

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

John C. Hayes, III, Circuit Court Judge

RECEIVED

JUN 29 2015

S.C. Supreme Court

NEARIM BLACKWELL-SELIM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000020

SUPPLEMENTAL APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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MIDDLETOWN POLICE DEPARTMENT

SUPPLEMENTARY REPORT

(1-A) Incident

-DOMESTIC

(2-A) Date of Report

02/09/2002

(3-A) Case Number

02-3193

(4-A) Originally Classified as

(5-A) Victim

(6-A) Address

(7-A) Narrative

ON THE ABOVE DATE, AT APPROX. 21:26, THIS OFFICER WAS ON ROUTINE PATROL ON MAIN ST. IN THE AREA OF RAPALLO AVE.

THIS OFFICER CAME UPON WHAT APPEARED TO BE A DISTURBANCE IN FRONT OF PIZZA BELLA RESTAURANT (684 MAIN ST.). I ADVISED DISPATCH WHAT WAS GOING ON AND AS I EXITED MY CRUISER I OBSERVED A FEMALE, LATER IDENTIFIED AS NEARIN BLACKWELL 01/30/67, LYING ON THE GROUND CRYING. I ASKED BLACKWELL WHAT HAD HAPPENED AND SHE STATED THAT HER BOYFRIEND, KEN KIDWELL, HAD BEATEN THE SHIT OUT OF HER AND TOOK OFF RUNNING TOWARDS THE CHURCH.

BLACKWELL APPEARED TO BE IN A LOT OF PAIN AND WAS HOLDING HER RIGHT ARM AND SHOULDER AREA. THERE WAS ALSO A VISIBLE INJURY TO HER KNUCKLES ON HER LEFT HAND. THIS OFFICER RADIOED TO DISPATCH AND REQUESTED AN AMBULANCE RESPOND TO THE SCENE.

THIS OFFICER THEN ASKED THE BYSTANDERS IF THEY HAD SAW ANYTHING. SCOTT BROWN, THE OWNER OF PIZZA BELLA, STATED THAT NEARIN TOLD HIM THAT HER BOYFRIEND BEAT HER UP AND THAT HE HAD A JOB APPLICATION THAT HE FILLED OUT A COUPLE OF DAYS AGO. BROWN GAVE THIS OFFICER THE APPLICATION.

BLACKWELL GAVE A DESCRIPTION OF KIDWELL TO THIS OFFICER AND STATED THAT HE IS PROBABLY HEADING BACK DOWN TO THE MILLER ST. AREA. SGT. ANDERSON AND MYSELF WENT DOWN TO 25 MILLER ST., BLACKWELLS RESIDENCE, THERE WAS NO ANSWER AT THE DOOR. WE CHECKED THE SURROUNDING AREA BUT WERE UNABLE TO LOCATE KIDWELL. BOTH BLACKWELLS NAME AND KIDWELLS NAME WERE ON THE MAILBOX.

BLACKWELL WAS QUESTIONED AGAIN ABOUT THE INCIDENT ON 02/12/02 AND SHE STATED THE FOLLOWING. SHE AND KEN WERE WALKING DOWN MAIN ST. BY PIZZA BELLA. SHE WAS TELLING HIM THAT SHE WAS UPSET BECAUSE SHE DID NOT GIVE A CD TO HER SON WHEN HIS FATHER PICKED HIM UP AND SHE BEGAN TO CRY. KEN GOT ANGRY WITH HER AND SNATCHED THE CD OUT OF HER HAND. BLACKWELL SVORE AT HIM FOR THAT. THEN KEN BEGAN TO HIT HER ON THE RIGHT SIDE OF THE FACE AND SHOULDER AREA. HE THEN PUT HIS ARM AROUND HER NECK AND BEGAN TO DRAG HER DOWN THE SIDE WALK. SHE HEARD PEOPLE YELLING AND KEN LET HER GO AND STARTED TO RUN UP THE STREET TOWARDS THE CHURCH. (SEE ATTACHED STATEMENT)

THIS OFFICER ASKED BLACKWELL ABOUT HER RELATIONSHIP WITH KIDWELL. SHE STATED THAT THEY HAD BEEN DATING OFF AND ON FOR SIX MONTHS. THEY USE TO LIVE TOGETHER IN PORTLAND UP UNTIL ABOUT A MONTH AGO. KIDWELL NEVER SPENT ANYTIME THERE HE ONLY USE TO STOP BY ON THE WEEKENDS. SHE DOESN'T HAVE A

(8-A) Case

Status: Unfounded



Bona Fide Case - Cleared



Not Cleared



(9-A) Investigating Officer: OFC. B. WHITE #19038

Signature:

Off. B. White

(10-A) The space below is reserved for the Commanding Officer approving this report.

Case Status: To Be

Follow Up

Follow Up By

Check One: Filed ☐By Detective ☐Uniform Patrol ☐

(11-A)

Signature of Supervisor



Oct-09-07 01:48pm From-Melanie Huggins Clerk of Courts

843 918 6881

T-888 P.004 F-903

MIDDLETOWN POLICE DEPARTMENT

SUPPLEMENTARY REPORT

(1-A) Incident

(2-A) Date of Report

(3-A) Case Number

-DOMESTIC

02/09/2002

02-3193

(4-A) Originally Classified as

(5-A) Victim

(6-A) Address

(7-A) Narrative:

PHONE NUMBER FOR HIM AND DOESN'T KNOW WHERE HE IS LIVING NOW. HE STOPS BY EVERY NOW AND THEN TO SEE HER.

THE NAME ON THE JOB APPLICATION GIVEN TO THIS OFFICER BY THE OWNER OF PIZZA BELLA WAS KEN SELIM 25 MILLER ST. AND HAD A SOCIAL SECURITY # . I ASKED BLACKWELL IF SHE KNEW HIM AND SHE STATED THAT SHE DID NOT. SHE FURTHER STATED THAT SHE DID NOT KNOW WHY HE WOULD USE THAT NAME AND PUT DOWN HER ADDRESS AS HIS RESIDENCE BECAUSE HE DOES NOT LIVE WITH HER. THIS OFFICER SHOWED BLACKWELL A D.O.C. PICTURE OF SELIM AND SHE STATED THAT IT DID NOT REALLY LOOK LIKE HER BOYFRIEND AND COULD NOT POSITIVELY SAY IT WAS HIM.

THIS OFFICER WENT BACK TO PIZZA BELLA ON 2-12-02 AND SPOKE TO SCOTT BROWN. HE STATED THE FOLLOWING. ON 2-09-02 HE HEARD A DISTURBANCE OUTSIDE HIS RESTAURANT. WHEN HE WENT OUTSIDE HE SAW NEARIN ON THE SIDEWALK CRYING. HE KNOWS HER BECAUSE SHE USE TO WORK FOR HIM. SHE TOLD HIM THAT HER BOYFRIEND HAD BEATEN HER UP. A COUPLE OF DAYS EARLIER HER BOYFRIEND FILLED OUT A JOB APPLICATION AND HE STILL HAD IT. HE GAVE THE APPLICATION TO THIS OFFICER. HE KNOWS KEN IS NEARIN'S BOYFRIEND BECAUSE HE SEES THEM TOGETHER ALL THE TIME AND WHEN SHE WORKED FOR HIM HE WOULD ALWAYS BE HANGING OUT IN THE RESTAURANT. (SEE ATTACHED STATEMENT)

IT IS THIS OFFICER'S BELIEF THAT NEARIN BLACKWELL'S BOYFRIEND IS NOT KENNETH KIDWELL BUT IS KENNETH SELIM. I HAN THE SOCIAL SECURITY NUMBER GIVEN ON THE JOB APPLICATION AND IT DID COME BACK TO KENNETH SELIM WITH A D.O.B. 07/13/1973. SELIM HAS AN ACTIVE WARRANT OUT OF ROCKYHILL.

AN ARREST WARRANT IS BEING APPLIED FOR KENNETH SELIM ON THE FOLLOWING CHARGES. BREACH OF PEACE 53a-181 AND ASSAULT 3rd 53a-61.

(8-A) Case Status: ☐ Unfounded ☐ Bona Fide Case - Cleared ☐ Not Cleared ☐

(9-A) Investigating Officer: OFC. B. WHITE #0038

Signature:

(10-A) The space below is reserved for the Commanding Officer approving this report.

Case Status: To Be

Follow Up

Follow Up By

Check One: Filed ☐By Detective ☐Uniform Patrol ☐

(11-A)

Signature of Supervisor

התאחדות המורים והמורות

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 of the
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4
Oct-06-07 01:48pm From:Melanie Huggins Clerk of Courts

943 915 6081

T-868 P.006 F-909

MIDDLETOWN POLICE DEPARTMENT

SUPPLEMENTARY REPORT

(1-A) Incident

(2-A) Date of Report

(3-A) Case Number

-PAST ASSAULT

05/30/02

02-13419

(4-A) Originally Classified as

(5-A) Victim

(6-A) Address

-SAME

RAY PARMALEE

PLAINVILLE CT.

(7-A) Narrative:

Additional Information
Arrest of Kenneth Selim

On 05/30/02 at about 1225 Hrs. this writer and Off. Godwin were dispatched to Main Street and Hartford ave on a report of a man bleeding from his head. Upon arrival these officers found an injured white male later identified as Ray Parmalee Dob [REDACTED]. Parmalee was not conscious at the scene. Parmalee had extensive visible injury to his face, and there was a large amount of blood at the scene. The accused also had blood spatter on his shirt. Parmalee was transported by Hunters ambulance to Hartford Hospital due to the seriousness of his head injuries. This writer spoke with Rachael, a intensive care nurse at Hartford Hospital. Rachael told this writer that Parmalee was still not conscious at this time (1500 Hrs.). Rachael also informed this writer that Parmalee had a blood alcohol content of .314 upon arrival at Hartford Hospital. The Middletown Police Detective division will be going to Hartford Hospital to photograph the victim's injuries.

At the crime scene this writer spoke with Nearin Blackwell a witnesses to this assault. Blackwell told this writer that she saw the accused and Parmalee exchange words; Blackwell did not know what was said. Blackwell said that she then saw the accused punch Parmalee several times in the face. Blackwell said that when the accused struck Parmalee blood (from Parmalee) splattered on her and the accused. Blackwell indicated that she was standing about three feet from the accused at the time of this assault. Blackwell refused to give a statement because she is afraid of the accused. Blackwell told this writer that the last time she gave a statement against the accused he (the accused) "beat her ass". Blackwell went on to tell this writer that the accused has hit her (Blackwell) in the past, and told her (Blackwell) that if another man talks to Blackwell he (the accused) would kill him.

Nothing further from this writer at this time, end of report.

(8-A) Case Status: Unfounded ☐ Bona Fide Case - Cleared ☐ Not Cleared ☐

(9-A) Investigating Officer
Signature: [Signature]

(10-A) This space below is reserved for the Commanding Officer approving this report.

Case Status: To Be Follow Up Follow Up By

Check One: Filed ☐ By Detective ☐ Uniform Patrol ☐

Subscribed and sworn before me this

30 day of May, 2002

Signature [Signature]
"Notary Public"

Oct-08-07 01:40pm From-Melanie Huggins Clerk of Courts

843 815 8081

T-888 P.007/021 F-803

MIDDLETOWN POLICE DEPARTMENT

(1-A) Incident

-ASSAULT 2ND ARREST

SUPPLEMENTARY REPORT

(2-A) Date of Report

05/30/02

(3-A) Case Number

02-13419

(4-A) Originally Classified as

(5-A) Victim

(6-A) Address

(7-A) Narrative:

ARREST OF: SELIM, KENNETH
D.O.B.:CHARGES: ASSAULT 2ND 53a-60
BREACH OF PEACE PA01-2(NOV)6

On 05/30/02 at approximately 1225hrs. Officer Duffy and I were dispatched to Main Street and Hartford Ave on a person bleeding from the head. Upon arrival I observed a white male slumped over on the bench. The male was bleeding from the head and face. His face was covered in blood. The blood was pooling on the bench and a blood stream on the ground approximately 3 feet long by 2 inches. The male appeared to be unconscious and breathing shallowly. Main St Fire Department arrived on scene within moments of our arrival. Hunters Ambulance arrived on scene and transported later identified, Ray Parmalee to Hartford Hospital for treatment.

I spoke to Nearin Blackwell. She said a white male named Mark (unknown last name) assaulted Parmalee. She said the male was wearing a white shirt and blue jeans and ran south on Main St. Blackwell did not want to give a statement or be involved.

I spoke to Willie Wiggins. He stated at approximately 1225hrs he was sitting on the bench by Hartford Ave and Main St. He said he was sitting next to Ray Parmalee who was intoxicated. Wiggins said Nearin Blackwell and Ken Selim walked up to them. He said Selim started calling Parmalee a " son of a bitch " " I'm going to kick your ass. " Wiggins said he told Selim to stop. He said Selim started to punch Parmalee numerous times in the head. He said Selim had a black object in his right hand as he punched Parmalee. Wiggins said he did not know what the item was. Wiggins stated he tried to pull Selim away unsuccessfully and Selim continued to punch Parmalee approximately 7 to 10 times. He said Parmalee remained seated during the assault and was so intoxicated he could not defend himself or even talk. Wiggins said Selim walked south on Main St and Blackwell called the police. Reference Statement.

Officer Duffy spoke to Nearin Blackwell. Officer Duffy and Blackwell later advised me Ken Selim assaulted Parmalee. Reference Officer Duffy's Supplement. While I was speaking with Wiggins, Selim returned. Selim stated he elbowed a unknown white male several times in the face after the unknown male started to choke him. Ken Selim was placed under arrest and transported to Hq for processing. At 1310hrs. Selim was read his Miranda Rights. He said he understood his rights and wanted to give a written statement to what occurred.

Ken Selim stated he was sitting on a bench at the corner of Hartford Ave and Main St next to a white male who he did not know. He said Nearin Blackwell was also sitting by him. He said the unknown white male called his girlfriend, Nearin Blackwell a " nigger ". Selim said the male then placed him in a head lock at which time he gave Blackwell his cigarette. Selim stated he turned and elbowed the male three times to the head. Selim said he then left. Reference Statement.

Ken Selim was held on a 25,000 bond and given a court date of 5/31/02. Selim was placed in cell #1. Selim's Tee-shirt had blood on the right sleeve and splattered blood on the back of the tee-shirt. The tee-shirt was tagged as evidence given property tag number 02-0306 and turned over to the property officer. Selim had minor cuts on the knuckles to his right hand. He said the cuts were from " singing in the choir ".

(8-A) Case Status: Unfounded ☐ Bona Fide Case - Cleared ☐ Not Cleared ☐(9-A) Investigator: Officer: OFFICER GODWIN 3332
Signature: *[Signature]*

(10-A) The space below is reserved for the Commanding Officer approving this report.

Case Status: To Be

Follow Up

Follow Up By

Check One: Filed ☐By Detective ☐Uniform Patrol ☐

Subscribe I and sworn before me this

30 day of May, 2002

(11-A)

Signature: *[Signature]*
Notary Public

Oct-09-07 01:49pm From: Melanie Huggins Clerk of Courts

843 915 8081

T-868 P. 008/021 F-903

The Middletown Press - News - 12/21/2005 - City

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City man held in box cutter attack on girlfriend

12/21/2005

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MIDDLETOWN -- A city man accused of cutting his girlfriend after a fight remained held on Friday.

Kenneth Selim, 29, of 25 Miller St., was charged Thursday with second-degree assault and held overnight on \$25,000 bond.

Following his arraignment Friday in Middlesex Superior Court, a judge set his bond at \$10,000, court officials said. He is scheduled to appear on Jan. 10.

Advertisement

Officers were sent to the area of O'Rourke's Diner on Main Street shortly after 7 p.m. Thursday to investigate a report of an assault victim, Capt. Philk Pessina said.

The 36-year-old female victim, who had called from a payphone, claimed Selim cut her with a knife, he said, adding Selim was found in the area a short time later.

★ There had been a history of disturbances between the two, the captain said.

Selim and the victim allegedly had an argument that escalated, Pessina said. Selim allegedly grabbed the victim, who in turn bit him on the finger, the captain said. Selim then allegedly cut the victim's elbow with a box cutter, he said.

The victim, who was not charged, was treated at Middlesex Hospital, Pessina said.

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Oct-09-07 01:40pm From:Melanie Huggins Clerk of Courts

643 815 6081

T-868 P.009/021 F-803

MIDDLETOWN POLICE DEPARTMENT

SUPPLEMENTARY REPORT

(1-A) Incident

(2-A) Date of Report

(3-A) Case Number

ASSAULT 2ND DEGREE/DOMESTIC

12/19/02

02-33141

(4-A) Originally Classified as

(5-A) Victim

(6-A) Address

(7-A) Narrative:

On the above date at approx. 1911 hours I was dispatched to O'Rourke's Diner/ Pay phone for a reported assault victim. When officer Linares and I arrived, Middletown Fire and Hunters ambulance were already checking on Ms. Blackwell. They told me that she had been cut on the inner right elbow and the lower back. I could see the injury to the elbow at this time, but could not see the back. I asked Blackwell what had happened and she stated "Kenny cut me with a knife". Blackwell required medical attention and was being transported to Middlesex hospital for treatment. Detective Lozefski was in the area and found Kenneth Selim, I told Lozefski to place Selim under arrest. Let it be known, that Nearin Blackwell and Kenneth Selim are long time boyfriend and girlfriend. It is also known that they fight all the time, sometimes getting physical resulting in arrests. Blackwell was transported to the hospital and Selim was transported to police headquarters.

Once back at Police headquarters Selim was processed and charged with second-degree assault. Selim was read his rights form and he stated that he understood his rights and waived them. Selim stated that he had a fight with Nearin like always and she fell on a space heater in his apartment cutting her back. He stated that he didn't want her arrested and asked what we were charging him with. I told him assault third; he became upset and told us to look at his finger, telling us she bit it. Selim then said he wanted to go to the hospital to get his finger checked. We called him an ambulance and I escorted him to the hospital.

While at the hospital I was able to talk with Nearin Blackwell. Blackwell told me that she and Kenny were sitting around having a few beers. They were talking nicely and then stated to argue over money. Nearin said that Kenny got very upset, stood up and punched her right in the face, splitting her lip. She said Selim then grabbed her by the neck. She stated that she bit Selim's finger trying to get away, because Selim had a hold of her neck. She then said, while she was biting his finger Selim cut her in the elbow, showing me the inside of her right elbow. Her Elbow had a cut out of it, consistent with that caused by a knife. She told me that she didn't see what she was cut with, but believe it was a box-cutting knife. Blackwell then stated that she got away from Selim and started to run out of his house on Miller Street. Blackwell said, as she running out of the house she felt a sharp pain in her lower back. Blackwell said she didn't know what the pain was from until she reached the pay phone and called (911) for help. Blackwell said, the fire department showed up and told her that she had been cut with something in her lower back.

