15 of the alleged domestic abuse was properly
16 corroborated. And they use Ms. Josephine Mouzon
17 as a witness.

18 Ms. Josephine Mouzon testified to two
19 instances. One she says she saw the victim on
20 some prior occasion hit Ms. Robinson up side her
21 head. And those one words that she used. And I
22 think that's in his brief. There was another
23 incident where she says that she saw the victim
24 and the defendant argue, and the victim pushed the
25 defendant in the back, and she stumbled. That's

1 it. That's all the corroborating evidence that
2 they have on this -- for this one particular
3 witness. Judge, there was no evidence in the
4 record that there was actual physical harm or
5 injury caused to the defendant as a result of
6 those instances. Nobody testified that she
7 complained of pain. Nobody testified that she
8 cried. Nobody testified that she went to the
9 emergency room. She didn't even testify to that.
10 She didn't say well he pushed me in the back or
11 hit me up side my head. I felt pain or I had a
12 knot on my head. She didn't even say that.

13 Judge, what is important to know about
14 this case, there was not one single police report
15 showing that the victim ever assaulted the
16 defendant. There was not one hospital ever in
17 their year long relationship, showing the victim
18 assaulted the defendant. He had never been
19 arrested for any act of violence against her or
20 anybody else in his entire life. The domestic
21 violence battered woman's syndrome came up as a
22 direct result of her criminal prosecution in this
23 case.

24 She did not even see this expert until two
25 and a half years after she was arrested for the

1 murder of the victim, Willie Dunmore. And when I
2 cross examined Dr. Veronen, I asked her, I said,
3 wait a minute now, you're telling me that you have
4 reached the opinion that this defendant is a
5 battered woman based on her prior history of being
6 a victim of domestic abuse. The fact that she had
7 an employment of financial problems. She had a
8 prior history of drug use; that she was
9 desensitized to violence. Essentially she's fast
10 on the trigger is how I would simplify it.

11 And I asked her, and she conceded. Well
12 all of those facts would make her fit the criteria
13 of being a batterer. And she had to concede that
14 point. She had never interviewed anybody about
15 Willie Dunmore. Her opinion was based solely on
16 the statements of the defendant. She had not even
17 seen the autopsy report of the victim in the case.
18 Everything she said was based -- everything she
19 testified to were based on the words of Lou Ann
20 Robinson. And, Judge, she has a clear motive as
21 any, to misrepresent the facts. To quite frankly,
22 lie to the jury, because she doesn't want to
23 convicted of murder. She's clearly biased. She
24 clearly has an interest in having her testimony to
25 be perceived a certain way. And, so, Judge we

1 believe that her testimony is not credible.

2 Your Honor, I have made a copy of the case
3 of the State vs. Hawes. That's H-A-W-E-S. It is
4 399 S.C. 211. It's a 2012 Court of Appeals
5 opinion. Judge, that case is significant and I
6 recite it, because in that case the defendant, a
7 male, was convicted of voluntary manslaughter
8 against his wife. He presented evidence that he
9 was the victim of domestic violence related to his
10 wife. In support of that, he had a -- or he
11 provided proof that the wife had been convicted of
12 domestic violence against him some ten years
13 before this happened. At the time he killed her,
14 she had two pending indictments against her for
15 domestic violence; wherein, he was the victim.

16 There was another incidence that
17 apparently was not recorded to the police. But
18 the deceased victim, his wife, had stabbed in the
19 hand. Although law enforcement wasn't called, he
20 was treated at the emergency room. So there was a
21 record of that. There was also voice mail
22 messages that the defendant in that case presented
23 in evidence where the victim had left threatening
24 calls on his cell phone or voice mail that
25 corroborated that he was the victim of domestic

1 violence.

2 And, Judge, I'm not certainly suggesting
3 that you have to have that level of proof in every
4 single case. But certainly when you're talking
5 about a case where typically the victim and the
6 defendant are the only witnesses, it certainly
7 makes it more credible when you have sufficient
8 corroborating evidence that some type of battery,
9 some type of history of abuse occurred. Your
10 Honor, I have also included and I will hand to the
11 court, the case of the State v. Groom. That's 540
12 S.E. 2d, 99. It's a 2000 Supreme Court case. In
13 that case a woman was convicted of voluntary
14 manslaughter. She took the position that she was
15 entitled to a finding by the court; that she was
16 the victim of domestic violence. The trial court
17 held and that decision was affirmed on appeal;
18 that the legislature did not intend that the mere
19 production of evidence to automatically result in
20 earlier parole eligibility when the enacting
21 statute enabling a defendant who was subject --
22 subjected to a history of domestic violence from
23 the victim, to be eligible for parole after the
24 service of 1/4th of the sentence.