See Nearin Blackwell's sworn written statement)

I asked the medical personnel at the Middlesex hospital what they thought might have caused Blackwell's injuries. They told me that a knife of some kind caused the cuts to Blackwell. Blackwell was still waiting for medical attention when I came back to police headquarters to report this incident.

(8-A) Case Status: Unfounded ☐ Bona Fide Case - Cleared ☐ Not Cleared ☐

(9-A) Investigating Officer: BWS
Signature: [Signature]

(10-A) The space below is reserved for the Commanding Officer approving this report.

Case Status: To Be Follow-Up Follow Up By

Subscribed and sworn before me this 19th

Check One: Filled ☐ By Detective ☐ Uniform Patrol ☐

(11-A) day of December, 2002

Signature of [Signature]
Notary Public

Oct-09-07 01:50pm From: Melanie Huggins Clark of Courts

843 815 6081

T-868 P.010/021 F-903

MIDDLETOWN POLICE DEPARTMENT

SUPPLEMENTARY REPORT

(1-A) Incident

(2-A) Date of Report

(3-A) Case Number

ASSAULT 2ND DEGREE/DOMESTIC

12/19/02

02-33141

(4-A) Originally Classified as

(5-A) Victim

(6-A) Address

(7-A) Narrative:

Detective Porter responded to Middlesex hospital and took several 35 millimeter pictures of Nearin Blackwell injuries.

Kenneth Selim was also waiting for medical attention, to his finger. Selim was going to be treated and transported back to police headquarters where he was being held on a 25,000.00 (twenty five thousand dollars) bond. Court date of 12/20/02 was given to Selim due to the Domestic issues.

(8-A) Case

Status: Unfounded ☐Bona Fide Case - Cleared ☐Not Cleared ☐(9-A) Investigating Officer
Signature: *[Signature]*

(10-A) The space below is reserved for the Commanding Officer approving this report.

Case Status: To Be

Follow Up

Follow Up By

Check One: Filed ☐By Detective ☐Uniform Patrol ☐

Subscribed and sworn before me this 19th

(11-A)

day of December, 2002

Notary Public

Oct-09-07 01:50pm From-Melanie Huggins Clerk of Courts

843 915 8081

T-868 P.011/021 F-803

MIDDLETOWN POLICE DEPARTMENT

(1-A) Incident

- PHOTOGRAPH RECORD / ASSAULT

SUPPLEMENTARY REPORT

(2-A) Date of Report

10-MARCH-2002

(3-A) Case Number

#02-33141

(4-A) Originally Classified as

-SAME

(5-A) Victim

NEARIN BLACKWELL

Address

MIDDLETOWN

(7-A) Narrative:

Page 01 of 01

INFORMATION SUPPLEMENTAL TO ORIGINAL CASE REPORT
PHOTOGRAPH RECORD

On Thursday, December 19th, 2002 at approximately 8:00 PM this investigator was requested at Middlesex Hospital by officer Wayne Linares who had been investigating this assault. Officer Linares was assigned the initial report regarding this incident. This investigator took the following photographs at Middlesex Hospital. The camera utilized by this investigator was a Canon OES 650 set to the manual mode. 400 speed AGFA color print film was used for the following photographs. Original photographs and photograph negatives are submitted to the Middletown Police Records Division.

No. DESCRIPTION

01. Case Identification.
02. Case Identification.
03. Abrasions on the inner side of the patient's lower lip.
04. Redness and Bruising evident on the anterior side of the patient's left upper arm.
05. Laceration of patient's the inner right arm.
06. Same as #4.
07. Same as #4.
08. Laceration along the lower portion of the patient's back. Apx. 5 inches in length.
09. Same as photo #8.
10. Same as photo #8.

No Further Photographs
End of Report

(8-A) Case Status: Unfounded ☐ Bone Fide Case - Cleared ☐ Not Cleared ☐

(9-A) Investigator: Officer Det. William M. Porter #7382
Signature: *[Signature]*

(10-A) The space below is reserved for the Commanding Officer approving this report.

Case Status To Be Follow Up Follow Up By

Check Out: Filed ☐ By Detective ☐ Uniform Patrol ☐

(11-A)

Signature of Supervisor

Oct-08-07 01:50pm From: Melanie Huggins Clerk of Courts

The Middletown Press - News - 11/12/2005 - 11:00 AM

843 915 8081

T-868 P.012/021 F-903

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News**Trio arraigned in disputes**

By SZYMON TWAROG, Middletown Press Staff

01/25/2006

[Email to a friend](#) [Voice your opinion](#) [Printer-friendly](#)**MIDDLETOWN - Three city residents were arraigned on domestic abuse charges in Middlesex Superior Court on Monday for incidents that occurred over the weekend.**

A city couple was arraigned for assault and disorderly conduct after the man allegedly attacked his girlfriend and she beat him off her with a piece of a refrigerator, according to police reports.

Kenneth Selim, 31, of 127 Grand St., was charged with assault in the third degree and disorderly conduct, while his girlfriend, Nearin Blackwell, 37, of the same address, was charged with assault in the second degree and disorderly conduct.

Police responded to the couple's home on Saturday night just before 11 p.m. and found physical evidence that there was an altercation between the two. Nearin admitted to police that she had bludgeoned Selim with the plastic front intake grill from the refrigerator, but only in self defense after he punched her several times in the face and body.

The same night, just past 10 p.m. police arrested a 53-year-old man after he threatened to swing a pick ax at his girlfriend.

Eddie Wicker, of 565 East Main St., was charged with threatening, possession of a dangerous weapon and disorderly conduct, according to police reports.

Wicker, who appeared to be drunk, allegedly got into a verbal argument with his girlfriend, grabbed the pick ax and then said he was going to swing it at her. The victim's daughter's boyfriend, who was there, grabbed the ax and threw Wicker out of the house.

He was released on a promise to appear on the condition that he return today for an alcohol evaluation and that he stay away from the victim.

Selim was held on a \$25,000 bond while Blackwell was released on a \$25,000 non-surety bond, meaning that she does not have to pay anything now, but will pay a \$25,000 bond if she does not appear for her next court date. The couple is due back in court on Jan. 31 and a full protective order has been issued to both.

To contact Szymon Twarog, call (860) 347-3331 ext. 220 or e-mail stwarog@middletownpress.com.

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<http://www.middletownpress.com/site/news.cfm?newsid=13816371&BRD=1645&PAG=4...> 9/12/2005

Oct-08-07 01:50pm From: Melanie Huggins Clerk of Courts

843 815 6081

T-868 P.013/021 F-903

MIDDLETOWN POLICE DEPARTMENT

SUPPLEMENTARY REPORT

(1-A) Incident Boyfriend/Girlfriend Physical Domestic (Arrest)		(2-A) Date of Report 01/22/05	(3-A) Case Number 05-1705
(4-A) Originally Classified as SAME	(5-A) Victim	(6-A) Address 127 Grand St Apt-201 Mdn, CT.	

(7-A) Narrative:

Arrest Of: Blackwell Nearin
Age Of Arrestee: 38yr old
Incident Location: 127 Apt-201 Grand St Mdn, CT.
Charges: Disorderly Conduct 53a-182
: Assault 2nd 53a-60
Court Date: 01/24/05
Bond: Released on a \$25,000.00 Non-Surety Bond

Arrest Of: Selim Kenneth
Age Of Arrestee: 31yr old
Incident Location: 127 Apt-201 Grand St Mdn, CT.
Charges: Disorderly Conduct 53a-182
: Assault 3rd 53a-61
Court Date: 01/24/05
Bond: Held on a \$25,000.00 bond

GA9

Middlebury Co Courthouse
1 Court St.
Middlebury, Connecticut

** This report should include a statement from victim that he had also beat her.*

SUMMARY: On Saturday 01/22/05, at approx 22:51hrs this Officer, assisted by Sgt. Maturo responded to a Boyfriend -vs- Girlfriend physical domestic at #177 Apt-201 Grand ST. Investigation revealed that a (Nearin Blackwell () 7) and a (Kenneth Selim ()) had been involved in a physical confrontation within the apartment. Upon investigation. It was established that, (Nearin Blackwell) had bridged her boyfriend in the back after being physically assaulted (punched in the face and about her body) by him. This Officer investigation also revealed physical evidence to support both accused/victims reported assault. Subsequently Nearin Blackwell also admitted to this Officer that she had utilized the dangerous instrument in an attempt to defend herself from her boyfriend.

Continued Page 02 of 04

(8-A) Case Status: ☐ Unfounded ☐ Bona Fide Case - Cleared ☐ Not Cleared	(9-A) Investigator Signature: Officer S. BARTOLOTTA <i>S. Bartolotta</i>
--	--

(10-A) The space below is reserved for the Commanding Officer approving this report.

Case Status: To Be	Follow Up	Follow Up By
Check One: Filled ☐	By Detective ☐	Uniform Patrol ☐

Subscribed and sworn before me this 23RD(11-A) day of JAN, 20 05

Signature of Notary Public: *[Signature]* #9449
 Notary Public

Oct-08-07 01:50pm From-Melanie Huggins Clerk of Courts

843 915 6081

T-868 P.014/021 F-903
SUPPLEMENTARY REPORT

DDLETOWN POLICE DEPARTMENT

1) Incident.

Date of Report

(3-A) Case Number

1) Originally Classified as

(5-A) Victim

(6-A) Address

Narrative:

ARREST OF: KENNETH SEYMOUR JR.

MURDER

CHARGE : DISORDERLY CONDUCT 32-102

DATE & TIME: April 13, 2005 0455 hrs.

LOCATION: Main St. by Capital Liquor

INCIDENT: ACCUSED WAS WALKING ON MAIN ST. CARRYING
A POINT GUN (RIGHT HAND) WEARING PANTS & A
KNIT HAT. IT APPEARED SEVERAL PEOPLE WERE BEHIND HIM
SAFELY.

ARREST DATE: April 20, 2005
M.S. ISSUED.

(5-A) Case

as: Unfounded ☐ Bona Fide Case - Cleared ☐ Not Cleared ☐

(9-A) Investigating Officer (Print):

Signature

(10-A) The space below reserved for Commanding Officer approving this report.

Subscribed and sworn before me this 13

Case Status: To Be

Follow Up

Follow Up By

Check One: Filed ☐By Detective ☐Uniform Ptn. ☐

(11-A)

day of April, 2005

Signature of Supervisor
"Notary Public"

Oct-08-07 01:50pm From: Melanie Huggins Clerk of Courts

943 915 6081

T-869 P.015/021 F-903

MIDDLESEX
HOSPITAL

1002

1891
ACKWELL
F 372

92798-59

NE
DOB: 04/11/04

SERV DATE:

PART 1 ☐ Crisis ☐ Unit RN

INTEGRATED PSYCHIATRIC ASSESSMENT

I. ARRIVAL INFORMATION

Date 4/12/04	Time 9:30 AM	History Obtained From ☐ Records ☐ Patient ☐ Other, Explain:	Accompanied by ☐ Family ☐ Friend ☐ Alone	Previous Admissions to The Hospital ☐ Yes ☐ No	Legal Section ☐ PEC ☐ Conservator Exp. Date:
-----------------	-----------------	--	--	---	--

Referral Source

MCT ☐ ED, MID ☒ ED, RN ☐ Other ☐ *2 Crescent MO*

Insurance (Primary and Secondary)

T-19

Authorization _____ Days

Insurance Contact

Name:

Phone:

Authorization No.

Present Complaint and Successors:

☐ employment ☐ family ☐ financial ☐ health ☐ recent loss ☐ social ☐ personal safety ☐ ETOH / drug abuse

3740 STE → ED @ 5pm yesterday - states B's since dy'd.
 & Virginia DO. says allertin was stolen "near place for 3 days"
 states having seizures q. 20" since BA's 0-2-70.

Previous Psychiatric Hx

BA's (believed) from being hit with large app.
 This AM A & X's mother, has decided she needs
 MPACT involvement re: housing, meds. Denies
 being any threat to self or others & future oriented.

Substance Abuse (Current or Past)

4-5 x use "to enjoy level" Vague re: other SA
 2-3 drinks; not recent w/ gr ego

Primary Psychiatric Hx

Psychosocial Hx

lives c. friend - unemployed
 working on SS disability

Medical Hx

Pneumonia DO

Medications

Allertin

Legal Hx/Legal Actions Pending

Denies

Outpatient treatment (check all that apply):

☐ Individual ☐ Group ☐ Couples ☐ Nursing Home
☐ Day Program ☐ Supervised Apartment ☐ Sheltered Workshop ☐ Substance Abuse Treatment
☐ Self Help Groups ☐ Community Residence ☐ Rest Home

Compliance History:

☐ Good ☐ Fair ☐ Poor

Primary Clinician (out-pt)

(Name)

(Address)

(Phone)

Informed

☐ Yes ☐ No

Case Manager (Community)

(Name)

(Address)

(Phone)

Informed

☐ Yes ☐ No

Primary Care Physician (Community)

(Name)

(Address)

(Phone)

Informed

☐ Yes ☐ No

Last Physical Exam

CHC DO, Hurdleston

Oct-09-07 01:51pm From: Melanie Huggins Clerk of Courts

843 815 8081

T-868 P.018/021 F-903

PRESENTATION		THOUGHT	
Appearance: <i>facial bruising (3 days ago)</i>	Hallucinations	Delusions	
Attitude / Behavior: <i>cooperative</i>	Obsessions	Compulsions	
Speech: <i>slow, vague</i>	Paranoia		
Activity			
EMOTION		COGNITION	
Affect: <i>congruent</i>	Orientation: <i>X3</i>	Concentration	
Mood: <i>"fine"</i>	Memory		
Suicide Risk: ☐ attempt ☒ ideation ☐ plan ☐ means <i>just thought</i>	Insight		
Violence Risk: ☐ Yes ☒ No	Strengths		
Judgment: <i>variable</i>	Supports		
Insight: <i>fair</i>			
Risks			
CRISIS ASSESSMENT TRIAGE SERVICE - MIDDLESEX HOSPITAL 304-6445 CRISIS ONLY			
IMPRESSION: <i>37 y/o male E.S. last night - today presents as no threat to self or others, wants PK</i>			
DIAGNOSIS			
I	<i>PTSD, anxiety disorder</i>	DSM IV Code	
II	<i>depression</i>		
III	<i>PTSD</i>		
IV	<i>substance abuse, unimp</i>		
V	<i>GAFC 60 GAFC</i>		
Severity	☐ Emergency ☐ Urgent F/U (within 24 hrs.) ☐ Routine		
Interventions			
1) <i>pt eval</i>			
2) <i>consult ED/PT/RA re: disposition</i>			
3) <i>discharged</i>			
Released to: <i>M-PACT</i>			
Patient instructions			
Crisis Clinician signature / RN signature		Patient signature	
<i>Jeanne Huggins</i>			
Date: <i>10/10/07</i>		Service Code	

UCL-UN-01

01:51pm

From: Melanie Huggins Clerk of Courts

843 915 6081

T-868 P.017/021 F-803



MEDICAL RECORD

NAME: B. CKWELL, NEARIN
 MR#: 0000234891
 ACCOUNT: 0009338986
 PT. TYPE, SERVICE: E, EMR
 ROOM/BED:

EMERGENCY DEPARTMENT RECORD

DATE: 06/01/2004

TIME OF EXAM: 11:35

ADDENDUM: The patient still being sought. The police have been sent to the patient's home. I did speak with Elizabeth Rocco, the referring ophthalmologist, who had seen this patient before. She told me that the patient gave a history of a boyfriend assaulting her. It is possible that the boyfriend that is with her today was the same individual who was responsible for an assault dating back two years ago. The patient's injuries today are consistent with possible abuse. This possible abuse is not reportable at this time for this individual but I am comfortable that we can convince her to report cases of abuse to appropriate authorities. This has been suggested of her in the past and she has refused. I have spoken with Dr. Smalley from the Hartford Hospital Emergency Department and informed him that our patient eloped. Should things change, he will be contacted again.

DICTATED BY:

Jeffrey Bernstein, M.D.

TR: jlr

BERNSTEIN, JEFFREY M

DD: 06/01/2004

(Electronically Signed 06/08/04 08:16)

DT: 06/01/2004

Oct-08-07 01:48pm From-Melanie Huggins Clerk of Courts

843 915 5081

T-868 P.001

F-803

Melanie Huggins
Horry County Clerk of Court
P. O. Box 677
Conway, SC 29526-0677



FACSIMILE TRANSMITTAL SHEET

DATE:

10/9/07

TO:

SOCID Sharon Ferguson

FROM:

PAGES:

(INCLUDING COVER SHEET)

MESSAGE:

These reports were in her file but I don't see
where they were marked as defense exhibits

phone: (843) 915-5080 or (843) 915-5081
fax: (843) 915-5081

AFFIDAVIT OF DONALD BLACKWELL453 West 152nd St. Apt 2A

New York City, NY 10031

Telephone: 212-920-7285

I am Donald Blackwell. Nearin Blackwell is my cousin. She calls me 'Uncle Donald' and I raised her. Her father was a jazz musician and traveled a great deal of the time.

Just a week and a half before the death of Kenny Selim, Nearin and Kenny stayed with me at my home for two weeks. I saw him attempt to physically abuse her. I say 'attempt' because I stopped him from harming her further each time I saw him begin to abuse her.

On one occasion during their visit with me, Kenny reached for her chest, grabbing her clothes before I yelled at him to stop.

On another occasion during their visit with me, Kenny grabbed for Nearin's neck and, once again, I shouted for him to stop and he did stop.

Prior to this visit when they stayed with me, and on several occasions, Nearin called me on the telephone and reported to me that Kenny had punched her.

During this visit to me prior to Kenny's death, I saw 'grab marks' on Nearin's arm, which consisted of bruises in the shape of finger prints where he had grabbed her.

I also saw bruises on her thigh prior to this visit and she told me that Kenny had hurt her.

Kenny drank beer everyday. Nearin drank beer, too, but Kenny would become 'stupefied' and become violent and abusive toward her. She would fight him back if she could.

Notary Public State of New York
 Commission Expires 8-20-2008
 Velma Saunders
 Registered in New York County
 Registration #01SAS116029

Donald Blackwell
 Donald Blackwell
January 30, 2007
 Date
Velma Saunders
 Notary

AFFIDAVIT

PAM WILSON
 697 Main St. Apt 8
 Middletown CT 06457
 860-344-0197

I was a friend of Nearin Blackwell in Middletown CT from 2001-2005. I had many conversations with Nearin about Kenny Selim and I saw their interaction on numerous occasions. In the summer of 2001, I saw Kennyt bully her and beat Nearin savagely when he hit her with a stick. This stick had a nail sticking out of it, with the sharp edge of the nail forming a knife-like protrusion from the stick. Kenny hit Nearin all over her body, over and over again. This happened just off the main street on a street in Middletown CT.

I saw him take out his frustrations on her while she was sitting down by the river. He beat her all over her body and punched her numerous times in the face. I don't remember the exact time of this attack, but think it was also during 2001.