25 Instead the legislature intended a

1 defendant to present credible evidence of such
2 domestic violence. The opinion goes on to say
3 that as far as far as one can determine, credible
4 evidence means believable. And the standards
5 should be by the greater weight of the evidence.

6 They found, the Supreme Court found in
7 this case that credible evidence is defined as
8 evidence that is worthy of belief. Trustworthy
9 evidence. Trustworthy is defined as worthy of
10 trust. Dependable, reliable. Contrary to the
11 appellate's argument, the statute requires a
12 defendant to do more than just simply produce
13 evidence of a history of domestic violence. Which
14 she believes to be credible. Use of term credible
15 evidence indicates that the legislature intended
16 the defendant's evidence to be in fact
17 trustworthy, not simply plausible.

18 And, Your Honor, I think that this
19 language is decisive. Accordingly, the defendant
20 must do more than simply present evidence. She
21 must persuade the trial judge that her evidence is
22 reliable. We find that the legislature did not
23 mean the mere production to automatically result
24 in earlier parole eligibility. If were in fact
25 the case as the appellate suggests, then all

1 individuals who are convicted of a defense against
2 a household member would be eligible for parole
3 after service of 1/4th of their prison term,
4 simply by testifying that they were the victim of
5 domestic violence. And I will hand those cases to
6 the court and to opposing counsel.

7 THE COURT: Okay.

8 MS. BARR: I beg the court's indulgence.
9 Your Honor, I have prosecuted a number of domestic
10 cases, and I understand the psychology of, or I
11 like to think I do anyway, understand the
12 psychology of battered woman syndrome. And what
13 doesn't make sense to me and what I would submit
14 to the court; is that, the defendant if she were
15 in fact truly a victim of domestic violence, truly
16 acting in self defense that night, all of her
17 actions after she stabbed the victim, are
18 inconsistent with an innocent person or a person
19 who is a victim of domestic violence. She never
20 calls the police after she claims she was stabbed
21 with a knife, struck with the butt of a gun. She
22 never calls the police. She waits at the home for
23 3 hours. She takes the weapons that she claims
24 the victim used to assault her with, and puts them
25 out in an area where he has access to. He's

1 living in the house. He's got a key to the house.
2 So there was nothing to prevent him from going and
3 picking up that same knife, that same gun, coming
4 back in the house and harming her if he really
5 intended to harm her.

6 When she goes to the police, she admits on
7 the stand that she lied to the police. Because
8 she told the police, the victim took the shotgun
9 out of the residence. And so when they confront
10 her and they see that that's not the case, she
11 admits in court for the first time, that she lied
12 to the police because she's the one who took the
13 firearm out of the house. Judge, the statute
14 requires that the victim or the defendant present
15 credible evidence of domestic violence.

16 I've already emphasized the word credible.
17 But, Judge, I would also emphasize the portion of
18 that statute that says at the hands of the victim.
19 And I emphasizing that only because their expert
20 witness who was paid \$1500 by the way, got on the
21 witness stand and said that she found that
22 Ms. Robinson had been the victim of prior domestic
23 abuse. And Mr. Jenkinson argued to the court
24 today that that already made her more susceptible
25 or already made her or weakened her in some form

1 or fashion.

2 Judge, if she were the victim of domestic
3 violence and he wasn't the cause of her battery,
4 then she cannot reap the benefits of this statute
5 because she was not the victim of any domestic
6 violence, credible domestic violence, that was
7 inflicted upon her by the victim.

8 The witness testified that she had a
9 history of post traumatic stress disorder. And
10 testified about all these things that were going
11 on with her. Judge, that resulted from situations
12 that were outside the control of the victim. Your
13 Honor, I would -- the last thing that I would add;
14 is that, two days before Christmas 2006,
15 Lou Ann Robinson took from the family of Willie
16 Dunmore, something she can never give back. A
17 week before Christmas 2009, a jury convicted her
18 of voluntary manslaughter. She comes into this
19 court now less than a week before Christmas 2012,
20 and she is asking the court to make a finding that
21 would essentially make her eligible for parole
22 right now after having serving three years in the
23 department of corrections for a taking a life.

24 Judge, she still owes a debt to society,
25 and she hasn't paid yet. She is not entitled to a

(1 finding that she is eligible for early parole,
2 because she has not presented credible evidence in
3 her own case that has had a history of domestic
4 violence with this victim.

5 Judge, we would respectfully implore the
6 court to issue a finding that she is not eligible
7 for early parole under 16-25-90. Thank you.

8 THE COURT: Thank you.

9 MR. JENKINSON: Briefly, Your Honor, I
10 just made some notes, and I would just like to
11 respond to a few of them.

12 THE COURT: Okay.

(13 MR. JENKINSON: The first one I found
14 interesting and I don't deny that's it true, but I
15 just think it is inconsistent. This court is
16 bound by the record in this case. The record in
17 this case says that Dr. Lois Veronen says she's
18 worked with Mr. Sabb and Ms. Barr. Well that's
19 pretty significant she says, because she says
20 today it never happened. I went back and just
21 perused quickly the cross examination of
22 Dr. Veronen by Mr. Sabb. Nowhere did he raise
23 that issue. Nowhere does it appear in the record
24 that she is contradicted on that point. So I
25 thought that was interesting, because we are

1 confined to the record. And if that would have in
2 fact been true, I thought he would have axe
3 murdered her in the courtroom over using them in
4 the testimony when in fact that didn't occur. So
5 that didn't occur based on the record. The
6 solicitor adequately -- appropriately says it must
7 be credible testimony.

8 Your Honor, please, and I am not
9 suggesting you toss out Lou Ann Robinson's
10 testimony. But just for example, let's just white
11 it out. What credible historical evidence is in
12 the record as a result?

13 She talked about two instances, but she
14 left out the most critical point that Josephine
15 testified about. She said the guy was controlling
16 and jealous all the time. And these two instances
17 just popped up as evidence of the controlling and
18 violence. That's why she had to slip and get had
19 and talk about how controlling which is something
20 very important in the domestic abuse situation.
21 Left that out. That's very important and very
22 credible from coming from Josephine. Then she
23 goes and says well Lou Ann is not credible,
24 period. She wasn't a good witness. We know that.
25 But we also know that she had a stroke. We also

1 know that she was battered. And we also know that
2 some of it the jury believed. She was charged
3 with murder, Your Honor. She wasn't found guilty
4 of murder. The jury had to believe some of what
5 she said to find her get guilty of a lesser
6 charge.

7 So I think the jury if they are speaking
8 to us today, they're saying yeah, we believe part
9 of what she said. Disagreeing with the solicitor.
10 She made a great issue out of the fact that she
11 went to the police that night and gave a
12 statement. She wants to put drugs and alcohol in
13 it, but nowhere in any police testimony or report
14 in this case, did they testify that she was on
15 drugs or alcohol the night when they questioned
16 her. Nowhere.

17 There is no evidence of her drinking or
18 being on drugs that night. Period. And she had
19 had some alcohol earlier in the day. That had
20 been in the morning probably 12, 14 hours before.
21 She gave this bizarre statement, because she had
22 thrown these weapons away. The reason she said, I
23 threw the weapons out, because I was afraid he
24 was coming back. I didn't know he was dead. They
25 didn't tell her if you will recall, Your Honor,

1 that Willie was dead.

2 When they went to her house, they took her
3 in and took a statement. And at the end of the
4 statement, the officers testified and cut it off.
5 And she said where is Willie. They said, oh,
6 Willie is dead. She didn't even know he was dead.
7 She was going on protecting him to an extent in
8 the same statement, because she didn't even know
9 he was dead. And they may say well he could have
10 come back and found these weapons. She was afraid
11 he was going to come back and use these same
12 weapons against her.

13 She's testified, I was afraid he was going
14 to come back and get the same knife. So I took
15 that knife and got rid of it. I took that shotgun
16 that he had been using and got rid of it. And
17 said well he could have found it. Well that
18 knife, when she gave the statement about that,
19 police officers couldn't find it. Well if they
20 couldn't find it, I don't think Willie Dunmore
21 could have found it. You know, it's interesting
22 is the person who found it. This guy sitting by
23 me. He went out in the house and searched it.
24 Outside in the woods and found the murder weapon
25 and turned it over to the police.

1 So none of that fits as far as what the
2 solicitor's argument. What the true facts are in
3 this case. And what the record contains in this
4 case.

5 They went on and they talk about, her
6 whole argument is really about the credibility of
7 Lou Ann. But obviously, she must have been
8 somewhat credible because the jury believed her,
9 to give her a less sentence. Now she -- she
10 talked a little bit about Dr. Veronen. And
11 Dr. Veronen only considered the testimony of Lou
12 Ann Robinson. That's not what the record says,
13 Your Honor.