Kenny was very jealous and controlling of Nearin. During 2001, I saw him stalking her all day and night when she tried to hide away from him. When he caught her hiding, he beat her. I often saw bruises on her body from his beatings. This was an everyday thing with him. She was an abused woman, very much so.

Pam Wilson

Pam Wilson

Witness

Cynthia M. Sootnick
Ana M. Sootnick

Date

1/22/07

Witness

Marilyn A. Phillips
Marilyn A. Phillips

Marilyn A. Phillips
 Notary Commission expires
 4/30/11

Sworn to and Subscribed Before me this

27

day of

Jan.

2007 in Middletown, CT 06457

Provided CT Drivers License
 as identification

Oct-08-07 01:51pm From-Melanie Huggins Clark of Courts

843 915 6081

T-868 P.018/021 F-803

AFFIDAVIT**SANDRA LECLAIRE**[REDACTED]
Middletown CT 06457

I was a friend of Nearin Blackwell during the early 2000's. I have given my work address because I feel safer that way.

I saw Kenny Selim punch Nearin in the head hard. She would hit him back. During 2003-2004, they (Kenny and Nearin) lived with me for approximately three to four months. Kenny called Nearin "bitch" and "slut." He'd hit her hard and she'd fight back at him. They both drank alcoholic beverages.

Sandra LeClaire
Sandra LeClaire

1-27-07
Date

Jean M. Southwick
Witness

Ava M. Southwick
Witness

Marilyn A. Phillips
Witness
Marilyn A. Phillips
Notary
Marilyn A. Phillips

Commission expires
4/30/11

Subscribed and sworn to before me on the 27 day of Jan 2007 in Middletown CT 06457

Provided CT Drivers
License as identification

AFFIDAVIT**Francis Blackwell****Everglades City FL 34139**

I am Francis Blackwell, mother of Nearin Blackwell. I have received many telephone calls from my daughter, Nearin, who was asking me to send her a ticket to come to me, away from the abuse she was suffering at the hands of Kenny Selim. On many occasions, I heard Nearin asking over the telephone for my help to leave Kenny and I would also hear Kenny shouting in the background the following: "You'll never get away from me. I'll find you. I'll kill you;" My daughter, Nearin, told me about Kenny physically abusing her. I felt badly that I did not have enough money to pay for a plane ticket for my daughter.

Nearin had three other abusive relationships with men before her relationship with Kenny Selim. I felt sorry that she kept being in relationships with men who physically hurt her and verbally abused her.

Francis Blackwell
Francis Blackwell

Date

2/8/07

April A. Butler
Notary



CARL FOSS
Witness (print name)

Carl Foss
Witness (sign name)

LINDA GUSTAFSON
Witness (print name)

Linda Gustafson
Witness (sign name)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NERAIN G. BLACKWELL-SELIM,

APPELLANT

FINAL BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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Statutes

South Carolina Code Ann. § 16-25-90 (Supp.1999) 5, 11, 12

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court judge err as a matter of law in deciding that appellant had failed to present credible evidence of a history of criminal domestic violence sufficient to satisfy the standard required by § 16-25-90?

STATEMENT OF THE CASE

On January 4, 2007, Nearim Grace Blackwell, appellant, entered a plea of guilty to voluntary manslaughter in the June 3, 2005, stabbing death of her live-in boyfriend/common-law husband, Kenneth Selim. The Honorable Steven H. John accepted appellant's guilty plea but delayed sentencing for the presentation of evidence relevant to a history of criminal domestic violence perpetrated by the victim on appellant. On February 27, 2007, a sentencing hearing was held after which Judge John sentenced appellant to twenty years in prison with no finding of a history of criminal domestic violence against appellant.

ARGUMENT

- I. The circuit court judge erred as a matter of law in deciding that appellant had failed to present credible evidence of a history of criminal domestic violence sufficient to satisfy the requirement of § 16-25-90.

Counsel for appellant informed the court that she sought a finding of a history of criminal domestic violence against appellant at the hands of the decedent, Kenneth Selim, for the purpose of parole eligibility as provided by South Carolina Code Ann. § 16-25-90. Counsel for appellant presented an abundance of evidence in varying forms which established that appellant was a victim of criminal domestic violence at the hands of the deceased victim, Kenny Selim. It was undisputed that Kenny Selim was appellant's household member; the assistant solicitor identified him as appellant's "common law husband, live-in boyfriend, co-habitation for some time." (R. p. 17, lines 19-21).

Counsel for appellant informed the court that Kenny Selim had arrests for Criminal Domestic Violence as well as arrests for other crimes and that she had "a packet of police incident reports" memorializing numerous incidents of Kenny Selim's violent and abusive conduct towards appellant. (R. p. 26, lines 2-5). Judge John ruled that these documents were relevant and admissible. (R. p. 28, lines 12-14). Included within these documents were police reports referencing appellant as the victim of criminal domestic violence at the hands of the decedent, Kenneth Selim. Appellant testified to the background of the incidents of criminal domestic violence memorialized by police officers; however, notably, the reports submitted include the observations and statements of police officers indicating that appellant was the victim of Kenny Selim's criminal domestic violence.

Counsel referenced a December 19, 2002, incident report indicating that an officer with the Middletown Police Department was dispatched to respond to an assault victim on that date. Officer Barr reported that he and Officer Linares observed appellant lying on the ground, crying. When the officers asked appellant what had happened, she indicated that Kenny had cut her with a knife. The officer reported that appellant required medical attention and that the officers had determined to place Kenny Selim under arrest. The police report indicates, "Let it be known that Neraim Blackwell and Kenneth Selim are long time boyfriend and girlfriend. It is also known that they fight all the time, sometimes getting physical, resulting in arrests. Blackwell was transported to the hospital and Selim was transported to police headquarters." The report further indicates that Kenny Selim was processed and charged with second degree assault. The police report indicates, "Detective Porter responded to Middlesex hospital and took 35 millimeter pictures of Nearim Blackwell's injuries." A supplemental report dated March 10, 2002, lists appellant's injuries as including abrasions on the inner side of her lip, redness and bruising evidence on the anterior side of her left upper arm, laceration of her inner right arm, and a laceration along the lower portion of her back, approximately five inches in length. The report concludes, "Selim was going to be treated and transported back to police headquarters where he was being held on a 25,000.00 bond. Court date of 12/20/02 was given to Selim due to Domestic issues."

Counsel for appellant submitted in evidence an article from the MiddletownPress, confirming that Kenny Selim had beaten appellant in the face, cut her elbow, and made a five inch cut in her back as she ran away from him. (R. p. 29, lines 1-5). The article is entitled, "Three city residents were arraigned on domestic abuse charges in Middlesex

Superior Court on Monday for incidents that occurred over the weekend;" it recounts that appellant and Kenneth Selim, of the same address, were each charged in an incident of criminal domestic violence.

Counsel for appellant next referenced an incident report from February 9, 2002. Appellant confirmed that on that date, she and Kenny were walking down the street near Pizza Bella, arguing over a compact disc which appellant had wanted Kenny to give to her son. Appellant testified that Kenny got mad when she started to cry, and that he snatched the CD out of her hand. Appellant testified that when she swore at Kenny, he started to hit her on the right side of the face and in the shoulder area. Appellant testified that when Ken put his arm around her neck and started dragging her down the sidewalk, other people in the vicinity yelled and the police came to her rescue. (R. p. 27, lines 8-18). The incident report identifies the call as a "Domestic" call and indicates that when the officer responded to a dispute in front of Pizza Bella restaurant, he saw appellant lying on the ground crying and that she said she was beaten by her boyfriend. The incident report indicates that the Officer spoke to the owner of the Pizza Bella, Scott Brown, and that Brown confirmed that he heard the disturbance and found appellant lying on the sidewalk outside his restaurant.

Counsel for appellant also referenced an incident occurring on May 30, 2002, in which Kenny Selim was charged with first degree assault related to the beating of Ray Parmalee, an older drunk man. The police report on Kenny Selim's arrest indicates that officers were dispatched on a report of a man bleeding from the head. Upon arrival, officers found Parmalee with extensive injuries to his face and a large amount of blood at the scene. The report notes that Kenny Selim had blood spatter on his shirt. Parmalee

was hospitalized with severe head injuries. An eye-witness identified Kenny Selim as the man who beat the defenseless Parmalee into unconsciousness. Appellant testified that she was only three feet away when Kenny beat the man and that she had blood spatter on her clothes. Apparently, appellant was so traumatized and frightened that she refused to assist the police or to give them a statement. However, appellant did tell police officers that she was afraid to say anything about Kenneth Selim because he would beat her. (R. p. 28, lines 2-6).

Counsel for appellant submitted an incident report indicating that Kenny Selim punched appellant several times in the face and body on January 22, 2005, and that in response, appellant struck Kenny with a plastic front intake grill from a refrigerator. (R. p. 29). Counsel for appellant indicated that both appellant and Kenny were arrested in connection with this incident of criminal domestic violence. (R. p. 29, lines 6-12). The police report indicates that this was a "boyfriend vs. girlfriend physical domestic." The report indicates that "it was established that" appellant was physically assaulted, i.e., punched in the face and body by Kenny Selim, and that, in response, she hit Kenny with a plastic refrigerator grille. The report indicates that both appellant and Kenny were arrested as a result of this incident of domestic violence.

Counsel for appellant referenced a letter written by Kenneth Selim in which he indicated that on January 22, 2005, both he and appellant were charged with criminal domestic violence. Kenny explained that he called 911, that his injuries were not serious, and that he was trying to get marriage counseling. However, Kenny further indicated that he had a severe drinking problem, that he was seeking help, and that his actions had caused appellant to try to defend herself and for that reason Kenny wanted the CDV case

against appellant dissolved. Kenny indicated in the letter that appellant was not a violent person but that she was protecting herself. (R. p. 31, lines 11-17).

In addition to the records and reports from law enforcement, counsel for appellant also submitted sworn affidavits from four individuals recounting incidents of criminal domestic violence perpetrated by Kenny Selim against appellant, as well as the testimony of Dr. Marty Loring, a psychologist who evaluated appellant's psychiatric condition at the request of counsel. Dr. Loring testified that he spent six hours interviewing appellant. (R. p. 37, lines 1-3). Dr. Loring testified that there was "no evidence" of inconsistency in appellants answers to his questions and "no indication" that appellant was faking or in any way dishonest in her reports of abuse. (R. p. 37, lines 4-7).

Dr. Loring indicated that he had investigated the case by interviewing witnesses and reviewing documents. Dr. Loring testified that he interviewed Mr. Michael Moody and that Mr. Moody indicated that he was the person who took appellant to the hospital whenever she called him after being injured by Kenny Selim. Mr. Moody recalled that he responded to appellant's calls for help but that, sometimes, Kenny Selim would block his van making it impossible for Moody to get appellant to the hospital. Moody reported a specific occasion when Kenny Selim dragged appellant out of the van in which Moody had placed appellant to take her to the hospital. (R. p. 37, lines 16-25). Dr. Loring testified that he also interviewed appellant's daughter, Medina Kidwell, who reported that while she was talking to appellant by telephone, she heard Kenny Selim in the background threatening to kill appellant and shouting that he would not allow appellant to leave him. (R. p. 38, lines 1-5). Dr. Loring testified that he interviewed David Gould.

Mr. Gould reported that he witnessed Kenny Selim punch appellant and that when Gould called the police, Kenny Selim ran away. (R. p. 38, lines 6-9).

Dr. Loring testified that appellant suffers from the Battered Woman's Syndrome. Dr. Loring testified that appellant "certainly loved and loves Mr. Selim, had increased fear of him, was terrified by harm or death." Dr. Loring testified that appellant's preferred way of avoiding violence was to run away. He referenced the Connecticut police reports of appellant running away and hiding and Kenny Selim trying to find her. However, Dr. Loring testified that when appellant was not able to run away, she would "try to fight back when she was being hit or punched or choked by him." (R. p. 41, lines 21-25). Dr. Loring testified that appellant's responding to violence from Kenny by hitting him was to be expected; he testified, "We often find that in family violence, the responsiveness." (R. p. 49, lines 15-21).

Dr. Loring testified that appellant suffers from severe PTSD related to horrific childhood abuse accompanied by acute and chronic trauma. Dr. Loring explained that when appellant was choked by Kenny Selim as an adult, as described by appellant and witnesses, she was unable to breathe and, therefore, she panicked. (R. p. 43, lines 20-24). Dr. Loring testified, "There certainly is documentation in the police reports from Connecticut and the witness reports." He further testified that Dr. Bernstein had reported that he felt that appellant was being abused and there were efforts on the part of medical personnel to get appellant to report the abuse but that appellant was "unwilling to do that even though she went to the hospital for treatment." (R. p. 40). The assistant solicitor argued that there were no convictions for criminal domestic violence. However,

critically, the State conceded: "there is a violent history between the two of them. You see assaults going back and forth, your honor." (R. p. 50, lines 2-3).

In light of the evidence presented, counsel for appellant requested that Judge John make a specific finding that appellant had shown a history of criminal domestic violence at the hands of the decedent, Kenny Selim. However, this request was denied. Judge John ruled, "The Court has heard from all sides of this particular issue and the story has been presented to the court probably as it represents the relationship that was experienced by the deceased and the defendant. I take into consideration everything that has been said regarding this particular matter." (R. p. 51, lines 10-17). The judge provided no grounds or basis for his ruling that "there is no finding of parole eligibility pursuant to 16-25-90." (R. p. 51, lines 22-23). This ruling constitutes an error of law where the judge's finding is not supported but contradicted by the evidence submitted.

The legislature has made an exception to general parole provisions where an inmate suffered domestic violence by her victim. S.C. Code § 16-25-90. That section provides in relevant part:

An inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

The South Carolina Supreme Court explained in State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (S.C. 2000),

The legislature did not intend the mere production of evidence to automatically result in earlier parole eligibility when enacting the statute enabling a defendant who was subjected to a history of domestic violence from the victim to be eligible for parole after service of one-fourth of the

prison term; instead, the legislature intended a defendant to present credible evidence of such domestic violence.

540 S.E.2d at 101. The Grooms Court determined that the appropriate standard to be applied is one of a preponderance of the evidence. The Court in Grooms held, “a defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole.” S.C. Code § 16-25-90 incorporates the specific definition of criminal domestic violence found in S.C. Code § 16-25-20:

It is unlawful to: (1) cause physical harm or injury to a person’s own household member, (2) offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

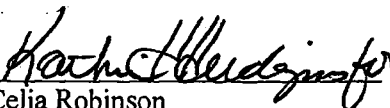
Here, appellant presented credible evidence of a history of criminal domestic violence at the hands of Kenneth Selim in the form of police reports, eye-witness statements, and expert testimony.

In addition, the State admitted that the relationship between these two long-time domestic partners was notable for “a violent history between the two of them. You see assaults going back and forth, your honor.” (R. p. 50, lines 2-3). Thus, the State conceded that there was a violent history of assaults perpetrated by Kenneth Selim against his domestic partner, appellant. In opposition to appellant’s evidence and its own concession, the State presented only the testimony of the victim’s family members. Therefore, appellant amply established her history of criminal domestic violence at the hands of Kenny Selim by a preponderance of the evidence. The Circuit Court erred in refusing to enter a finding of a history of criminal domestic violence pursuant to § 16-25-90.

CONCLUSION

The circuit court judge erred in refusing to find that appellant had established by well beyond a preponderance of the evidence that she was the victim of criminal domestic violence at the hands of the deceased victim. The judge's ruling is inconsistent with the evidence presented before the court by appellant and it is contradicted by the State's concession that there was a history of Kenny Selim violently assaulting appellant. The circuit court's ruling should be reversed and the case remanded for entry of a finding that appellant did present credible evidence establishing that she was the victim of criminal domestic violence at the hands of the deceased victim and that she is eligible for parole after serving one-fourth of her prison term, pursuant to S.C. Code § 16-25-90.

Respectfully submitted,


M. Celia Robinson
Appellate Defender

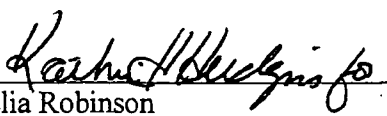
ATTORNEY FOR APPELLANT.

This 21st day of August, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 21, 2008


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry CountySteven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

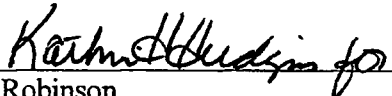
V.

NERAIM G. BLACKWELL-SELIM,

APPELLANT

CERTIFICATE OF SERVICE

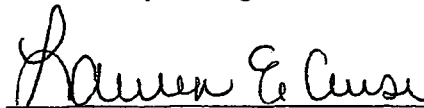
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 21st day of August, 2008.



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 21st day of August, 2008.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: August 23, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Horry County
The Honorable Steven H. John, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

NEARIN G. BLACKWELL-SELM,

APPELLANT.

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STATEMENT OF ISSUE ON APPEAL

Is the circuit court's finding that Appellant failed to credibly prove, by a preponderance of the evidence, that she suffered a history of criminal domestic violence at the hands of her victim, pursuant to S.C. Code Ann. § 16-25-90, supported by evidence in the record?

STATEMENT OF THE CASE

Appellant¹ was indicted on July 28, 2005 by the Horry County Grand Jury for the murder of her live-in boyfriend, Kenneth Selim. (See Indictment). The Honorable Steven H. John accepted her plea of guilty to voluntary manslaughter on January 4, 2007, but deferred sentencing until February 27, 2007. (See Jan 4 Tr., p. 13, lines 4-17). On that date, after a hearing on whether Appellant suffered a history of criminal domestic violence at the hands of the victim, such that she would be eligible for early parole in accordance with S.C. Code Ann. § 16-25-90, Judge John sentenced Appellant to twenty years and found that she failed to prove her eligibility for early parole. (See Feb. 27 Tr., p. 3-37). A Notice of Appeal was timely served on February 28, 2007.

¹ Appellant was indicted as "Nearin Grace Blackwell;" however, it appears from the sentencing sheet and the affidavits from friends and family members that her first name is actually "Nearin."

ARGUMENT

Evidence Before the Lower Court

At Appellant's January 4, 2007 guilty plea, the solicitor informed the court that although an indictment for murder had been true-billed, Appellant would be pleading guilty to the lesser offense of voluntary manslaughter. (Jan. 4 Tr. p. 3, lines 9-14). The solicitor told the court that Appellant was indicted for stabbing the victim, Kenneth Al Selim, in the chest on June 3, 2005. (Jan. 4 Tr. p. 11, lines 11-17). The autopsy report indicated that the stab wound was left to right, going through the chest in a downward motion. (Jan. 4 Tr. p. 11, lines 20-25). The solicitor told the court that after the incident Appellant claimed that the victim jumped on the knife; however, the pathologist's report revealed that would not have been possible because of the angle of the wound. (Jan. 4 Tr. p. 11, line 25 – p. 12, line 4). Appellant affirmed that the facts as stated by the solicitor were true and correct, and, after a thorough questioning of Appellant, the court accepted her plea of guilty. (Jan. 4 Tr. p. 12, lines 5-11; see p. 5-13).

At the February 27, 2007 sentencing hearing, the solicitor first recited Appellant's prior record, including 1991 charges for domestic violence and disturbing the peace; in 1994 seven charges of "uttering forgery," in 2003 "assault three" and resisting arrest charges. (Feb. 27 Tr. p. 4, line 20 – p. 5, line 5).² The court was then presented with a picture of the victim and a letter from the victim's stepmother. (Feb. 27 Tr. p. 5, lines 9-14). The victim's mother then read aloud a letter she wrote to the court. (Feb. 27 Tr. p. 5, line 21 – p. 9, line 11). In this letter, she stated that her family did not feel that this was an accident; instead it was "another act of

² Since Connecticut assault offenses will be mentioned more than once in this Brief, it should be noted that in Connecticut, "assault first" is a Class B felony, "assault second" is a Class D felony, and "assault third" is a Class A misdemeanor. See Conn. Gen. Stat. Ann. § 53a-59 – 61. Generally, a Class B felony carries not more than twenty years; a Class D felony carries not more than five years, and a Class A misdemeanor carries not more than a year. See Conn. Gen. Stat. Ann. § 53a-35(a) & § 53a-36.

violence deliberately performed to our son, Kenny, by Nearin.” (Feb. 27 Tr. p. 6, lines 6-8). She described a previous stabbing by Appellant in Connecticut, six weeks prior to the victim’s death, where Appellant stabbed the victim three times in the back. (Feb. 27 Tr. p. 6, lines 8-11). She also indicated that Appellant had a habit of cutting or maiming herself, then calling the police and telling them that the victim did it to her. (Feb. 27 Tr. p. 6, lines 11-13). She stated that the victim’s whole personality changed after he entered into the relationship with Appellant, and that he seemed unusually sad. (Feb. 27 Tr. p. 6, lines 17-20). The victim told his mother recently that he “slept with one eye open” and feared for his life. (Feb. 27 Tr. p. 6, lines 14-15). When family members told the victim that he needed to get out of the relationship with Appellant, he told them “I can’t.” (Feb. 27 Tr. p. 6, lines 21-25). Family members felt strongly that Appellant may have threatened him or his daughter, Callie, with harm. (Feb. 27 Tr. p. 6, lines 25–p. 7, line 2).

The victim’s mother further indicated that family members suspected that the victim was planning to finally leave Appellant to start a new life with his daughter, because he traveled from Connecticut to South Carolina, where Callie lived, and her address was found in his pocket at the time of his death. (Feb. 27 Tr. p. 7, lines 18-23). They suspected that he and Appellant argued about this prior to his death. (Feb. 27 Tr. p. 7, lines 24-25). The victim’s mother pointed out that the Appellant had three children of her own, but did not have custody of any of them. (Feb. 27 Tr. p. 8, lines 1-4). She also informed the court that, because of Appellant’s tendency to “control relationships,” the victim’s family felt that upon release from custody, Appellant would be a danger to society, capable of hurting someone else. (Feb. 27 Tr. p. 8, lines 5-8). She described Appellant’s behavior as “hostile.” (Feb. 27 Tr. p. 8, lines 14-15).

Ms. Bright, the mother of the victim’s daughter, also spoke on the victim’s behalf and told the court that she was with the victim for seven years, and that during that time, there were

no incidents of domestic violence. (Feb. 27 Tr. p. 10, lines 2-3). She stated that the victim had been a good father to both of her children. She corroborated that the victim indicated prior to his death that he was coming to be with his daughter. (Feb. 27 Tr. p. 10, lines 9-10).

Appellant's counsel then made her presentation to the court, first informing the court that Appellant would be seeking a finding of early parole eligibility under S.C. Code Ann. § 16-25-90. (Feb. 27 Tr. p. 10, lines 21-24). Appellant's counsel informed the court about the victim's criminal history, including "felony assault second" and "misdemeanor assault third" in 2002; "felony assault first" in 2003 and another in 2004. (Feb. 27 Tr. p. 11, lines 21 – p. 12, line 1). She also informed the court that the victim had outstanding arrests for which there were no dispositions, and she provided the court with copies of the incident reports. (Feb. 27 Tr. p. 12, line 2 – 6). Again, none of these incidents had been resolved in a court of law. (Feb. 27 Tr. p. 12, lines 2-3). Although the State objected to the introduction of the arrests without subsequent convictions, as well as to the self-serving hearsay contained in the documentation of the alleged incidents, the court permitted them, stating, "I'm going to listen to all of it to make my decision." (Feb. 27 Tr. p. 14, lines 8-14).

Appellant's counsel also presented four affidavits to the court, all from friends or family of Appellant. (Feb. 27 Tr. p. 16, line 3- p. 17, line 22). Ms. Sanders, Appellant's older cousin, then spoke on Appellant's behalf, telling the court that she had a very positive relationship with Appellant since childhood. (Feb. 27 Tr. p. 19, line 4 – p. 19). She indicated that because they were both "battered women," they would discuss their desires to have non-abusive relationships. (Feb. 27 Tr. p. 20, lines 7-11). She also told the court that Appellant indicated to her that she loved the victim but was "confused" about the way that she was treated. (Feb. 27 Tr. p. 20, lines 16-18).

Appellant also presented Marty Loring, Ph.D., a forensic consultant, expert witness, and "mitigation specialist" who was hired to evaluate Appellant. (Feb. 27 Tr. p. 18, lines 8-22; p. 21, line 12-19). Dr. Loring stated that she spent a total of about six hours with Appellant, including phone calls and interviews. (Feb. 27 Tr. p. 22, line 23 – p. 23, line 3). Dr. Loring stated that she found no inconsistencies in Appellant's answers to her questions. (Feb. 27 Tr. p. 23, lines 4-7). She stated that she spoke with "collateral witnesses," the first being a "Michael Moody," who indicated that he took or attempted to take Appellant to the hospital on several occasions after incidents of alleged domestic violence. (Feb. 27 Tr. p. 23, lines 16-25). The second was Appellant's daughter, Medina Kidwell, who indicated that she overheard the victim threatening Appellant. (Feb. 27 Tr. p. 24, lines 1-5). Finally, she stated that spoke with a "David Gould," who reported that he witnessed the victim punch Appellant. (Feb. 27 Tr. p. 24, lines 6-9). Dr. Loring went on to describe Appellant's upbringing and alleged sexual abuse by family members. (Feb. 27 Tr. p. 25, line 15- p. 26, line 11). Dr. Loring also stated that Appellant reported having two abusive relationships prior to her relationship with the victim. (Feb. 27 Tr. p. 26, lines 9-11).

Dr. Loring's diagnosis was that Appellant suffered from "battered woman's syndrome" and "post traumatic stress disorder," and that although she preferred to run away and hide to avoid or escape violence, when that was not possible, she fought back by hitting or grabbing things to hit with. (Feb. 27 Tr. p. 27, line 15- p. 28, line 13). Dr. Loring admitted that she was aware of Appellant's own prior arrests for assault - twice in 2002, again in 2004, and again in 2005. (Feb. 27 Tr. p. 33, lines 11-14). She was also aware of an open case for "spousal abuse" from April 2005, as well as harassment and trespassing charges from 2001. (Feb. 27 Tr. p. 33, lines 15-20). Dr. Loring acknowledged that she was aware that after the killing of the victim, Appellant gave a false identity for herself and for the victim, and maintained a false story in the

days afterwards. (Feb. 27 Tr. p. 34, lines 13-25). The doctor also knew about a statement given by Stacy Johnson that the Appellant was the one who “wore the pants in the relationship,” and that he had witnessed Appellant slap the victim. (Feb. 27 Tr. p. 35, lines 5-20). The solicitor pointed out that the victim had no convictions for criminal domestic violence. (Feb. 27 Tr. p. 35, line 25 – p. 36, line 1). Appellant’s counsel responded that there was an “assault first” concerning Appellant, but stated that the police did not take into account that they lived together. (Feb. 27 Tr. p. 36, lines 17-22).

The court also had before it copies of all the documents presented by Appellant’s counsel. (Feb. 27 Tr. p. 14, lines 16-18). The first incident report, dated February 9, 2002, stated that Appellant, who was found crying on the ground, told the officer that her boyfriend “Ken Kidwell” had beaten her up and took off running. (See 2/9/02 Report). Although it states that she “appeared to be in a lot of pain,” the only visible injury was to her knuckles. (See 2/9/02 Report). When the officer asked bystanders what happened, a shop owner could only relate what Appellant told him, which was that her boyfriend beat her up. (See 2-9-02 Report). When Appellant was questioned again a few days later, she told the officer she and the victim had an argument, and stated that he hit her after she swore at him. (See 2/9/02 Report). She told the officer that she and “Kidwell” had been dating on and off for about six months and used to live together in Oregon until about a month earlier. (See 2/9/02 Report). She told him that she did not know where he currently lived. (See 2/9/02 Report). However, a recent job application indicated that her boyfriend was in fact named was “Ken Selim,” and that he lived at her address. (See 2/9/02 Report). She was shown a picture of Ken Selim and she stated that “it did not really look like” her boyfriend. (See 2/9/02 Report). Another witness told this officer that he knew that Ken (Selim) was Appellant’s boyfriend because he saw them together all the time. (See 2/9/02 Report).

An incident report dated May 30, 2002 indicated that officers spoke with Appellant as a witness to an assault upon a man named Ray Parmalee. (See 5/30/02 Report). She told officers that she saw her boyfriend and Ray exchange words but did not know what was said, then she saw her boyfriend punch Ray and thereafter leave the scene. (See 5/30/02 Report). Appellant told officers that she would not give a statement because she was afraid of her boyfriend, who had hit her in the past. (See 5/30/02 Report). She told another officer that a white male named "Mark" actually assaulted Ray Parmalee. (See 5/30/02 Report). Selim returned to the scene a few minutes later, and told officers that he started fighting with the man after the man called his girlfriend (Appellant) a "nigger." (See 5/30/02 Report). Selim had cuts on the knuckles of his right hand. (See 5/30/02 Report).

A third incident report, dated December 19, 2002, indicated that Appellant had a cut on her inner elbow and on her lower back. (See 12/19/02 Report). She told the officer, "Kenny cut me with a knife." (See 12/19/02 Report). The officer made the following notation in his report: "Let it be known, that Nearin Blackwell and Kenneth Selim are long time boyfriend and girlfriend. It is also known that they fight all the time, sometimes getting physical resulting in arrests." (See 12/19/02 Report). The report indicates that after Selim was arrested, he stated that he and Appellant, "like always," were fighting, and Appellant cut herself when she fell onto a space heater in their apartment. (See 12/19/02 Report). He told police he did not want her arrested. (See 12/19/02 Report). Both parties were taken to the hospital. (See 12/19/02 Report). Appellant told police at the hospital that she and the victim had been drinking alcohol and they got into an argument over money. (See 12/19/02 Report). A supplement to the original case report, dated March 10, 2002, purports to incorporate several photographs of various parts of Appellant's body depicting injuries. (See 3/10/02 Report). It is unclear why this report is dated approximately nine months earlier than the alleged incident in December of 2002; however, if

the report is instead actually from March 10, 2003, is unclear why the report was supplemented with photographs several months after the incident.

An "integrated psychiatric assessment" dated April 12, 2004, indicated that Appellant presented at the emergency department at 5:00 pm the night before, asserting that her medication had been stolen.³ (See 4/12/04 Medical Report). The report indicated that Appellant claimed her face was bruised from "being hit several days ago." Appellant's blood-alcohol level was noted at .270; the report also appears to state that she drank to that intoxication level four to five times per week. (See 4/12/04 Medical Report). She was "vague" regarding other substance abuse. (See 4/12/04 Medical Report). The report also indicated that she was experiencing "suicidal ideation" the night before. (See 4/12/04 Medical Report).

Another medical report "addendum" dated June 1, 2004, indicated that Appellant was referred to the emergency department of Middlesex Hospital by an ophthalmologist for "injuries consistent with possible abuse," but had eloped from the hospital. (See ED Record dated 6/1/04). It states that the police had been sent to the patient's home and that she was still being sought. (See ED Record dated 6/1/04). The report notes that the patient gave the ophthalmologist a history of "a boyfriend assaulting her," and states that "the boyfriend that is with her today" might be the same individual responsible for an assault two years ago. (See ED Record dated 6/1/04). The report also notes that the "possible abuse is not reportable at this time," and that reporting cases of abuse to the appropriate authorities has been suggested to her in the past, but she "refused." (See ED Record dated 6/1/04).

A police report dated January 22, 2005 indicated that a "physical confrontation" occurred between Appellant and the victim inside their apartment. (See 1/22/05 Report). The report

³ It appears that Appellant was on "Dilantin," a medication for the prevention of seizures. The fact that Appellant had a seizure disorder and was on seizure medication (and the side effects of the medication and its effects in combination with other substances), was not specifically pointed out to the sentencing court, but the court did have a copy of the medical record.

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stated that Appellant "bludgeoned" her boyfriend using a "dangerous instrument" after being assaulted by him. (See 1/22/05 Report). Both parties were arrested; Appellant was charged with felony assault second and disorderly conduct, while Selim was charged with misdemeanor assault third and disorderly conduct. (See 1/22/05 Report). A "Middletown Press" internet news report dated accompanied this report. (See 1/25/05 News Report). Apparently in relation to that incident, Appellant's counsel told the court about a letter allegedly written by the victim to an attorney, which stated that both he and Appellant were charged with (but not convicted of) criminal domestic violence after the January 22 incident. (Feb. 27 Tr. p. 17, lines 6-10). The letter also states that although his injuries were not serious, he called 911 and subsequently sought marriage counseling for himself and Appellant, as well as treatment for a drinking problem. (Feb. 27 Tr. p. 17, lines 10-14). The letter also declares that he wished for the case against Appellant to be dissolved, and repeats three times that the victim was not at fault in the matter. (Feb. 27 Tr. p. 17, lines 14-17).

The court was also presented with four affidavits signed by family or friends of Appellant. The first, from Donald Blackwell, Appellant's older cousin, stated that he witnessed the victim attempt to abuse Appellant. (See Affidavit). He also said that Appellant called him several times and reported that "Kenny had punched her." (See Affidavit). He stated that he observed "grab marks" and bruises on Appellant, and Appellant told him that "Kenny had hurt her." (See Affidavit). He stated that both the victim and Appellant drank beer, and that Kenny would become "stupefied" and become violent and abusive; however, she would fight him back if she could. (See Affidavit).

Pam Wilson, a friend of Appellant from Connecticut, also submitted an affidavit, indicating that she had many conversations with Appellant regarding Kenny Selim and observed their interactions. (See Affidavit). She claimed to have seen, in the summer of 2001, the victim

"bully" Appellant and beat her "all over her body" with a stick that had a nail protruding from it. (See Affidavit). She also claimed to have seen him "take out his frustrations on her" while they were down by the river sometime in 2001 – he beat her "all over her body" and punched her numerous times in the face. (See Affidavit). Ms. Wilson opined that Appellant was "an abused woman." (See Affidavit).

Sandra LeClaire, another friend of Appellant from Connecticut, submitted a brief affidavit, stating that Appellant and the victim both drank alcoholic beverages, and that the victim would "hit her hard" and Appellant would hit him back and fight back at him. (See Affidavit.) Appellant's mother, Francis Blackwell, signed an affidavit stating that Appellant called her and asked for her help to leave Kenny Selim, but she did not have enough money to help her with a plane ticket. (See Affidavit). She also claimed to have overheard Kenny in the background shouting threats, including that Appellant would never get away from him and that he would find her and kill her. (See Affidavit.) The mother's affidavit stated that Appellant had three other "abusive relationships" with men. (See Affidavit).

Finally, the court had before it the arrest warrant, affidavit for probable cause, and the indictment for murder. The probable cause affidavit indicated that the victim was found with a stab wound to the chest - he was transported to the hospital, but died of the injury. (See PC Affidavit). It was thereafter determined that Appellant was responsible for the stabbing, which resulted from an incident of domestic violence. (See PC Affidavit). It further stated that Appellant provided deceptive information to police to attempt to conceal and cover up what occurred. (See PC Affidavit). In a subsequent interview (after a waiver of her rights), Appellant admitted to arming herself with a knife for the purpose of threatening the victim. (See PC Affidavit).

The sentencing court, prior to making its ruling, stated that it was taking into account "everything that has been said" regarding the case. (Feb. 27 Tr. p. 37, lines 16-17). The court remarked that it had "heard from all sides of this particular issue and the story has been presented to the court probably as it represents the relationship that was experienced by the deceased and the defendant." (Feb. 27 Tr. p. 37, lines 12-16). The court then sentenced Appellant to twenty years, with credit for 635 days of time served. The court ruled that there would be "no finding of parole eligibility pursuant to 16-25-90."

Standard of Review

"In criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Laney, 367 S.C. 639, 643-644, 627 S.E.2d 726, 729 (2006) (citations omitted). "At sentencing, a judge has an obligation to consider information material to punishment. A sentencing judge 'may appropriately conduct an inquiry broad in scope, largely unlimited as to either the kind of information he may consider, or the source from which it may come.'" Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984) (citations omitted); see also State v. Franklin, 267 S.C. 240, 245, 226 S.E.2d 896, 897 (1976); State v. Sullivan, 267 S.C. 610, 618, 230 S.E.2d 621, 625 (1976). Of course, the trial court has the best vantage point from which to assess matters of credibility. Cherry v. Thomasson, 276 S.C. 524, 525, 280 S.E.2d 541, 541 (1981). "Because the appellate court lacks the opportunity for direct observation of witnesses, it should accord great deference to trial court findings where matters of credibility are involved." Dixon v. Dixon, 336 S.C. 260, 263, 519 S.E.2d 357, 359 (Ct. App. 1999). Hence, the burden is on the appellant to convince the appellate court that the lower court erred in its findings of fact. Cherry, supra.

The circuit court's finding that Appellant failed to credibly prove, by a preponderance of the evidence, that she suffered a history of criminal domestic violence at the hands of her victim under S.C. Code Ann. § 16-25-90, is supported by evidence in the record.

South Carolina's early parole eligibility statute provides that an inmate who is convicted of an offense against a household member may become eligible for parole after serving one-fourth of his or her prison term, when the inmate presents "credible evidence of a history of criminal domestic violence, as provided in § 16-25-20, suffered at the hands of the household member." S.C. Code Ann. § 16-25-90 (2003). S.C. Code Ann. § 16-25-20 states that it is unlawful to cause or attempt to cause physical harm or injury to one's own household member.