14 On cross examination she was asked at
15 length about everything that she looked at. And
16 she goes into great length at 558, 569 on cross
17 examination. We don't have testifying as to what
18 she looked at. What did she rely on. She said I
19 relied on the psychiatric history at 558, and
20 psychological history. And anything else.
21 Interviews. What else did you review, your police
22 report. Yes, I did. And the statements were
23 given. Yes, I did. Did you see photographs.
24 Yes, I did. Did you review the police report.
25 Yes, I did.

1 What else did you review. That may be all
2 she said. But she also did psychological testing,
3 which was very important to determining whether or
4 not this was credible information, and to build
5 her case and determine whether or not she was a
6 battered woman. In this case clearly.

7 So Dr. Veronen did a lot more than the
8 solicitor suggests based upon what the record in
9 this case says. And we rely again on the record
10 in this case. She says that well there was no
11 police report of any preexisting problems, or any
12 medical records to show that she had been abused
13 before. Plenty of cases in domestic abuse.
14 There's no record of it, because they are scared
15 if they don't turn somebody in. That's the
16 control aspect of it.

17 They're scared to turn them in because of
18 what may happen. That's not usual in domestic
19 abuse cases. I don't know what else to suggest,
20 Your Honor, but to tell you that our position is,
21 there is plenty of credible evidence in this
22 record that Dr. Veronen which we take the position
23 in and of itself, just based upon her testimony,
24 the court could find that the defendant had met
25 her burden of proof alone. But when that's

1 coupled with the credible aspects of the defendant
2 testimony, the credible aspects of the wounds she
3 suffered, the credible aspects of Josephine
4 Mouzon, it all goes to a very clear picture of a
5 history well documented, of physical abuse at the
6 hands of the deceased and victim in this
7 particular case.

8 And, Your Honor, we would urge the court
9 to apply the 1/4th rule parole eligibility.
10 Because that's exactly what the legislature
11 intended. No, it's not automatic. There is
12 nothing automatic in this world. But the burden
13 of proof has been met. It's not by the greater
14 weight, and it's not by the proof beyond a
15 reasonable doubt. It's just a preponderance of
16 the evidence. And we think we have met that
17 test. And we thank Your Honor for your time,
18 right at the holiday season. I know we'd all
19 rather be other places, but we've got to do what
20 we've got to do.

21 And, Merry Christmas, Your Honor.

22 THE COURT: Okay. You are all both done
23 an excellent job in presenting your cases. I will
24 review this record and let you all know something
25 shortly.

(1 MS. BARR: Thank you, Your Honor.

2 --End of Requested Transcript of Record--

3

4

5

6

7

8

9

10

11

(12

13

14

15

16

17

18

19

20

21

22

23

(24

25

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Lou Ann Robinson, Appellant.

Appellate Case No. 2009-148966

Appeal From Williamsburg County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-574
Submitted October 1, 2012 – Filed October 24, 2012

AFFIRMED IN PART AND REMANDED IN PART

Appellate Defender Elizabeth Anne Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, Senior Assistant
Attorney General Harold M. Coombs, Jr., all of
Columbia; and Solicitor C. Kelly Jackson, of Sumter, for
Respondent.

PER CURIAM: Lou Ann Robinson appeals her conviction of voluntary manslaughter, arguing the trial court erred in charging voluntary manslaughter. Additionally, she argues the trial court erred in failing to make a finding under section 16-25-90 of the South Carolina Code (Supp. 2011), which provides early parole eligibility for an inmate convicted of an offense against a household member, when evidence is presented of criminal domestic violence suffered at the hands of the household member.

1. As to whether the trial court erred in charging voluntary manslaughter, we affirm pursuant to the following authorities: *State v. Miller*, 397 S.C. 630, 634-35, 725 S.E.2d 724, 727 (Ct. App. 2012) ("In criminal cases, appellate courts review only errors of law and will not reverse a trial court's decision concerning jury instructions unless the trial court abused its discretion."); *id.* at 635, 725 S.E.2d at 727 ("An abuse of discretion occurs when the [trial] court's decision is unsupported by the evidence or controlled by an error of law."); *State v. Moore*, 374 S.C. 468, 473-74, 649 S.E.2d 84, 86 (Ct. App. 2007) ("This [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial [court's] ruling is supported by any evidence."); *State v. Johnson*, 333 S.C. 62, 65, 508 S.E.2d 29, 31 (1998) ("To warrant a court's eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter."); *State v. Tyson*, 283 S.C. 375, 379, 323 S.E.2d 770, 772 (1984) ("Voluntary manslaughter is the unlawful killing of a human being in the heat of passion upon sufficient legal provocation."); *State v. Starnes*, 388 S.C. 590, 598, 698 S.E.2d 604, 609 (2010) ("[F]ear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion.").