Currently, only one South Carolina case discusses the early parole eligibility statute. In that case, as in the case at bar, the appellant had been indicted for the murder of her live-in boyfriend, but she pled to voluntary manslaughter and sought a finding by the sentencing judge that she was eligible for early parole. State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (2000). Prior to sentencing, the appellant presented her own testimony, as well as that of a psychiatrist, an investigator, and her sister's guardian ad litem. The solicitor presented testimony from the victim's wife, sister, and from a police investigator. Id. at 250, 540 S.E.2d at 100. The circuit court held that Appellant had not presented "credible evidence of a history of physical harm that's been substantiated or documented," and had not proven by a preponderance of the evidence that she suffered a history of criminal domestic violence at the hands of her victim. Id. at 251, 540 S.E.2d at 100. The judge noted that if he were to rule otherwise, then "anyone can say at any time without corroboration that such and so happened at such and such a time;" he also stated that although not all instances of alleged physical abuse must be corroborated, he was taking into account the believability and credibility of the witnesses and the "bias, interest, and prejudice of the witnesses." Id.

The South Carolina Supreme Court upheld the finding of the circuit judge under a preponderance of the evidence standard, finding that the defendant must “do more than simply present evidence; she must persuade the trial judge her evidence is reliable.” Id. at 253, 540 S.E.2d at 101. The Court noted that “[c]redible evidence” is defined as “[e]vidence that is worthy of belief; trustworthy evidence.” Black’s Law Dictionary 577 (7th ed. 1999). ‘Trustworthy’ is defined as ‘worthy of trust; dependable; reliable.’ Webster’s New World College Dictionary 1436 (3rd ed. 1997). State v. Grooms, 343 S.C. 248, 252-53, 540 S.E.2d 99, 101 (2000).

Accordingly, the duty of the lower court in this case, under a preponderance of the evidence standard, was to evaluate the evidence presented and determine whether Appellant had credibly proven that her version of events was more likely than not. See Metropolitan Stevedore Co. v. Rambo, 521 U.S. 121, 137-139 (1997) (internal citations omitted) (the evidence of the party bearing the burden of proof must be *more convincing* than the evidence in opposition; if evidence is evenly balanced, party with the burden must lose) (emphasis added). Of course, in Appellant’s case, as in Grooms, the victim is not here to tell his side of the story. However, the plea court was able to consider the assertions of the victim’s family that Appellant was the one “controlling” the relationship, that she was in fact violent, and that she had stabbed the victim previously in Connecticut six weeks prior to his death. The court heard about a corroborating statement from Stacy Johnson that Appellant “wore the pants in the relationship.”⁴ The victim’s former girlfriend, and mother of his daughter Callie, was present at the hearing and personally informed the court that she was with the victim for seven years and never once was there an incident of domestic violence.

⁴ It should be noted that Appellant approximately six years older than the victim. (See Connecticut Incident Reports.)

In addition, the victim's mother informed the court that Appellant, in keeping with her "hostile" behavior, had a habit of injuring herself and then calling police and blaming the victim for it. If the court found this testimony credible, it would lessen or extinguish any evidentiary value of the victim's assault conviction. Regarding incidents not resulting in convictions, although the court ruled that it would "listen to all of it," it was up to the court to determine the weight that alleged incidents from years past should have even though they never resulted in convictions in a court of law. For example, it could be that the charges against the victim were dismissed when Connecticut prosecutors discovered that Appellant's injuries were in fact self-inflicted. The court here was left to speculate on this issue. The lower court was also informed of Appellant's probable malicious motive for the killing - that the victim was planning to finally leave her to start a new life. Again, of course, the victim was not present to tell the court what, in fact, his intentions were; however, importantly, this statement was not contested or refuted by either Dr. Loring, or by Appellant herself when she was given the opportunity to speak to the court. (See Feb. 27 Tr. p. 21-37).

At the January 4, 2007 plea, Appellant admitted to the facts as stated by the solicitor, which indicated that she provided deceptive information to the Myrtle Beach police regarding her level of culpability for the stabbing in an attempt to conceal what really occurred. The February 9, 2002 incident report of Officer White, as well as the May 30, 2002 incident report of Officer Godwin, both indicate that Appellant also provided deceptive information to police in Connecticut. This, of course, places her credibility into serious doubt, which is significant because much of the evidence she presented on her own behalf was self-serving hearsay. The various police reports and medical reports indicate mostly what Appellant told the writers of the reports rather than eyewitness accounts of Kenny Selim beating Appellant. Although some injuries to Appellant are noted in reports, there was no direct evidence presented that those

injuries were caused by the victim. Furthermore, the only witnesses purporting to offer eyewitness testimony were biased in favor of Appellant, including Appellant's older cousin, two friends from Connecticut, and Appellant's mother.

Furthermore, none of these people actually presented themselves to the court personally to speak on Appellant's behalf at the sentencing hearing. It was certainly within the court's province to weigh and evaluate the comparative credibility of testimony presented in an affidavit versus in-person testimony. Regarding the affidavit of Pam Wilson in particular, there were no medical reports presented corroborating a "savage beating" with a nail-studded stick; in fact, the only medical reports presented described either bruising or vague "injuries" with no description. The mother's affidavit, which stated that Appellant had been involved in three prior "abusive relationships," contradicted the information Appellant provided to Dr. Loring that she had *two* prior abusive relationships. In addition, the April 2004 "integrated psychiatric assessment" indicates suicidal ideation, a high alcohol concentration, and a claim of stolen medication, but only in passing does it reference facial bruising - with no reference to Kenny Selim as being the source of it. The only other medical report, the June 2004 emergency department record, vaguely references the patient giving "a history of a *boyfriend* assaulting her." As the court noted in Grooms, *supra*, although documentation of every alleged incident may not always be required, appropriate corroboration may be necessary when there is conflicting information coming from the victim's family members and when Appellant's credibility is cast into doubt.

Ms. Sanders, who did appear and speak on Appellant's behalf at the February 27 hearing, was also a biased witness, since she was Appellant's older cousin. In any event, she was unable to offer any direct evidence to the court. Dr. Loring, the psychologist who evaluated Appellant, apparently had a history of abuse in her own background (see Feb. 27 Tr. p. 18, lines 9-10), and

was tearful during some of her presentation to the court. (See Feb. 27 Tr. p. 26, lines 20-22; p. 26 – 31). This certainly reflects upon the objectivity and impartiality of her evaluation and conclusions, as does the fact that she was a hired “mitigation specialist.” Furthermore, the methods used in her evaluation, such as the “trauma tools” (see Feb. 27 Tr. p. 21, line 21 – p. 23, line 7) appeared to be somewhat unreliable, inasmuch as she rested upon mostly hearsay and “hearsay within hearsay,” none of which the victim can now refute. (See Feb. 27 Tr. p. 23-31). It was within the court’s discretion to weigh Dr. Loring’s “expert” opinions accordingly.

The incident reports, as noted above, did not ultimately result in the victim being convicted, and some contained conflicting or incorrect information. However, if some or all of the Connecticut reports in this case were given weight by the court, they tend to indicate that the Appellant and the victim *mutually* fought with each other. The victim had injuries that were documented in the same fashion that Appellant’s were documented – specifically an injury to his finger on December 19, 2002, and that he was “bludgeoned” by Appellant with a “dangerous instrument” on January 22, 2005. They both had assault-related arrests, and Appellant herself had a 1991 domestic violence charge on her record as well as the assault arrests in recent years. The court had to balance this against the testimony of the victim’s former girlfriend who appeared in court personally and told the judge that there had never been an incident of domestic violence between herself and the victim during the entire seven years that they were together. The victim’s mother also personally told the court that the Appellant was the controlling and violent one in the relationship. Assuming that the court found credible evidence that *both* parties fought each other, the court could reasonably have found that this was insufficient to prove that Appellant suffered a history of criminal domestic violence *at the hands of* her victim. Compare State v. Taylor, 356 S.C. 227, 233-234, 589 S.E.2d 1, 4 (2003) (mutual agreement to fight acts as bar to self defense because it is inconsistent with “no fault” finding necessary to establish self-

defense); also State v. Santiago, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006), *reh'g denied* Aug. 25, 2006 (defendant who provokes or initiates an assault cannot invoke self-defense). The court could reasonably have found from the evidence presented that Appellant failed to prove that she was, in fact, the more minor aggressor in the relationship. Unquestionably, the statute did not intend that a primary, or even an equal, aggressor in a mutually abusive relationship would be rewarded with early parole eligibility when he or she eventually kills the other.⁵

Finally, and perhaps most important in this case, Appellant herself did not take the stand and testify as to any criminal domestic violence allegedly perpetrated by the victim. She could have corroborated the reports and affidavits, and could have also explained the inconsistencies and prior deceptive statements to police, thus rehabilitating her credibility before the court. She failed to explain why she did not have custody of her three children, and failed to even establish how long she and the victim dated or lived together, which might have lent credibility to the medical report that referenced "a boyfriend." As it stands, both her mother and Dr. Loring stated that she had prior "abusive relationships," and with no time frames established, the court was left to speculate. Appellant made only a brief statement to the court as follows: "Sir, I would just like to say that I am very sorry for that this accident that has happened. Regardless of the way things were we did love each other and I just know that there were plenty of things that just weren't correct with both of us and I'm sorry. I'm sorry that he's gone and I'm sorry for everyone's loss." (Feb. 27 Tr. p. 37, lines 2-8). Furthermore, she failed to deny or refute any of the statements made by the victim's mother, including that she was the controlling and violent one, that she previously stabbed the victim six weeks before she killed him; and that she killed

⁵ Appellant argues that the solicitor's comment that there appeared to be a "violent history" between the victim and Appellant (see Feb. 27 Tr. p. 36, lines 2-3) removes from the judge the discretion to find otherwise; however, the Respondent would simply note that the solicitor did *not* concede that Appellant "suffered a history of criminal domestic violence at the hands of her victim."

the victim because he was planning to leave her to start a new life. In sum, Appellant herself failed support her case for early parole eligibility, and therefore she failed to meet her burden of proof.

Accordingly, because the lower court heard the presentations in court and had the unique opportunity weigh, and reject, the evidence it found unreliable or unbelievable, the lower court's finding is not erroneous and is supported by evidence in the record.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction, sentence, and non-eligibility for early parole under S.C. Code Ann. § 16-25-90 should be affirmed.

Respectfully submitted,

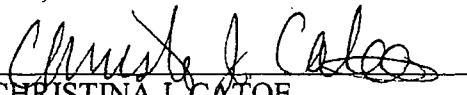
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ATTORNEYS FOR RESPONDENT

February 21, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Horry County
The Honorable Steven H. John, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

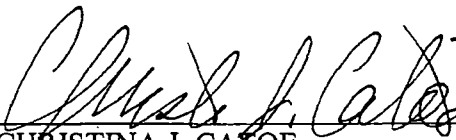
v.

NEARIN G. BLACKWELL-SELIM,

APPELLANT.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that a true copy of the **Initial Brief of Respondent** and **Designation of Matter** in the above-referenced case has been served upon **M. Celia Robinson, Esquire**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **21st day of February, 2008**.



CHRISTINA J. CATOE
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SWORN to before me this 21st day of February, 2008.



Notary Public for South Carolina.

My Commission Expires:

5-11-2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NERAIN G. BLACKWELL-SELIM,

APPELLANT

FINAL REPLY BRIEF OF APPELLANT

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REPLY ARGUMENT

I. The circuit court judge erred as a matter of law in deciding that appellant had failed to present credible evidence of a history of criminal domestic violence sufficient to satisfy the requirement of § 16-25-90.

On brief, appellant argued that, as the Supreme Court found in State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (2000), the legislature intended that a convicted person only be required to present credible evidence of a history of domestic violence in order to benefit from S.C. Code § 16-25-90. Appellant further argued that, as the Supreme Court held in Grooms, “a defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole.” Appellant argued that the circuit court judge erred in finding that appellant had failed to satisfy the requirements of S.C. Code § 16-25-90 where she actually met and exceeded the preponderance standard through the presentation of imminently credible evidence of a history of domestic violence perpetrated upon her by the victim, Kenneth Selim, including a police report proclaiming, “Let it be known that Neraim Blackwell and Kenneth Selim are long time boyfriend and girlfriend. It is also known that they fight all the time, sometimes getting physical, resulting in arrests;” by eye-witness accounts, expert testimony, and, most critically, the concession of the State of South Carolina that the relationship between these two long-time domestic partners was notable for “a violent history between the two of them. You see *assaults going back and forth*, your honor.” (R. p. 36, lines 2-3).

The State has responded by stressing what the State apparently perceives as contrary evidence. The State points to the particulars of the manslaughter for which appellant is imprisoned; reviews appellant’s history of charges for domestic violence, disturbing the peace, and forgery; recites the testimony of the victim’s grieving mother to the effect that appellant is a bad person who murdered her son and who was a bad influence on his life from

the inception of their relationship; and finishes with a review of the testimony of the mother of the victim's children to the effect that when *they* were together, Kenny was not violent towards *her*. (Initial Brief of Respondent pp. 1-3). Next, the State reviews the evidence presented by appellant and purports to challenge the credibility of that evidence. However, this entire exercise is unavailing in the face of the State's hearing admission that the homicide victim was appellant's long time domestic partner and that he had perpetrated acts of violence upon her.

The State has thus conceded the requirements of the statute. Nevertheless, the State purports to challenge the admitted fact that appellant was the victim of domestic violence at the hands of the manslaughter victim by again pointing out that appellant was not the sort of sympathetic, helpless, heroine typically found in movies on the Lifetime network and then stressing that the witnesses who testified on appellant's behalf were her friends or supporters. The State doubts the credibility of Dr. Loring's diagnosis of battered woman's syndrome because the doctor "admitted" that she was aware of appellant's own arrests for assault and that, when appellant did not run away, she responded to violence with violence. (Initial Brief of Respondent at pp. 8-9). The State challenges the efficacy of the numerous incident reports of Kenneth's Selim's violence

against appellant by pointing out that appellant's injuries were minimal, that in many cases appellant refused to accurately identify her assailant or refused to press charges to conviction, and by again pointing out that appellant was in some cases also charged, along with Kenneth Selim, for domestic violence.

The State's argument would have been appropriate jury argument had the charges related to the death of Kenneth Selim proceeded to trial. However, at this stage of the proceedings, this argument in no way served to diminish the preponderance of the evidence which established that appellant was the victim of domestic violence at the hands of the

victim. Again, this fact was admitted by the State. However, the State's presentation does provide some clue as to what may have prompted the Circuit Court's error. The State strove at the hearing and continues to strive on appeal to negate any notion that appellant was a nice, sweet, helpless woman, victimized by a man who was overpoweringly violent and abusive and, apparently, such concerns weighed with the Circuit Court. However, appellant was not required to make any such showing by S.C. Code § 16-25-90. No such requirement was set out by the legislature; instead, the legislature plainly indicated by the spare, not to say taciturn, language of this section that a person in appellant's position is required only to show by credible evidence a history of domestic violence at the hands of her eventual victim.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998). In construing a statute, the Court must give clear and unambiguous terms their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Gilstrap v. South Carolina Budget and Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (S.C., 2000).

Given that the apparent purpose of this legislation was to benefit those convicted of killing their abusers, the court must assume that the legislature purposely and deliberately did not qualify the type, chronicity, or severity of the prior history of abuse and intentionally did not require persons in appellant's position to prove that they were worthy, deserving, or without blame. The legislature did not require that the prior domestic abuse be egregious, inescapable, horrific, or life threatening. Instead, the legislature's requirement is satisfied by credible evidence of a single prior incident of any sort of criminal domestic violence perpetrated upon her by the convicted person's former domestic partner.

The legislature's statute did not require appellant to prove that she was helpless and never fought back, did not require her to prove that she was without fault in the relationship, and did not require her to prove that the killing was justified. The legislature likely believed that at this stage of the proceedings it was a little late to be debating issues more relevant to justifying the homicide. The legislature did not require a diagnosis of battered woman's syndrome or expert testimony. The legislature did not require persons in appellant's position to be able to present a tidy package of their abuser's convictions for criminal domestic violence. Instead, the legislature, well aware that criminal domestic violence often does not result in conviction, required only that she present credible evidence that such domestic violence actually took place.

The legislature's lack of qualification and the minimal requirements imposed are likely explained by the fact that the purpose of the legislation was to result in persons in appellant's position being eligible for parole and also by reasons wholly unrelated to fairness or sympathy for the incarcerated, such as the legislature's awareness that persons in appellant's position do not pose the same threat to the community, so that parole in such cases is acceptable despite the legislature's other strictures on parole for violent offenders. Possibly, the legislature did not intend the inquiry allowed by S.C. Code § 16-25-90 to

become a trial after a trial and did not intend for a searching exploration into the character of the parties or the history of the domestic relationship and the degree of and fault for the domestic abuse involved to be conducted. However, while such speculation as to the legislature's motivations in failing to require certain levels or types of proof are reasonable, the reasons for the statute's failure to require more are irrelevant to the Circuit Court's obligation to apply the statute as written.

Courts must take a statute as it is drafted and give effect to the legislative intent as expressed in its language; a statute must be taken as found, giving effect to the legislative intent as expressed in its language. State v. White, 525 S.E.2d 261(S.C.App.,1999). Where appellant presented credible evidence of a history of domestic abuse and where the State conceded that there was a violent history of assaults perpetrated by Kenneth Selim against appellant, his domestic partner, the statute was satisfied. The Circuit Court erred as a matter of law in requiring more.

Respectfully submitted,


M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

This 21st day of August, 2008.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

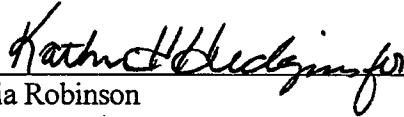
V.

NERAIN G. BLACKWELL-SELIM,

APPELLANT

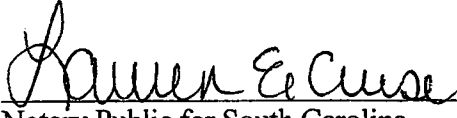
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 21st day of August, 2008.


M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 21st day of August, 2008.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Nearin G. Blackwell-Selim,

Appellant.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 4619
Submitted June 1, 2009 – Filed September 15, 2009

AFFIRMED

Appellate Defender M. Celia Robinson, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Assistant Attorney General Christina J. Catoe, all of
Columbia; John Gregory Hembree, of Conway, for
Respondent.

THOMAS, J.: Nearin Blackwell-Selim (Appellant), pled guilty to voluntary manslaughter after stabbing her common-law husband to death in 2005. She appeals her sentence, alleging the trial court erred in making no finding of early parole eligibility under section 16-25-90 of the South Carolina Code (Supp. 2008). We affirm.¹

FACTS

Appellant and Kenneth Selim (Victim) lived together in Connecticut prior to coming to South Carolina. On June 3, 2005, shortly after arriving in this state, Appellant fatally stabbed Victim once in the chest. According to an affidavit dated June 4, 2005, Appellant, after initially providing deceptive information to the police regarding the incident, admitted she had armed herself with the knife for the purpose of threatening Victim.

Appellant pled guilty to voluntary manslaughter, and the trial court sentenced her to twenty years' imprisonment. Appellant moved the court to find her eligible for early parole based on section 16-25-90 of the South Carolina Code, entitling a defendant to release after serving one quarter of a sentence, if credible evidence is presented to show a history of suffering domestic violence at the hands of the victim. Both Appellant and the State presented evidence of the alleged violent nature of the relationship or lack thereof. At the close of the hearing, the trial court held; "there is no finding of parole eligibility pursuant to 16-25-90." This appeal follows.

ISSUE

Did the trial court err in declining to find Appellant eligible for early parole under section 16-25-90?

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id. In reviewing the trial court, this Court is bound by the factual findings of the trial court unless an abuse of discretion is shown. State v. Laney, 367 S.C. 639, 643-44, 627 S.E.2d 726, 729 (2006). This standard is satisfied when there is evidence in the record to support the conclusion of the trial court. Id.

ANALYSIS

Appellant alleges that the trial court erred in not finding her eligible for early parole. We disagree.

Section 16-25-90 of the South Carolina Code (Supp. 2008) provides in pertinent part:

[N]otwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

Under section 16-25-20, a person commits criminal domestic violence when he "(1) cause[s] physical harm or injury to [his] own household member; or (2) offer[s] or attempt[s] to cause physical harm or injury to [his] own household member with apparent present ability under circumstances

reasonably creating fear of imminent peril." S.C. Code Ann. § 16-25-20 (2003).

Eligibility for early parole under section 16-25-90 requires the accused to demonstrate by preponderance of the evidence that criminal domestic violence was suffered at the hands of the victim. State v. Grooms, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000). Thus, a convicted individual must present credible evidence sufficient to meet the preponderance of the evidence standard. In this regard, a sentencing judge is largely unlimited as to either the kind or the source of the information he may consider upon sentencing. Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984); see also State v. Cantrell, 250 S.C. 376, 379, 158 S.E.2d 189, 191 (1967) (stating that the circuit court exercises "a wide discretion in the sources and types of evidence" it considers in sentencing).

The trial court made no explanation as to whether this holding was because Appellant failed to produce credible evidence that she suffered criminal domestic violence at the hands of Victim, or whether she failed to meet the preponderance of the evidence standard. However, " '[t]his Court . . . is authorized to consider any sustaining ground found within the record.' " State v. Parker, 381 S.C. 68, 96, 671 S.E.2d 619, 633 (Ct. App. 2008) (citing Hutto v. State, 376 S.C. 77, 82 n.2, 654 S.E.2d 846, 849 n.2 (Ct. App. 2007)); see Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). Accordingly, we may affirm if the record supports either or both: (1) Appellant failed to produce credible evidence or (2) failed to meet the preponderance of the evidence standard.

Here, we find the trial court's conclusion to be supported by the record as to both the credibility of the evidence as well as the weight. The record reveals that the evidence offered by Appellant may not have been credible as required by section 16-25-90. Much of the testimony received in support of Appellant's motion was hearsay. In addition, a majority of the testimony was offered by parties with potential bias or by Appellant herself. Further, evidence demonstrated Appellant's previous dishonesty with law enforcement. We therefore find sufficient evidence to support a determination that the evidence presented by Appellant was not credible.

Furthermore, with ample amounts of conflicting information, evidence of Appellant's aggressive nature, the fact that Victim had no criminal convictions for domestic violence, and few specific details, we find a determination that Appellant did not satisfy the preponderance of the evidence burden is also supported by the record.²

CONCLUSION

We affirm the trial court's ultimate conclusion that Appellant was not entitled to early release under section 16-25-90. The record supports the determination that Appellant failed to produce credible evidence of a history of criminal domestic violence between the parties and she failed to satisfy the preponderance of the evidence standard. Accordingly, the ruling of the trial court is

AFFIRMED.

HEARN, C.J., and KONDUROS J., concur.

² We recognize that Appellant argues her past violent behavior toward her late husband should not bar her from eligibility for early parole. We do not imply by our holding that Appellant is barred from eligibility because of this behavior. Rather, we simply find that based on our standard of review, the record supports the ultimate conclusion of the trial court under either rational: *i.e.*, either (1) Appellant failed to present credible evidence she suffered criminal domestic violence at Victim's hands or (2) the evidence she presented, whether credible or not, did not satisfy the preponderance of the evidence burden.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

COPY

THE STATE,

RESPONDENT,

V.

NERAIM G. BLACKWELL-SELIM,

APPELLANT

Appeal from Horry County

Steven H. John, Circuit Court Judge

Opinion No. 4619

PETITION FOR REHEARING

RECEIVED

SEP 25 2009

SC Court of Appeals

On January 4, 2007, Nearin Grace Blackwell-Selim, petitioner, entered a plea of guilty to voluntary manslaughter in the June 3, 2005, stabbing death of her live-in boyfriend/common-law husband, Kenneth Selim. The Honorable Steven H. John accepted appellant's guilty plea but delayed sentencing for the presentation of evidence relevant to a history of criminal domestic violence perpetrated by the victim on appellant. On February 27, 2007, a sentencing hearing was held after which Judge John sentenced appellant to twenty years in prison with no finding of a history of criminal domestic violence against appellant.

On September 15, 2009, this Court affirmed the finding of no history of criminal domestic violence against appellant. Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Blackwell hereby petitions this Court to rehear this matter based upon the following

grounds:

The Opinion issued by this Court approves the trial court's conclusion that petitioner had not submitted credible evidence as being supported by the record as to both the credibility of the evidence as well as the weight. The Court's opinion indicates that the evidence offered by petitioner may not have been credible as required by section 16-25-90. Petitioner would ask the Court to reconsider its finding on this issue in light of the evidence indicating that Kenny Selim had arrests for Criminal Domestic Violence and the submission of "a packet of police incident reports" memorializing numerous incidents of Kenny Selim's violent and abusive conduct towards appellant. (R. p. 26, lines 2-5). Judge John ruled that these documents were relevant and admissible. (R. p. 28, lines 12-14). Included within these documents were police reports referencing appellant as the victim of criminal domestic violence at the hands of the decedent, Kenneth Selim. Certainly, petitioner testified to the background of the incidents of criminal domestic violence memorialized by police officers; however, notably, the reports submitted included the observations and statements of police officers indicating that appellant was the victim of Kenny Selim's criminal domestic violence.

Petitioner would ask the Court to reconsider its finding in light of the December 19, 2002, incident report indicating that an officer with the Middletown Police Department was dispatched to respond to an assault victim on that date. Officer Barr reported that he and Officer Linares observed appellant lying on the ground, crying. When the officers asked appellant what had happened, she indicated that Kenny had cut her with a knife. The officer reported that appellant required medical attention and that the officers had determined to place Kenny Selim under arrest. The police report indicates, "Let it be known that Nearin Blackwell and Kenneth Selim are long time boyfriend and girlfriend. It is also known that they fight all the time,

sometimes getting physical, resulting in arrests. Blackwell was transported to the hospital and Selim was transported to police headquarters.” The report further indicates that Kenny Selim was processed and charged with second degree assault. The police report indicates, “Detective Porter responded to Middlesex hospital and took 35 millimeter pictures of Nearin Blackwell’s injuries.” A supplemental report dated March 10, 2002, lists appellant’s injuries as including abrasions on the inner side of her lip, redness and bruising evidence on the anterior side of her left upper arm, laceration of her inner right arm, and a laceration along the lower portion of her back, approximately five inches in length.

This evidence relied on the credibility of police officers, who had no bias and no reason to falsify their report memorializing an incident wherein petitioner was physically abused and injured by her domestic partner. Petitioner would ask the Court to reconsider its ruling given this indisputably credible evidence that petitioner had a history of being victimized by her domestic partner; this evidence clearly satisfies the statutes requirement of some credible evidence of a history of domestic abuse.

Petitioner would ask the Court to reconsider its decision in light of the additional evidence submitted including the article from the Middletown Press, confirming that Kenny Selim had beaten appellant in the face, cut her elbow, and made a five inch cut in her back as she ran away from him. (R. p. 29, lines 1-5). The article is entitled, “Three city residents were arraigned on domestic abuse charges in Middlesex Superior Court on Monday for incidents that occurred over the weekend;” it recounts that appellant and Kenneth Selim, of the same address, were each charged in an incident of criminal domestic violence. The Court’s opinion rejected petitioner’s claim that she should benefit under the statute in part because she acted aggressively too. However, notably, the statute requires only the presentation of some evidence that the

petitioner was the victim of domestic abuse. Even where both petitioner and Kenny Selim were cited for domestic abuse, the fact is that petitioner presented credible evidence in the form of a police report and newspaper article establishing as fact that in that incident, petitioner was abused by her domestic partner. Again, this evidence was the unimpeachable reports from the police and the newspaper; the court should find that such evidence amply satisfied the legislature's requirement of some credible evidence of a history of domestic abuse.

The Court's opinion explains that much of the testimony received in support of Appellant's motion was hearsay or that it was offered by parties with a potential bias or by appellant herself. The Court specifically notes that there was evidence demonstrating that petitioner had been dishonest with law enforcement. Petitioner would ask the Court to reconsider this finding in light of the fact that petitioner's dishonesty was nothing more than the typical dishonesty of victims of domestic abuse wherein the abused victim lies to the police to protect the abuser. Petitioner would ask the Court to reconsider the relevance of its finding that petitioner had previously lied to the authorities to protect her abuser in light of the evidence. Counsel for petitioner referenced an incident occurring on May 30, 2002, in which Kenny Selim was charged with first degree assault related to the beating of Ray Parmalee, an older drunk man. The police report on Kenny Selim's arrest indicates that officers were dispatched on a report of a man bleeding from the head. Upon arrival, officers found Parmalee with extensive injuries to his face and a large amount of blood at the scene. The report notes that Kenny Selim had blood spatter on his shirt. Parmalee was hospitalized with severe head injuries. An eye-witness identified Kenny Selim as the man who beat the defenseless Parmalee into unconsciousness. Petitioner testified that she was only three feet away when Kenny beat the man and that she had blood spatter on her clothes. However, petitioner refused to assist the police or to give them a

statement; but she did tell police officers that she was afraid to say anything about Kenneth Selim because he would beat her. (R. p. 28, lines 2-6).

Petitioner would suggest that this typical behavior wherein an abused victim dishonestly protects the abuser would explain the wide open standard of evidence required by the legislature. The legislature could have simply required an applicant to provide evidence that the abuser had been convicted of CDV; however, apparently well aware that abusers are often not prosecuted due to a lack of evidence, the legislature chose not to require that the abused victim provide evidence of an actual conviction.

The Court's opinion indicates that there was conflicting information presented and evidence that petitioner acted aggressively when threatened. First, petitioner is unaware of any evidence disputing or contradicting the evidence she submitted. In particular, the police reports and the State's own admission that she was the victim of domestic abuse were uncontested. Further, petitioner would ask the Court to reconsider its finding in light of the actual requirements of a statute which does not require that a victim prove that she was blameless or that she was a helpless victim who never fought back. Petitioner would ask the Court to reconsider its holding in light of the fact that the legislature's statute is satisfied where a victim proves incidents which establish a history of domestic abuse at the hands of her domestic partner.

Petitioner would ask the Court to reconsider its decision in light of the decision in State v. Grooms, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000). The Court in Grooms held, "a defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole." Here, appellant presented credible evidence of a history of criminal domestic violence at the hands of Kenneth Selim in the form of police reports, eye-witness statements, and the State's actual concession that she was the victim of

domestic abuse.

The State admitted that the relationship between these two long-time domestic partners was notable for “a violent history between the two of them. You see assaults going back and forth, your honor.” (R. p. 50, lines 2-3). Thus, the State actually conceded that there was a history of assaults perpetrated by Kenneth Selim against his domestic partner, appellant. In opposition to appellant’s evidence and its own concession, the State presented only the obviously biased testimony of the Kenny Selim’s bereaved family members. Thus, petitioner’s evidence was largely unopposed and well exceeded the preponderance standard in establishing a history of domestic violence.

Petitioner would ask the Court to reconsider its decision in light of the well established rules of statutory construction: All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." The legislature's intent should be ascertained primarily from the plain language of the statute. The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.

In construing a statute, the court looks to the language as a whole in light the statute’s manifest purpose. A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. The real purpose

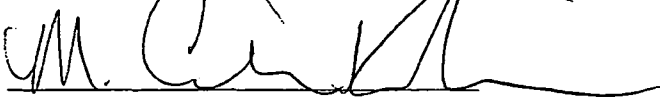
and intent of the lawmakers will prevail over the literal import of the words. Courts will reject a statutory interpretation which would defeat the plain legislative intention. When interpreting a statute, courts must presume the legislature did not intend to do a futile act. The legislature is presumed to intend that its statutes accomplish something.” State v. Sweat, 379 S.C. 367, 374-377, 665 S.E.2d 645, 649-651 (Ct. App.2008) (citations omitted).

Here, the legislature’s plain intention and manifest purpose was to provide early parole for those victims of domestic abuse who had been imprisoned for killing their abuser. However, through judicial construction, the legislative purpose and intent is defeated where the Courts will not accept even the reports of the police or an admission by the State as credible evidence of a history of abuse. Petitioner would ask the Court to reconsider its decision along with the suggestion that this Court and the Circuit Court have imposed a much stricter and higher standard of proof than that actually codified by the legislature. In fact, petitioner would ask the Court to reconsider its holding in light of the fact that by imposing a higher and stricter standard of proof than that promulgated by the legislature, the courts have through judicial construction rendered the legislature’s statute superfluous and of no benefit to the very victims the legislature was seeking to aid. The legislature is presumed to intend that its statutes accomplish something. Here, where the legislature’s statute is construed to require a much higher and stricter burden of proof than that set out by statute, the statute, intended to benefit prisoners such as petitioner, accomplishes nothing and benefits no one.

CONCLUSION

Petitioner prays that the Court will reconsider its holding and find instead that petitioner was entitled to early release under section 16-25-90 because the record fairly supports only a determination that she did produce credible evidence of a history of criminal domestic violence which more than met the preponderance of the evidence standard.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

This 25th day of September, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

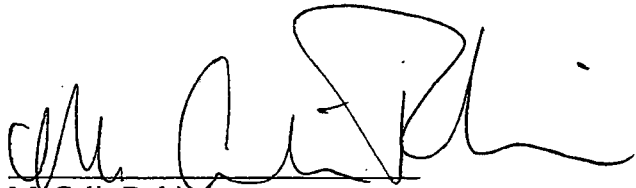
V.

NERAIM G. BLACKWELL-SELIM,

APPELLANT

CERTIFICATE OF SERVICE

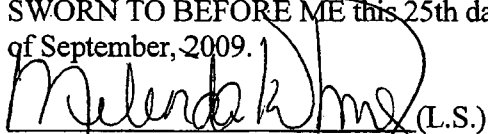
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Christina J. Catoe, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201 Esquire, this 25th day of September, 2009.



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 25th day
of September, 2009.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2018.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Nearin G. Blackwell-Selim,

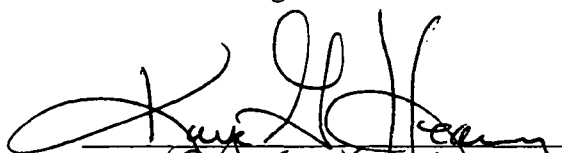
Appellant.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2005-GS-26-02615

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

 C. J.
 J.
 J.

Columbia, South Carolina

OCT 22 2009

cc: Appellate Defender M. Celia Robinson
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Christina J. Catoe
John Gregory Hembree, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Steven H. John, Circuit Court Judge

Opinion No. 4619 (S.C. Ct. App. filed 9/15/2009)
05-GS-26-2615.

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MAR 12 2010

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NEARIN G. BLACKWELL-SELIM,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the Court of Appeals erroneously approve and affirm the Circuit Court's conclusion that petitioner had failed to submit credible evidence of a history of domestic violence at the hands of her deceased household member as required by S.C. Code Ann. Section 16-25-90 (2003) where that finding was unsupported by the record evidence and where the erroneous ruling was due to the Court's failure to apply the statute as written?

STATEMENT

On January 4, 2007, Nearin Grace Blackwell-Selim, petitioner, entered a plea of guilty to voluntary manslaughter in the June 3, 2005, stabbing death of her live-in boyfriend/domestic partner/common-law husband, Kenneth Selim. The Honorable Steven H. John accepted appellant's guilty plea but delayed sentencing for the presentation of evidence relevant to a history of criminal domestic violence perpetrated by the victim on appellant. On February 27, 2007, a sentencing hearing was held after which Judge John sentenced appellant to twenty years in prison with no finding of a history of criminal domestic violence against appellant.

On September 15, 2009, the Court of Appeals affirmed the Circuit Court's ruling whereby he failed to find that petitioner had presented credible evidence of a history of the victim's perpetrating criminal domestic violence against petitioner. The Petition for Rehearing was denied on October 22, 2009. This Petition for a Writ of Certiorari to the Court of Appeals follows.

ARGUMENT

- I. The Court of Appeals erroneously approved the Circuit Court's conclusion that petitioner had failed to submit credible evidence of a history of domestic violence at the hands of her deceased domestic partner as required by S.C. Code Ann. Section 16-25-90 (2003) where that finding is in contradiction to the record evidence and where the erroneous ruling was due to the Court's failure to apply the statute as written.

In apparent recognition of the complex interrelationship between the inescapable fact that criminal domestic violence is an ill which plagues society, destroys South Carolina families, and leaves devastated victims in its wake and conflicting and competing considerations of fairness and equity which arise from the necessity to punish through incarceration those victims of domestic violence who later kill the person who abused them, the South Carolina legislature codified S.C. Code Ann. Section 16-25-90 (1976). That section provides in relevant part:

An inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

The South Carolina Supreme Court explained in State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (2000),

The legislature did not intend the mere production of evidence to automatically result in earlier parole eligibility when enacting the statute enabling a defendant who was subjected to a history of domestic violence from the victim to be eligible for parole after service of one-fourth of the prison term; instead, the legislature intended a defendant to present credible evidence of such domestic violence.

540 S.E.2d at 101. The Grooms Court determined that the appropriate standard to be applied is one of a preponderance of the credible evidence. The Court in Grooms held, “a defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole.” Grooms, 540 S.E.2d at 101.

The early parole section, 16-25-90, incorporates the specific definition of criminal domestic violence found in S.C. Code § 16-25-20 (2003):

It is unlawful to: (1) cause physical harm or injury to a person’s own household member, (2) offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

The Court of Appeals’ decision indicates that the Circuit Court judge would have been justified in finding that the evidentiary showing was not credible and/or that it did not meet the preponderance of the evidence standard. To the contrary, the evidence submitted was credible and overwhelmingly established by more than the preponderance of the evidence that petitioner had a history of criminal domestic violence at the hands of the deceased victim, Kenneth Selim. The record includes:

1. **The State’s concession that the eventual victim, Kenneth Selim, was petitioner’s “household member.”**

The State’s representative conceded that Kenneth Selim was Nearin’s “household member.” The Solicitor indicated that Kenneth Selim was Nearin’s “common law husband, live-in boyfriend, co-habitation for some time.” (R. p. 17, lines 19-21).