2. As to whether the trial court erred in failing to make a finding regarding Robinson's eligibility for early parole: Section 16-25-90 of the South Carolina Code (Supp. 2011) states an inmate shall be eligible for parole after serving one-fourth of his or her prison sentence when the inmate was convicted of a crime against a household member and presents credible evidence of a history of criminal domestic violence suffered at the hands of the household member. "The circuit court must make specific findings in ruling on parole eligibility or ineligibility under § 16-25-90." *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011). "Such a history must be proven by a preponderance of the evidence." *Id.* at 3-4, 707 S.E.2d at 428. We hold the trial court erred in failing to make a finding regarding Robinson's eligibility for early parole under section 16-25-90. Accordingly, we remand for a determination of whether Robinson presented a

preponderance of evidence showing she suffered criminal domestic violence inflicted by the victim.

AFFIRMED IN PART AND REMANDED IN PART.¹

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	Case No.: 2007-GS-45-0152
State of South Carolina,	)	
	)	
Plaintiff,	)	
vs.	)	FACTUAL FINDING IN
	)	ACCORDANCE WITH S.C. CODE ANN.
	)	§16-25-90
Lou Ann Robinson,	)	
	)	
Defendant.	)	

Procedural History

Lou Ann Robinson was indicted by the Williamsburg County grand jury for murder and possession of a weapon during a violent crime during its 2009 term. At trial, Ms. Robinson was convicted of voluntary manslaughter and possession of a weapon during a violent crime for killing Willie Dunmore. The Honorable R. Ferrell Cothran, Jr. sentenced Ms. Robinson to twelve years.

Ms. Robinson appealed the conviction and the Court of Appeals for South Carolina reversed and remanded in part because the trial court failed to make a factual finding regarding Ms. Robinson's eligibility for early patrol pursuant to S.C. Code Ann. §16-25-90. State v. Robinson, Unpublished Opinion No. 2012-UP-574 (October 24, 2012).

Factual Finding Pursuant to §16-25-90

Section 16-25-90 allows an inmate who was convicted of an offense against a household member to serve a quarter of her prison term if she can present credible evidence during trial that she was a victim of a history of criminal domestic violence. Credible evidence requires the defendant to present evidence that is "in fact, trustworthy, not simply plausible." State v. Grooms, 343 S.C. 248, 253, 540 S.E.2d 99, 101 (2000). The definition of "history" is not clearly defined but comparing "the number of prior instances of domestic violence [and] the relative severity of the various instances" appears to be sufficient. State v. Hawes, 399 S.C. 211, 216, 730 S.E.2d 904, 906 (Ct. App. 2012), reh'g denied (Aug. 23, 2012) (declining to define "history" because the Court found the lower court considered the legislative intent of section 16-25-90).

Thus, the "more serious or violent instances of criminal domestic violence would be entitled to substantially more consideration, even though fewer in number, than less egregious, but more frequent instances." *Id.* at 216, 730 S.E.2d 906-07. "Such a history must be proven by a preponderance of the evidence." *State v. Blackwell-Selim*, 392 S.C. 1, 3-4, 707 S.E.2d 426, 428 (2011) (citing *State v. Grooms*, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000)).

In this case, the defense asserts that a history of domestic violence can be proven by the preponderance of the evidence by reviewing the testimony of Ms. Robinson, Josephine Mouzon, Dr. Lois J. Veronen, Mary Glen Ross, and Officer McCrae. Ms. Robinson testified that Mr. Dunmore was very controlling and would get violent with her when he would drink. Ms. Mouzon also testified that Mr. Dunmore was controlling and that she saw Mr. Dunmore on two different occasions physically assault Ms. Robinson. The first alleged assault involved Mr. Dunmore slapping Ms. Robinson upside the head and the other alleged assault involved Mr. Dunmore pushing Ms. Robinson. Dr. Veronen testified as an expert witness in the field of battered women syndrome and she stated that Ms. Robinson is a battered woman who was in a violent relationship with Mr. Dunmore around the time of killing. Ms. Ross testified that she visited Ms. Robinson in jail on December 28, 2006 and witnessed bruises and cuts on Ms. Robinson's body. Finally, Officer McCrae testified that Mr. Dunmore was lucid in the hospital before passing away and was answering all of his questions until he asked Mr. Dunmore about who stabbed him.