2. **The State’s concession that petitioner’s household member, Kenneth Selim, had a history of subjecting her to criminal domestic violence.**

During the sentencing hearing, the State’s representative admitted that the relationship between Nearin Blackwell and Kenneth Selim, these two long-time domestic partners, was notable for “a

violent history between the two of them. *You see assaults going back and forth, your honor.*" (R. p. 50, lines 2-3)(emphasis added). Thus, the State conceded that there was a violent history of assaults perpetrated by Kenneth Selim upon his household member, petitioner. Petitioner can conceive of no other reasonable interpretation of the solicitor's statement and no other interpretation has been suggested by the State on appeal.

By the prosecutor's statement, the State thereby **recognized as fact, admitted, and conceded** that Kenneth Selim had a "violent history" of physically "assaulting" his household member. Where criminal domestic violence is defined to include a person's causing any sort of physical harm or injury to a person's household member, petitioner can see no other interpretation of the Solicitor's statement than that he thereby conceded that Kenneth Selim had a history of perpetrating physical violence upon his household member. Where the State's admission was against its interest in opposing petitioner's eligibility under the statute, the sentencing judge and the Court of Appeals erred in failing to find that the State's recognition and admission of certain facts as being true constituted credible evidence of that fact.

The State conceded each and every requirement of the early parole statute. Given that the State admitted that Kenneth Selim had a "history" of "violently" assaulting his household member, the sentencing judge's failing to find that the evidence presented constituted credible evidence of the facts the State had admitted cannot be sustained on the record evidence. Therefore, petitioner was entitled to a finding that the sentencing judge was, in fact, presented with credible evidence of a history of criminal domestic violence at the hands of petitioner's household member. The Circuit Court and the Court of Appeals unaccountably and erroneously

refused to find that the State's conceding the factual requirements of the early parole statute constituted credible evidence that those factual requirements were present.

3. The firsthand accounts of eyewitnesses as to the violent assaults perpetrated upon Nearin by Kenneth Selim along with descriptions of her injuries.

Petitioner submitted the affidavits of various witnesses who testified that they were eye-witnesses to Kenneth Selim violently assaulting Nearin Blackwell and that they observed and could describe her injuries resulting from such assaults. (Supplement to the Record on Appeal, pp. 1-5). However, the Court of Appeals indicated that this evidence was of minimal probative effect because the witnesses presented by Nearin Blackwell were predominantly friends, co-workers, or family of Nearin Blackwell. Therefore, the Court of Appeals found that the evidence submitted was lacking in weight and credibility because presented by witnesses with a potential bias in favor of Nearin Blackwell.

However, the evidence submitted on the other side of the equation was likewise offered by witnesses who absolutely were biased in favor of their family member, the deceased victim. Given that the evidence offered by the witnesses who were involved with this couple was potentially or actually biased in favor of Nearin Blackwell or Kenneth Selim, the Court of Appeals erred in finding only that the evidence presented on behalf of Nearin Blackwell suffered from such reported lack of probative force as the result of bias. Where petitioner submitted in evidence the eye-witness accounts of witnesses who personally observed and described her abuse, the sentencing judge and the Court of Appeals erred in finding that petitioner had failed to

submit credible evidence which established by a preponderance that Kenneth Selim had a history of violently abusing her.

4. **Police and medical reports memorializing a history of incidents of violence perpetrated by Kenneth Selim upon his household member and identifying petitioner as the victim of CDV.**

The evidence submitted before the Circuit Court should have been found sufficient to establish beyond any reasonable doubt that the deceased Kenneth Selim had had multiple arrests for Criminal Domestic Violence (CDV). Counsel for petitioner submitted “a packet of police incident reports” memorializing numerous incidents of Kenneth Selim’s violent and abusive conduct towards petitioner. (R. p. 26, lines 2-5). Judge John ruled that these documents were relevant and admissible. (R. p. 28, lines 12-14). Included within the documents the judge found relevant and admissible were police reports identifying appellant as the victim of criminal domestic violence at the hands of her deceased domestic partner, Kenneth Selim. (R. pp. 55-57).

For example, a December 19, 2002, incident report indicates that an officer with the Middletown Connecticut Police Department was dispatched to respond to an assault victim. Officer Barr reported that he and Officer Linares observed petitioner lying on the ground, crying. When the officers asked Nearin what had happened, she indicated that Kenny had cut her with a knife. The officer reported that appellant required medical attention and that the officers had determined to place Selim under arrest.

Notably, the Middletown police officer made clear that this was not an isolated incident or an unlooked for event. The police report indicates,

Let it be known that Nearin Blackwell and Kenneth Selim are long time boyfriend and girlfriend. It is also known that they fight all the time, sometimes getting physical, resulting in arrests. Blackwell was transported to the hospital and Selim was transported to police headquarters.

(R. p. 61). The report further indicates that Kenneth Selim was processed and charged with second degree assault. The police report indicates, "Detective Porter responded to Middlesex hospital and took 35 millimeter pictures of Nearin Blackwell's injuries." A supplemental report dated March 10, 2002, lists Nearin's injuries as including abrasions on the inner side of her lip, redness and bruising evidence on the anterior side of her left upper arm, laceration of her inner right arm, and a laceration along the lower portion of her back, approximately five inches in length. (R. p. 63).

Dr. Loring presented expert testimony as to Nearin Blackwell's diagnosis of Battered Woman's Syndrome and PTSD. Dr. Loring further recalled that Dr. Bernstein had reported that he believed that Nearin was being abused and there were efforts on the part of medical personnel to get her to report the abuse but that she was "unwilling to do that even though she went to the hospital for treatment." (R. p. 40).

This evidence of Kenneth Selim's history of committing criminal domestic violence relied on the credibility of police officers and medical doctors who had no bias and no reason to falsify their reports. The officers were plainly recording the unfortunate facts of Nearin and Kenneth Selim's relationship as they knew them to be from their first-hand contact with the couple. The sentencing judge and the Court of Appeals erroneously failed to find that these reports constituted indisputably credible, eye-witness, evidence establishing that petitioner's

history of being victimized by her domestic partner was known and established well before the fatality.

Particularly where there was no challenge to the factual accuracy of the police reports, it is troubling that the sentencing judge as affirmed by the Court of Appeals found that the police reports memorializing a history of abuse did not constitute credible evidence of a history of abuse. Notably, the State did not challenge the credibility of the police reports admitted. Instead, the State challenged the efficacy of those reports to establish a history of criminal domestic violence only on the grounds that: (1) the reports indicated that Nearin's injuries were minimal, (2) that in many cases Nearin refused to accurately identify her assailant or refused to press charges to conviction, and (3) Nearin was in some cases also charged, along with Kenneth Selim, for domestic violence.

However, unlike the sentencing judge and the Court of Appeals, the State accepted the substance and content of the police reports submitted as established fact. The State then proceeded to argue that those facts should not entitle petitioner to early parole; however, the State raised no challenge to the credibility or accuracy of the police reports submitted. As for the grounds the State did raise in response to the police reports memorializing a history of Kenneth Selim's committing acts of domestic violence upon Nearin, first, the notion that knife wounds, cuts, choking, beating, and bruising constitute evidence of only "minimal" injuries is absurd.

However, more to the point, the infliction of wounds, cuts, and bruising upon one's household member would certainly fall within South Carolina's statutory definition of criminal

domestic violence which provides no exception from the definition for violent assaults upon a household member which result in only "minimal" physical injuries. In fact, neither the statute defining CDV nor the early parole statute requiring evidence of a history of criminal domestic violence mentions the severity of the injuries received as even a relevant factor. Our legislature has chosen to define criminal domestic violence as including violent assaults upon a household member regardless of the severity of the injuries received. In fact, the legislature's definition of criminal domestic violence does not actually require that the household member receive any injury at all where the abuser offers or attempts to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril. Given the legislature's definition of CDV, the Court of Appeals plainly erred in finding that petitioner's proof was wanting due to her supposed failure to prove that she was seriously injured.

Next, the State pointed out that that in many cases Nearin refused to accurately identify her assailant and/or refused to press charges to conviction. Similarly, the Court of Appeals noted that a majority of the testimony submitted in favor of a finding of a history of abuse was offered by parties with potential bias in favor of petitioner or by petitioner herself. The Court of Appeals specifically noted that there was evidence demonstrating that petitioner had been dishonest with law enforcement which was relevant to her credibility. Indeed, petitioner had been dishonest in the past with law enforcement, most notably when she denied abuse and refused to prosecute Kenneth Selim despite having received injuries requiring medical attention and then again when she denied the stabbing. However, the Court of Appeals failed to recognize that petitioner's lack of candor was largely the typical unwillingness of victims of domestic

abuse to cooperate with the responding officers by prosecuting the abuser to conviction once the immediate danger had passed.

Such behavior is common to the typical pattern exhibited by victims of criminal domestic violence whereby the victim refuses to incriminate, identify, or prosecute her abuser once the immediate danger and emergency has passed. The phenomenon is so prevalent among victims of domestic violence that law enforcement agencies in South Carolina have adopted “no drop” policies whereby the prosecution refuses to drop CDV prosecutions simply because the victim refuses to cooperate, refuses to identify her abuser, or actually denies that the abuse took place. Apparently, the State in those situations does not believe that the fact that a victim of CDV refuses to cooperate with the authorities or to accurately identify her abuser raises a doubt as to her overall credibility. Likewise, here, the fact that despite numerous CDV calls and injuries witnessed and reported by police officers Nearin had failed to cooperate and failed to follow through in order to achieve a CDV conviction against Kenneth Selim should raise no question as to her overall credibility.

For example, counsel for petitioner referenced an incident occurring on May 30, 2002, in which Kenneth Selim was charged with first degree assault related to the beating of Ray Parmalee, an older man who was intoxicated at the time of the beating. The police report of Kenneth Selim’s arrest indicates that officers were dispatched on a report of a man bleeding from the head. Upon arrival, officers found Mr. Parmalee with extensive injuries to his face and a large amount of blood at the scene. The police report notes that Kenneth Selim had blood spatter on his shirt and that Parmalee was hospitalized with severe head injuries. (R. pp. 58-59).

An eye-witness identified Kenneth Selim as the man who beat the defenseless Parmalee into unconsciousness. Nearin indicated that she was only three feet away when Kenneth beat the man and that she had blood spatter on her clothes from the beating. However, when the authorities arrived, Nearin refused to assist the police or to give them a statement, although the officers reported that Nearing told them that she was afraid to say anything about Kenneth Selim because he would beat her. (R. p. 28, lines 2-6; pp. 55- 58). The fact that Nearin often refused to cooperate and refused to implicate Kenneth Selim was a common symptom of criminal domestic violence and a function of her fear, but such refusal should raise no questions about her credibility.

Thus, the evidence presented to establish a history of criminal domestic violence was not dependent on the credibility of petitioner. The incidents of criminal domestic violence memorialized by police reports and the fact that these incidents did take place and that the injuries reported were inflicted did not rely on petitioner's credibility. The police reports submitted included the observations and statements of unbiased police officers indicating that there was a history and pattern of petitioner's being the victim of Kenneth Selim's criminal domestic violence. Therefore, the evidentiary presentation which overwhelmingly established that there was a history of domestic abuse was not dependent on petitioner's credibility. Instead, the evidentiary presentation included the concession by the State that there was a history of violent assaults perpetrated by Kenneth Selim upon his household member, the first-hand observations of police officers of the results of incidents of CDV perpetrated by Kenneth Selim upon petitioner; the admission by Kenneth Selim that he was a violent alcoholic, that he abused

Nearin, that she was not a violent person, and that Nearin resorted to violence when defending herself from his abuse; the medical reports indicating that Nearin's injuries appeared to be the result of abuse but that she would not press charges against Kenneth Selim; the testimony of eye-witnesses to the incidents and the results of Kenneth Selim's abusing petitioner, and the expert testimony as to petitioner's history, treatment, and diagnosed conditions of PTSD and Battered Woman's Syndrome.

Finally, the State argued that the fact that there was a history of criminal domestic violence perpetrated by Kenneth Selim upon petitioner was in some way cast in doubt by the fact that in some cases, when the police were called, Nearin Blackwell was also charged, along with Kenneth Selim, for domestic violence. The Court of Appeals echoed the State's finding that this fact would cast some doubt upon whether or not there was a history of criminal domestic violence perpetrated upon petitioner by Kenneth Selim. The Court of Appeals' opinion notes that petitioner's entitlement to benefit under the early parole statute was cast in doubt by the fact that petitioner was sometimes also charged with CDV and by the fact that petitioner's pattern was to respond with aggression when threatened.

However, notably, Section 16-25-90 requires only the presentation of credible evidence that the petitioner was the victim of domestic abuse. The statute makes no mention of the relevance or effect of evidence that a victim of domestic violence responded with aggression when threatened or of the relevance or probative effect of a victim of CDV's herself being charged with committing CDV. To the contrary, even where both Nearin *and* Kenneth Selim

were cited by responding officers for CDV, the very existence of the citations against Kenneth Selim for CDV constituted credible evidence that there was a history of domestic violence.

The Court of Appeals similarly indicated that there was “conflicting information” presented and that much of the evidence submitted could be characterized as “hearsay.” First, petitioner is unaware of any evidence disputing or contradicting the evidence she submitted. Instead, the State’s concession that petitioner was the victim of domestic abuse at the hands of Kenneth Selim was uncontested. Further, the substance and accuracy of the various police reports memorializing incidents of criminal domestic violence perpetrated by Kenneth Selim upon petitioner were unchallenged by the State. Thus, the evidence did not actually conflict.

In addition, to the extent that the Court of Appeals discounted the evidence presented on the grounds that that evidence was reliant on hearsay, such ruling was error. A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. Wasman v. United States, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984); State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct.App. 2008). If justice is to be done, a sentencing judge should know all the material facts. Fair administration of justice demands that the judge will not act on surmise or suspicion but will impose sentences with insight and understanding. Hence, the judge is required to listen and give serious consideration to any information material to punishment. State v. Franklin, 267 S.C. 240, 245, 226 S.E.2d 896, 897 (1976).

Generally, the circuit court may conduct an inquiry broad in scope, largely unlimited either as to the kind of information it may consider or the source from which the information may come, to assist it in determining the sentence to be imposed. State v. Gullledge, 326 S.C. 220, 228, 487 S.E.2d 590, 594 (1997); 250 S.C. 376, 380, 158 S.E.2d 189, 191 (1967)(holding when sentencing a convicted defendant, a circuit court exercises a wide discretion regarding the sources and types of evidence it may use to assist it in determining the kind and extent of punishment to be imposed). As noted in Gullledge, "[i]n a sentencing proceeding, evidentiary rules are inapplicable[.]" and the court may consider evidence, which may be inadmissible at trial, so long as the information is relevant, reliable and trustworthy. Gullledge, 326 S.C. at 228, 487 S.E.2d at 594; State v. Thomason, 355 S.C. 278, 285-286, 584 S.E.2d 143, 147 (Ct.App. 2003). As decided in Gullledge, the only constraint on the information which may be considered by the circuit court at sentencing is that it be relevant and have sufficient indicia of reliability. Thomason, 355 S.C. at 287, 584 S.E.2d at 148. The Court of Appeals erred to the extent it found that the evidence presented was lacking in credibility because the evidence included evidence based on hearsay.

The Court of Appeals further found that the fact that petitioner had an "aggressive nature" served to cast doubt on the credibility of the evidence of a history of abuse. However, the Court of Appeals' finding that petitioner had an "aggressive nature" was unsupported by the evidence presented. In fact, the evidence presented showed not that petitioner had an aggressive nature but only that, when faced with threats or physical abuse, petitioner ran away if she could but, if she could not escape, she defended herself. Dr. Loring testified that Nearin's preferred

way of avoiding violence was to run away. The doctor referenced the Connecticut police reports describing petitioner's running away and hiding while Kenneth Selim hunted for her. However, the expert agreed that if she was unable to run away, Nearin would "try to fight back when she was being hit or punched or choked by him." (R. p. 41, lines 21-25). The fact that petitioner responded to abuse or threats by attempting to defend herself if cornered was established by the expert testimony and confirmed by the statement of the deceased, Kenneth Selim.

In January 2005, an incident report indicated that Kenneth Selim punched Nearin in the face and body and that, in self-defense she struck him with a plastic grill from the cover of an appliance. (R. p. 65). The police report indicated that Nearin "later" admitted to the officer that she had used the plastic cover in an "attempt to defend herself from her boyfriend." (R. p. 65). Counsel for petitioner submitted in evidence a letter provided to his attorney by Kenneth Selim. The letter referenced the January incident which resulted in both Kenneth Selim and Nearin being charged with CDV. Kenneth Selim indicated that "his injuries were not extensive or serious, that he was trying to get some marriage counseling, but indicating more specifically that he had a severe drinking problem, that he was seeking help, that his actions caused her to try to defend herself and that he wanted her case to be dissolved. [sic] She is not a violent person, she was only protecting herself." (R. p. 31, lines 6-17).

Thus, the Court of Appeals finding that petitioner has an aggressive nature is not borne out by the evidence but, instead, that conclusion was contradicted by the expert testimony and by Kenneth Selim's own statement. However, petitioner would suggest that the consideration of whether petitioner could be or was aggressive under certain circumstances was actually

irrelevant to whether or not the credible evidence had established by the preponderance of the evidence that she was the victim of domestic abuse at the hands of her domestic partner. The question before the sentencing judge was not whether Nearin Blackwell was blameless or whether she was a helpless victim who never fought back - - the question was simply whether it was shown by a preponderance of the credible evidence that there was a history of domestic abuse perpetrated by Kenneth Selim upon Nearin. The Court of Appeals erred in construing the legislature's statute to require more than merely the presentation of a preponderance of credible evidence establishing that prior to the fatality; there was a history of the deceased subjecting his domestic partner to abuse.

In Grooms, the Supreme Court held, "a defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole." However, the Grooms Court imposed no specific requirements for any particular type of evidence which would be required to comply with S.C. Code § 16-25-90. Here, appellant presented credible evidence of a history of criminal domestic violence at the hands of Kenneth Selim in the form of police reports, eye-witness statements, expert testimony and the State's actual concession that Kenneth Selim had an established pattern and history of violently assaulting his household member. In opposition to appellant's evidence and its own concession, the State presented the understandably biased testimony of Kenneth Selim's bereaved family members. However, that testimony did little to raise doubt as to the overwhelming evidence of the history of domestic abuse. Thus, petitioner's evidence was largely unopposed and exceeded the preponderance standard in establishing a history of domestic violence. However, in violation

of the well established rules of statutory construction, the sentencing judge as affirmed by the Court of Appeals erroneously construed the legislature's statute to require more than the legislature had demanded.