Officer Danny McCrae Testimony

The Court finds that there has been no relevant testimony presented by Officer McCrae regarding whether there was or was not a history of domestic violence. The fact Mr. Dunmore would not identify Ms. Robinson as his attacker, how and why he got stabbed, and the location of the incident does not provide the Court with any proof of a history of domestic violence by a preponderance of the evidence. See Transcript of Record at 601-602.

Mary M. Ross Testimony

The Court finds that there has been no relevant testimony presented by Ms. Ross regarding whether there was or was not a history of domestic violence. While the Court acknowledges that Ms. Ross testified that she saw bruising on Ms. Robinson, Ms. Ross did not

testify regarding the source of the bruising and wasn't able to "testify as to how old [the bruises] are." Id. at 590. Without any testimony as to the source of bruising and the age of the bruising, the Court is left to speculate regarding the source of the bruising.¹ Therefore, the Court finds there was no evidence presented during the testimony of Ms. Ross which leads to a finding of a history of domestic by the preponderance of the evidence.

Josephine Mouzon Testimony

The Court finds that Ms. Mouzon has presented evidence of domestic violence but the testimony is found to lack credibility. Ms. Mouzon testified that Mr. Dunmore "hit [Ms. Robinson] ... up side the head." Id. at 413. Ms. Mouzon also testified that she saw Mr. Dunmore "push [Ms. Robinson] in her back and she like stumbled." Id. at 417. Ms. Mouzon also testified that the first time she witnessed a physical altercation between Mr. Dunmore and Ms. Robinson was the Friday after Thanksgiving or 29 days before the incident. Id. at 425. The defense also elicited testimony from Ms. Mouzon that Mr. Dunmore was controlling over Ms. Robinson. Id. at 411. However, Ms. Mouzon was inconsistent during cross-examination which leads the Court to find her testimony lacked credibility. For example, Ms. Mouzon stated during cross examination that she earlier testified on direct that she stopped being around Ms. Robinson. However, she later testified during cross examination that she spoke with Ms. Robinson the Friday after Thanksgiving and again on the day of the incident. See Id. at 423-24.

Applying the definition of history, the Court finds that the short length of time between the alleged domestic violence and the killing of Mr. Dunmore (29 days) and the relative lack of severity of the alleged domestic violence are not sufficient to warrant a finding of a history of domestic violence.

Lou Ann Robinson Testimony

The Court finds that Ms. Robinson has presented evidence of domestic violence but the testimony is found to lack credibility. Ms. Robinson testified that things started going bad between herself and Mr. Dunmore after six months living together and that he became abusive. See Id. at 437-38. Ms. Robinson testified in one altercation that Mr. Dunmore gave her a "black eye." Id. at 443. Ms. Robinson also testified that she remembers the two instances of domestic

¹ It should also be noted that Ms. Ross' observation of the bruising occurred on December 28, 2006 which is 5 days after the incident. Thus, the bruising could have occurred before, during, or after the killing of Mr. Dunmore.

violence that were described by Ms. Mouzon. See Id. at 445-46. The final incident of domestic violence that Ms. Robinson testified about was the altercation that occurred during the night of the killing. See Id. at 463-70. Ms. Robinson also continually mentioned that Mr. Dunmore was controlling because Mr. Dunmore did not let her go places, continually called the house, and recorded her phone messages. However, Ms. Robinson was inconsistent with her testimony. On direct examination, she claimed she called the police for help one time when Mr. Dunmore was drinking and abusing her. See Id. at 453. Then later on cross examination, Ms. Robinson first testified she called 911 on Mr. Dunmore but later recanted her story when the State asked her "would it surprise you that there is not a single solitary nine one one tape from you." See Id. at 485-86. In fact, there was no evidence presented that Ms. Robinson ever called the police on Mr. Dunmore. Ms. Robinson also testified she lied when she initially told law enforcement that Mr. Dunmore threw his shotgun in the woods after the incident which led to his death. See Id. at 479. Ms. Robinson also testified that she had copies of recorded phone conversations that Mr. Dunmore recorded at her home but when asked to present to them by the State she failed to deliver them. See Id. at 488. While these inconsistencies discredit Ms. Robinson's testimony, the most troubling aspect of Ms. Robinson's testimony is based on Dr. Veronen testimony regarding Ms. Robinson's ability to recall information. Dr. Veronen stated that after testing Ms. Robinson "ninety-nine percent of the population was better at holding onto memory. She was definitely in the bottom one, three, four and six percent in terms of memory [recollection.]" Id. at 553. In fact, Ms. Robinson not only demonstrated her lack of memory recollection during her testimony regarding her living situation with Mr. Dunmore but admitted her problem. During cross examination, Ms. Robinson was inconsistent when questioned about whether or not she spent a Christmas with Mr. Dunmore. See Id. at 490-92. Then when Ms. Robinson was pressed by the State, she stated "I had some very, very, very bad time and it just made me – a whole lot of bad years. I can't remember things very good." Id. at 493.

Ms. Robinson testified to several different instances of alleged domestic violence. However, Ms. Robinson's testimony lacked credibility because her testimony was inconsistent and she admitted that she suffered from memory loss. Additionally, Dr. Veronen testified that Ms. Robinson's ability to recall memory is among the lowest in the population. Therefore, the

Court finds that the testimony of Ms. Robinson does not prove a history of domestic violence by preponderance of the evidence because her testimony lacked credibility and the few instances that were corroborated by Ms. Mouzon² are insufficient to trigger section 16-25-90.

Dr. Lois J. Veronen Testimony

The Court finds that Dr. Veronen presented credible evidence that Ms. Robinson has suffered from a history of domestic violence. However, Dr. Veronen's testimony does not satisfy the preponderance of the evidence standard in order to prove a history of domestic violence at the hands of Mr. Dunmore. Dr. Veronen testified that battered women can suffer abuse by controlling behavior such as "situations in which access is restricted to friends, family [and] other people. Restrictions as to cars, going to church, other things, or a frequent monitoring type of behavior or what we call stalking behavior." Id. at 540. Dr. Veronen also testified that she determined Ms. Robinson was "in a violent relationship [with Mr. Dunmore] and had a psychological reaction of fear at times." Id. at 548. However, Dr. Veronen also testified that Ms. Robinson has a "previous history of [domestic violence] predating [the] relationship with Willie Dunmore." Id. at 550. Dr. Veronen also answered "yes" when the State asked "if [Ms. Robinson] gave responses that are consistent with being a battered woman, that [those responses] could relate to the prior relationship. Correct?" Id. at 560. Dr. Veronen was then asked "[d]o you have any way of knowing whether [Ms. Robinson's] responses relate to the prior relationship or the relationship with Willie Dunmore?" Id. at 561. Dr. Veronen responded with "[s]ome aspects of the testing were specific to Willie Dunmore but others were more general." Id. Dr. Veronen also stated that her characterization of Ms. Robinson as a battered woman is due in part to "Ms. Robinson's responses to questions and ... her traumatic reaction to visualization experiences" and that she needed to "trust what Ms. Robinson told [her]." Id. at 559.

The Court finds the analysis by Dr. Veronen problematic because she admits that she relied, at least in part, to her interactions with Ms. Robinson because she stated that Ms. Robinson suffers from memory problems. Additionally, Dr. Veronen stated that "there are

 ² Ms. Mouzon's testimony was also found to not be credible. Thus, the corroboration carries little if no weight.

areas in which [Ms. Robinson's] testimony is compromised definitely by the deficits that [Ms. Robinson] has." Id. at 568.

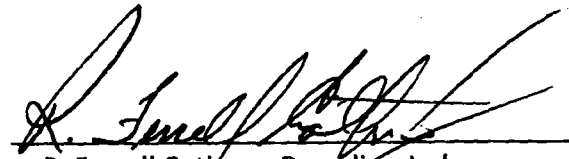
The Court also finds that Dr. Veronen's testimony regarding Ms. Robinson's history of domestic violence prior to her relationship with Mr. Dunmore does not entitle Ms. Robinson to trigger section 16-25-90. The intent of section 16-25-90 was to provide early parole for a person who suffered from a history of criminal domestic violence "at the hands of a household member." S.C. Code Ann. §16-25-90. In this case, it is clear from the testimony that Ms. Robinson is a victim of a history of criminal domestic violence. However, there was not enough credible evidence presented, as stated in this Factual Finding, that shows Ms. Robinson suffered from a history of domestic violence at the hands of Mr. Dunmore.

The Court hereby finds, that the testimony of each individual when considered independently or as a whole is insufficient to find a history of domestic violence by the preponderance of the evidence. The finding of a lack of history of domestic violence by this Court does not condone any instance of domestic violence. However, the standard set in Hawes to trigger section 16-25-90 is not met based on the testimony presented at trial.

AND IT IS SO ORDERED.

At Manning, South Carolina

Dated: Jan. 24, 2013


R. Ferrell Cothran, Presiding Judge

FILED
07 JUL -5 PM 2:12
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

WITNESSES

SHERIFF'S OFFICE

Willie Brown

DOCKET NO. 2007-GS-45- 152
The State of South Carolina
County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JULY TERM 2007

THE STATE
vs.