Given that the apparent purpose of this legislation was to benefit those victims of CDV who were convicted of killing their abusers, the court must assume that the legislature purposely and deliberately did not qualify the type, chronicity, or severity of the prior history of abuse and intentionally did not require persons in petitioner's position to prove that they were worthy, deserving, or without blame. The legislature did not require that the prior domestic abuse be egregious, inescapable, horrific, or life threatening. Instead, the legislature's requirement is satisfied by credible evidence which establishes by a preponderance of the evidence a history of the deceased victim's perpetrating any sort of criminal domestic violence upon his household member. The legislature's statute did not require appellant to prove that she was helpless and never fought back, did not require her to prove that she was wholly without fault in the relationship, and did not require her to prove that the killing was justified. The legislature likely believed that at this stage of the proceedings it was a little late to be debating issues more relevant to justifying the homicide.

The legislature did not require a diagnosis of battered woman's syndrome or expert testimony. The legislature did not require persons in appellant's position to be able to present a tidy package of their abuser's convictions for criminal domestic violence. Instead, the legislature, all too well aware that criminal domestic violence often does not result in conviction, required only that a victim of CDV present credible evidence that such domestic violence

actually took place. The legislature's lack of qualification and the minimal requirements imposed are likely explained by the fact that the legislation's purpose was to result in persons in appellant's position being eligible to apply for early parole according to the terms of the statute. However, the legislature was not likely chiefly motivated by fairness to or sympathy for the incarcerated. More likely, the legislature was motivated by more practical concerns. For example, the legislature is surely aware that persons in appellant's position do not pose the same threat to the community as an ordinary killer, so that parole in such cases is acceptable despite the legislature's other strictures on parole for violent offenders.

Possibly, the legislature did not intend the inquiry allowed by S.C. Code § 16-25-90 to become a trial after a trial and did not intend for a searching exploration into the character of the parties or the history of the domestic relationship and the degree of and fault for the domestic abuse involved to be conducted. In fact, the legislature included no requirement for any such proof as to the couple's relationship. However, while these suggested explanations for the legislature's motivation in passing the early parole bill are reasonable, the reasons for the legislature's not including strict standards of proof or particular types of evidence to establish the required credible evidence of a history of abuse, the fact that the statute was not written to require more definitive or particular types of proof is irrelevant to the court's obligation to apply the statute as written.

Courts must take a statute as it is drafted and give effect to the legislative intent as expressed in its language; a statute must be taken as found, giving effect to the legislative intent as expressed in its language. State v. White, 525 S.E.2d 261(Ct.App. 1999). Where appellant presented credible evidence of a history of domestic abuse in a variety of forms of evidence and

where the State conceded that there was a violent history of assaults perpetrated by Kenneth Selim against appellant, his domestic partner, the statute was satisfied. The Circuit Court erred as a matter of law in requiring more and the Court of Appeals erred in affirming his ruling.

The Court of Appeals' decision would appear to rely on policy concerns and stringent factual requirements not referenced or mentioned by the legislature. For example, the Court of Appeals echoed the State's observation that petitioner was unable to submit proof that Kenneth Selim had actually been convicted of CDV. The Court of Appeals indicated that petitioner's showing of a history of criminal domestic violence was insufficient, at least in part, because there was no proof of a CDV conviction against Kenneth Selim. However, while it would have been relatively easy and clear for the legislature to simply require that in order to come under the early parole section a convict must show that her victim was convicted at some point prior to his death of CDV, the legislature chose not to impose such a requirement. The sentencing judge and the Court of Appeals should similarly have avoided reading into the statute such a requirement where the legislature saw no need to require that the deceased abuser had been convicted of CDV.

"All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." State v. Sweat, 379 S.C. 367, 374, 665 S.E.2d 645, 649 (Ct.App.2008). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." S.C. Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989);

Sweat, supra. The legislature's intent should be ascertained primarily from the plain language of the statute. The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction; it is not the court's place to change the meaning of a clear and unambiguous statute.

In construing a statute, the court looks to the language as a whole in light the statute's manifest purpose. A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Courts will reject a statutory interpretation which would defeat the plain legislative intention. "When interpreting a statute, courts must presume the legislature did not intend to do a futile act. The legislature is presumed to intend that its statutes accomplish something." Sweat, 379 S.C. at 374-377, 665 S.E.2d at 649-651. Here, the legislature's plain intention and manifest purpose was to provide early parole consideration for those victims of domestic abuse who had been convicted of killing their abuser. However, the legislative purpose and intent are defeated where the courts construe the statute so as to impose more stringent requirements not mentioned by the legislature. Where the legislature required only the submission of credible evidence of a history of domestic abuse, the Circuit Court and the Court of Appeals erred in construing the statute to require more.

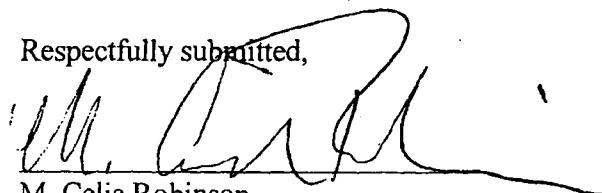
Where the Circuit Court and the Court of Appeals concluded that petitioner's evidentiary showing was insufficient despite the fact that petitioner was able to rely on the State's own concession that there was a history of Kenneth Selim's abusing his domestic partner and upon

unchallenged police reports proclaiming that Kenneth Selim had a history of abusing her, the courts have imposed a much stricter and higher standard of proof than that actually codified by the legislature. By imposing a higher and stricter standard of proof than that promulgated by the legislature, the courts have through judicial construction rendered the legislature's statute superfluous and of no benefit to the very victims of domestic violence the legislature was seeking to aid. The legislature is presumed to intend that its statutes accomplish something. Here, where the legislature's statute is judicially construed to require a higher and stricter burden of proof than that actually set out by statute, the statute, intended to benefit prisoners such as petitioner, accomplishes nothing and benefits no one.

CONCLUSION

The Court of Appeals should have reversed the Circuit Court's decision where it was unsupported by the evidence where the record fairly supports only a determination that she did produce credible evidence of a history of criminal domestic violence which more than met the preponderance of the evidence standard. This Petition should be granted so that the issues may be more fully briefed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of March, 2010.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Steven H. John, Circuit Court Judge

Opinion No. 4619 (S.C. Ct. App. filed 9/15/2009)
05-GS-26-2615.

THE STATE,

RESPONDENT,

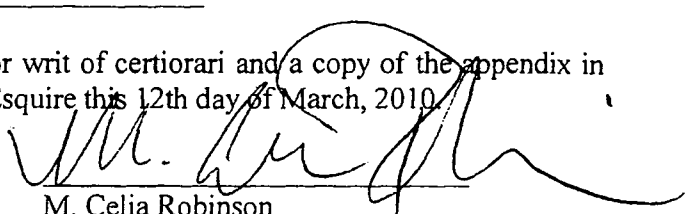
V.

NEARIN G. BLACKWELL-SELIM,

PETITION

CERTIFICATE OF SERVICE

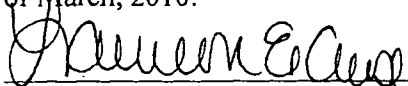
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Christina J. Catoe, Esquire this 12th day of March, 2010.



M. Celia Robinson
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of March, 2010.



(L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State,

Respondent,

v.

Nearin Blackwell-Selim,

Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 26948
Submitted March 15, 2011 – Filed March 21, 2011

VACATED and REMANDED

Appellate Defender M. Celia Robinson, South Carolina
Commission on Indigent Defense, of Columbia, for
Petitioner.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney

General Salley Elliott, Assistant Attorney General Christina J. Catoe, all of Columbia; John Gregory Hembree, 15th Circuit Solicitor's Office, of Conway, for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in State v. Blackwell-Selim, 385 S.C. 394, 684 S.E.2d 208 (Ct. App. 2009). We grant the petition for a writ of certiorari, dispense with further briefing, vacate the opinion of the Court of Appeals, and remand to the circuit court to make specific findings of fact.

FACTUAL/PROCEDURAL BACKGROUND

Petitioner pled guilty to voluntary manslaughter in the stabbing death of her live-in boyfriend. She was sentenced to twenty years' imprisonment. During sentencing, petitioner presented evidence seeking to show a history of criminal domestic violence suffered by her at the hands of the decedent, entitling her to early parole eligibility pursuant to S.C. Code Ann. § 16-25-90 (Supp. 2010). After sentencing petitioner to twenty years' imprisonment, the plea judge stated, "There is no finding of parole eligibility pursuant to § 16-25-90;" however, he made no specific findings of fact as to why petitioner was ineligible for early parole.

The Court of Appeals affirmed the plea judge's finding as to early parole eligibility. The Court of Appeals concluded the record supported a determination that petitioner failed to produce credible evidence of a history of criminal domestic violence at the hands of the decedent and failed to satisfy the preponderance of the evidence standard.

ISSUE

Did the Court of Appeals err in affirming the plea judge's finding that petitioner was ineligible for early parole?

LAW/ANALYSIS

In criminal cases, the appellate court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown. State v. Laney, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006). The appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence. State v. Winkler, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010).

Pursuant to § 16-25-90, a person who is convicted of or pleads guilty to an offense against a household member is eligible for parole after serving one-fourth of his or her prison term if the person presents credible evidence of a history of criminal domestic violence, as defined in S.C. Code Ann. § 16-25-20 (2003), suffered at the hands of the household member. Such a history must be proven by a preponderance of the evidence. State v. Grooms, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000). Therefore, mere production of evidence does not automatically result in earlier parole eligibility; instead, the defendant must persuade the judge by presenting proof which leads the trier of fact to find that the existence of the contested fact is more probable than its nonexistence. Id. at 253-54, 540 S.E.2d at 101-02 (citing 2 McCormick on Evidence § 339 (5th ed. 1999)). Moreover, use of the term "credible evidence" indicates the legislature intended the defendant's evidence to be, in fact, trustworthy, not simply plausible. Id. at 253, 540 S.E.2d at 101. The defendant must persuade the judge her evidence is reliable. Id.

We find the Court of Appeals erred in reviewing the plea judge's finding petitioner was not eligible for early parole under § 16-25-90 because the plea judge failed to make specific findings of fact to support his ruling. Thus, there was nothing for the Court of Appeals to review. Winkler, 388 S.C. at 583, 698 S.E.2d at 601; Laney, 367 S.C. at 643, 627 S.E.2d at 729. The circuit court must make specific findings in ruling on parole eligibility or ineligibility under § 16-25-90. See e.g. Grooms, 343 S.C. 248, 540 S.E.2d

99. Therefore, we vacate the opinion of the Court of Appeals and remand the matter to the circuit court to make specific findings of fact regarding the ruling that petitioner was not entitled to early parole eligibility pursuant to § 16-25-90.

CONCLUSION

Because the plea judge failed to make specific findings of fact with regard to his ruling that petitioner was not entitled to early parole eligibility pursuant to § 16-25-90, we grant the petition for a writ of certiorari, dispense with further briefing, vacate the Court of Appeals' opinion, and remand the case to circuit court to make such findings.

VACATED and REMANDED.

**TOAL, C.J., PLEICONES, BEATTY, and KITTREDGE JJ., concur.
HEARN, J., not participating.**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NEARIM BLACKWELL-SELIM,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

State v. Blackwell-Selim, 392 S.C. 1, 707 S.E.2d 426 (2011). 6

STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in failing to make specific findings of fact on the record concerning new evidence that was brought forward by appellant that presented credible evidence of a history of criminal domestic violence so as to make her eligible for parole after serving one-fourth of her sentence?

STATEMENT OF THE CASE

Appellant was indicted for murder at the July 2005 term of the Horry County Grand Jury. On February 27, 2007, she appeared before the Honorable Stephen H. John and pled guilty to voluntary manslaughter. She was sentenced to twenty (20) years imprisonment with no finding of parole eligibility.

Appellant appealed her conviction and sentence and they were affirmed on September 15, 2009, by the Court of Appeals. On March 21, 2011, this Court vacated the opinion of the Court of Appeals and remanded the case to the circuit court to make specific findings of fact on the issue of parole eligibility. A remand hearing was held on May 11, 2011, and Judge John again made a finding of no parole eligibility. Orrie E. West, Esquire and Ronald Hazzard, Esquire were the attorneys representing appellant.

This appeal follows.

ARGUMENT

The trial court erred in failing to make specific findings of fact on the record concerning new evidence that was brought forward by appellant that presented credible evidence of a history of criminal domestic violence so as to make her eligible for parole after serving one-fourth of her sentence.

The trial court on remand said it was its duty to make specific findings on why appellant was not entitled to one-fourth parole eligibility. He did not take this to mean that they were to have a de novo hearing. The court would allow new evidence to be presented for the purposes of appellant review only. (ROA p. 8, lines 11-21).

Defense counsel introduced the victim's RAP sheet or NCIC report. (ROA p. 14, lines 1-10; line 23 – p. 15, line 6). A log of the victim's time in prison was introduced to explain the gap in time when appellant was not being abused. (ROA p. 16, lines 2-24). A criminal conviction case detail from the State of Connecticut on the victim was also introduced. (ROA p. 17, lines 1-14). Both the victim and appellant had lived in Connecticut where the abuse occurred before moving to Myrtle Beach.

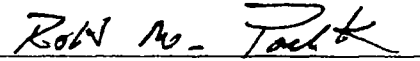
Appellant's daughter, Menina Kidwell, testified how abusive, threatening, and violent the victim was. (ROA p. 20, lines 7 – p. 26, line 7). Dr. Carlotta Abrams, a friend of appellant's, testified about the victim's abusive and threatening nature. (ROA p. 30, line 16 – p. 35, line 10). Finally, appellant's mother, Frances Blackwell, testified about the victim's abuse. (ROA p. 40, line 8 – p. 47, line 11). Defense counsel then went over documentation that was presented at appellant's February 2007 hearing on this subject with police reports of abuse by the victim in Connecticut. (ROA p. 52, line 15 – p. 56, line 20).

The trial judge concluded that based on the old evidence that appellant was not entitled to one-fourth parole eligibility. (ROA p. 60, line 13 – p. 64, line 17). Then he considered the new evidence that was presented, that he said he was not going to consider, and he said that it did not change his position. (ROA p. 64, line 18 – p. 65, line 12). The trial judge, however, failed to make specific findings of fact on the record as to the new evidence and why it would not support one-fourth parole eligibility State v. Blackwell-Selim, 392 S.C. 1, 707 S.E.2d 426 (2011).

CONCLUSION

Appellant's case should be remanded again for the trial judge to make specific findings of fact as to why the new evidence that was presented did not entitle her to one fourth parole eligibility especially when viewed in conjunction with the old evidence that had been presented.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robt M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

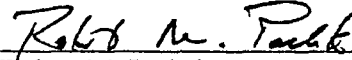
ATTORNEY FOR APPELLANT

This 9th day of April, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 9th, 2012



Robert M. Pachak
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NEARIM BLACKWELL-SELIM,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of April, 2012.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of April, 2012.

Silvia K. Berry (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020

**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.

Nearin Blackwell-Selim, Appellant.

Appellate Case No. 2011-192328

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2012-UP-566
Heard October 4, 2012 – Filed October 24, 2012

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General Christina J. Catoe, all of Columbia, and
Solicitor J. Gregory Hembree, of Conway, for
Respondent.

PER CURIAM: On January 4, 2007, Nearin Blackwell-Selim pled guilty to voluntary manslaughter, and the circuit court sentenced her to twenty years in prison. Blackwell-Selim moved the court to find her eligible for early parole based on South Carolina Code section 16-25-90 (Supp. 2011), which entitles a defendant to be considered for parole after serving one quarter of a sentence if credible evidence is presented to show a history of suffering domestic violence at the hands of the victim. After giving Blackwell-Selim an opportunity to put forth evidence, the court denied her early parole.

The court of appeals affirmed, finding the record supported the circuit court's determination that Blackwell-Selim did not produce credible evidence of domestic violence between the parties. *State v. Blackwell-Selim*, 385 S.C. 394, 399, 684 S.E.2d 208, 210 (Ct. App. 2009). The supreme court vacated the opinion of the court of appeals and remanded the case because the circuit court "failed to make specific findings of fact to support [its] ruling." *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011) (*per curiam*). In its opinion, the supreme court remanded "the matter to the circuit court to make specific findings of fact regarding the ruling the petitioner was not entitled to early parole eligibility pursuant to [section] 16-25-90." *Blackwell-Selim*, 392 S.C. at 4, 707 S.E.2d at 428.

At the second sentencing hearing, Blackwell-Selim offered new evidence in addition to the evidence presented at the initial sentencing hearing. Although the circuit court allowed her to present the new evidence, the court stated it would not consider it because the evidence was not before the court at the initial sentencing hearing. After the presentation of evidence and in accordance with the supreme court's opinion, the circuit court specifically found Blackwell-Selim was not eligible for parole pursuant to section 16-25-90 and issued an order denying her request.

Blackwell-Selim appeals only the circuit court's lack of specific factual findings as to the additional evidence presented at the second sentencing hearing. She does not challenge the evidence originally presented at the first sentencing hearing, the merits of the ruling based on the original evidence, or the circuit court's decision not to consider additional evidence at the second sentencing hearing. See 208(b)(1)(B), SCACR ("The brief of appellant shall contain . . . [a] statement of each of the issues presented for review. . . . Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

A person who is convicted of or pleads guilty to an offense against a household member is eligible for parole after serving one-fourth of his or her prison term if the person presents credible evidence of a history of criminal domestic violence suffered at the hands of the household member. S.C. Code Ann. § 16-25-90 (Supp. 2011). Such a history of criminal domestic violence must be proven by a preponderance of the evidence. *State v. Grooms*, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000). In ruling on parole eligibility or ineligibility, the court must make specific findings of fact. *Blackwell-Selim*, 392 S.C. at 3, 707 S.E.2d at 428.

Whether or not a trial court may consider additional evidence on remand depends on the purpose of the remand. *State v. Frey*, 362 S.C. 511, 514, 608 S.E.2d 874, 876 (Ct. App. 2005). When an appellate court remands a case to a trial court to address issues not fully developed during the trial, it is appropriate for the trial court to consider new evidence. *Id.* However, when a remand is not for this purpose, a party should not be allowed a "second evidentiary hearing." *Id.*

In this case, the supreme court remanded the case to the circuit court "to make specific findings of fact regarding the ruling the petitioner was not entitled to early parole eligibility pursuant to [section] 16-25-90." *Blackwell-Selim*, 392 at 4, 707 S.E.2d at 428. There were no issues that were not fully addressed and developed during the original sentencing hearing; instead the remand was for a determination of specific findings on the evidence already presented. Thus, there was no requirement that the circuit court consider or make specific findings of fact as to the new evidence. We find no error.

AFFIRMED.

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.