LOU ANN ROBINSON

ARREST WARRANT NUMBER

K157788 & K157789

D/A: 12/29/06

ACTION OF GRAND JURY

Jane Bill
Ethel Jackson
Foreperson of Grand Jury
Date: 7-5-07

VERDICT

Foreperson of Petit Jury
Date:

Indictment for

**MURDER AND POSSESSION OF A
WEAPON DURING A VIOLENT CRIME**

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
**MURDER AND POSSESSION OF A WEAPON
DURING A VIOLENT CRIME**

At a Court of General Sessions, convened on July 9, 2007, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE -- MURDER

That LOU ANN ROBINSON did in Williamsburg County on or about December 23, 2006, feloniously, wilfully and with malice aforethought, killed one Willie Dunmore, in that she stabbed the victim in chest with a knife, causing his death.

COUNT TWO - POSSESSION OF A WEAPON DURING VIOLENT CRIME

That LOU ANN ROBINSON did in Williamsburg County on or about December 23, 2006, possess or visibly display a knife during the commission or attempted commission of a violent crime, in violation of Code Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

FILED
07 JUL -5 PM 2:12
CAROLYN E. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

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

C. Kelly Jackson

SOLICITOR

WITNESSES

SHERIFF'S OFFICE

Willie Brown

ARREST WARRANT NUMBER

K157788 & K157789

D/A: 12/29/06

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: *7/2/09*

VERDICT

Foreperson of Petit Jury

Date:

AMENDED

DOCKET NO. 2007-GS-45-

152

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JULY TERM 2009

THE STATE

vs.

LUEANN~~LOU ANN~~ ROBINSON

Indictment for

MURDER, VOLUNTARY
 MANSLAUGHTER AND POSSESSION
 OF A WEAPON DURING A
 VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

CAROLYN E. WILLIAMS
 CLERK OF COURT
 KINGSTREE, S.C.

09 JUL -2 AM 1:33

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
**MURDER, VOLUNTARY MANSLAUGHTER
AND POSSESSION OF A WEAPON
DURING A VIOLENT CRIME**

At a Court of General Sessions, convened on July 6, 2009, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - MURDER

LUEANN

That ~~LOU ANN~~ **ROBINSON** did in Williamsburg County on or about December 23, 2006, feloniously, wilfully and with malice aforethought, killed one **Willie Dunmore**, in that she stabbed the victim in chest with a knife, causing his death.

COUNT TWO - VOLUNTARY MANSLAUGHTER

LUEANN

That ~~LOU ANN~~ **ROBINSON** did in Williamsburg County on or about December 23, 2006, violate Section 16-3-50 of the Code of Laws of South Carolina (1976), as amended, in that she without malice aforethought, did kill one **Willie Dunmore** by means of stabbing him in the chest, and that the said **Willie Dunmore** did die as a proximate result thereof.

COUNT THREE - POSSESSION OF A WEAPON DURING VIOLENT CRIME

LUEANN

That ~~LOU ANN~~ **ROBINSON** did in Williamsburg County on or about December 23, 2006, possess or visibly display a knife during the commission or attempted commission of a violent crime, in violation of Code Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

FILED

09 JUL -2 AM 1:33

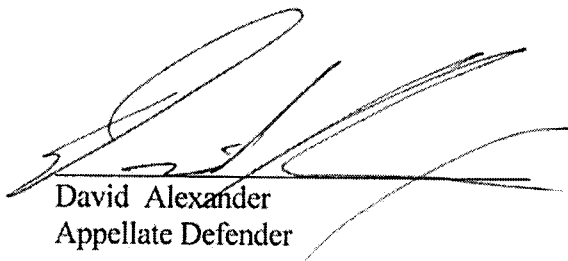
CAROLYN E. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

C. Kelly Jackson
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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 25th, 2014



David Alexander
Appellate Defender

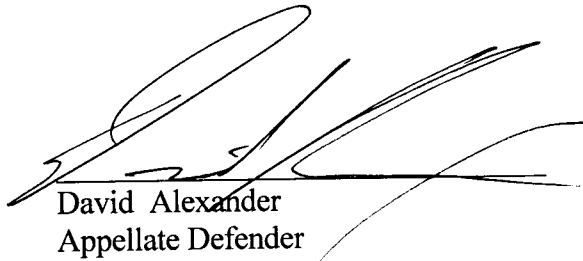
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 25th, 2014



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT