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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Stephen H. John, Circuit Court Judge

Case No.: 2012-GS26-02679
Appellate Case No.: 2014-001679

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SC Court of Appeals

The State,

Respondent,

v.

Vivian Schrader-Falls,

Appellant.

RECORD ON APPEAL

Beth B. Richardson, Esquire
Benjamin R. Gooding, Esquire
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Tel. No.: (803) 929-1400

Robert M. Dudek, Esquire
Division of Appellate Defense
S.C. COMMISSION ON INDIGENT
DEFENSE
rdudek@sccid.sc.gov
1330 Lady Street, Suite 401
Post Office Box 11286
Columbia, South Carolina 29201
Tel. No.: (803) 734-1330
Attorneys for Appellant

Alan Wilson
Assistant Attorney General

John W. McIntosh
Chief Deputy Attorney General

Donald Zelenka
Senior Assistant Deputy Attorney General

William Edgar Salter, III
Senior Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

Jimmy A. Richardson, II
Solicitor, Fifteenth Judicial Circuit
P.O. Drawer 1276
Conway, SC 29528
(843) 915-8608

Attorneys For Respondent

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1 and thinking about all the things that she had given him,
2 her car to use, and had even bought a new car so he could
3 have hers, but he wasn't satisfied with that, and the things
4 that he was doing, lying to her about his rela- -- other
5 relationship, that she was going to shoot out his tire, not
6 a great decision, not a nice thing, probably a lot of people
7 would have sympathy for her at that point, but it still
8 wasn't a nice thing to do.

9 She didn't even have the malice or the gumption to
10 shoot an inanimate object. She couldn't even bring herself
11 to shoot out a tire when there was no one there to prevent
12 her. No one even knew she was there yet. That woman
13 doesn't have the gumption to say boo to a fly, and she sure
14 as hell doesn't have the malice in her heart to shoot down a
15 living human being.

16 Tony came outside. She didn't know if he was or not.
17 He came from the other way. The last that Vivian knew was
18 Diane Movsky said I'll have him call you, and shut the door.
19 Vivian started to walk off the porch. She doesn't know if
20 Tony is coming out or not. He won't pick up the phone. She
21 hasn't seen him, and she said -- this is key, too -- she
22 said one reason I chose to go up to the house was I was
23 going to tell Tony, yes, this is it. I'm okay. You do what
24 you're going to do, but I'm -- I'm finally gone.

25 And she wanted to do that in that location. Why?

1 Because she didn't think Tony would show his rear end in
2 front of somebody else and that she could do it without
3 having confrontation, whether it would be physical or not,
4 that she could avoid the argument and the hurt feelings and
5 all of that, because he wouldn't show his rear end in front
6 of Diane Movsky.

7 But Tony didn't come outside at that point, so at that
8 point Vivian is just walking off. He comes out. Why are
9 you here? Vivian, what are you doing? And it quickly
10 becomes -- Vivian, you know she called the police. Vivian
11 -- and that was when Vivian says for what? Why did she call
12 the police? I haven't done anything. I'm not going to jail
13 for something I didn't do.

14 That's what Ryan McCarty heard when he woke up. Nobody
15 else heard anything. Diane Movsky didn't hear that. The
16 neighbor across the street didn't hear that. But Vivian
17 told you, oh, yes, there was that conversation, but it
18 happened here, not in between shots. And her version is
19 frankly just the more believable. She's a more credible
20 witness than Ryan McCarty just from demeanor.

21 Mr. McCarty, you have reason to doubt what he's saying
22 because of his different versions of the shots and how they
23 happened, both when he first talked to the police and in
24 court, and his ability to actually see anything. He
25 probably did hear that. I think he heard it in a different

1 order than he thinks, and nobody else heard that.

2 And at that point, Vivian said I didn't do anything.
3 Why did she call the police? She doesn't know the police
4 haven't been called. Why did she call the police? I'm not
5 going to jail. I didn't do anything.

6 And they continue to discuss, and she says Tony, I'm
7 fine with all this, meaning Diane Movsky and other women.
8 I'm fine. You do what you're going to do, but this is when
9 the trouble started. This is wherein the fault lies. She
10 says but you can't come back to my bed. She finally got the
11 courage to say it. Enough is enough. I cannot tolerate the
12 intolerable anymore. You can't come back to my bed. That's
13 what set him off.

14 Tony Hughes wasn't mad when she showed up. He was
15 laughing inside with Diane Movsky. We can't have a moment's
16 peace. I'll go out. It will be fine. That's what he told
17 Diane. There wasn't trouble when he came outside. She
18 didn't threaten and start yelling at him. He immediately
19 said, hey, better watch out. She called the police. You
20 need to know that. Why did she call the police? I don't
21 understand.

22 You can't come back to my bed. And what does he do?
23 Flips down the cigarette, and he says, who the fuck are you
24 telling me that, what I can do, and he comes towards her
25 with a look that she knows means she's going to get it.

1 Now, she says I was in fear, and that's based on a real
2 fear, her knowledge of him, as well as her history with men.

3 It is backed up by what Dr. Proctor told you. Dr.
4 Proctor said I can't tell you the order of the shots. I
5 can't tell you exactly how many, could be as few as three.
6 I can't tell you an exact distance that they were fired, but
7 I can tell you that they were fired from a distance of
8 between eighteen and twenty-four inches.

9 Twenty-four inches is the reach of my arm. I'm five
10 foot, eight. Tony Hughes was six foot, three. That is
11 within a striking distance. That is close enough to be a
12 legitimate threat, particularly with a man who has been
13 brutal to you before.

14 What does Dr. Proctor further say when I asked him
15 about the number of wounds and the number of bullets. He
16 described them as defensive wounds, but yes, the hands --
17 the wounds to the hands and the wounds to the arm indicated
18 the arms had been raised and that the bullets had caused
19 multiple wounds. He used the phrase defensive wounds. I
20 would argue that those were offensive wounds. It wasn't
21 this, but this (indicating), or a version of that, close
22 range, three shots. Everything is consistent with that.

23 Vivian's testimony alone is riveting and believable,
24 and it is supported by what other witnesses tell you. It's
25 supported by the physical evidence, not just some fanciful

1 concoction that this sneaky lawyer has come up with.

2 Battered spouse syndrome, the last thing I'm going to
3 say. It's important on two issues, state of mind,
4 perception, intent with regard to malice on the murder
5 charge. There has to be intent and malice for this to be
6 murder, because without it, at most it's manslaughter. It
7 cannot be murder without malice.

8 I know there are an awful lot of people out there this
9 day and age in matters of abuse and all kind of different
10 things, they cry wolf and they cry wolf, and it's easy to
11 tune out some of that stuff, and they are here we go again.
12 You've heard from Miss Vivian. You've heard from other
13 witnesses that corroborated.

14 You've heard from a woman who has as much experience as
15 any person in this state in dealing with this situation of
16 battered spouse syndrome. There is no doubt that this is a
17 real case who is a battered woman, and battered at the hands
18 of Tony Hughes, among others.

19 This is not the boy who cried wolf. Don't put
20 yourselves in the position of those -- remember, the boy who
21 cried wolf, at the end of the story, there really was a
22 wolf. Don't be the villagers who didn't believe the person
23 who cried wolf. This is a legitimate character wolf.
24 Vivian Schrader-Falls, if there was ever a lamb walking this
25 earth, it is that woman.

1 You all swore an oath to do your job, to listen to the
2 evidence, to apply the law as the Judge gives it to you and
3 to render a verdict. I don't know that I've ever seen a
4 jury pay as close attention as I have this week. I know you
5 have taken your duty very seriously, but you have no friends
6 to reward or enemies to punish.

7 This case is not about, unfortunately, alleviating the
8 pain of the Hughes family. There is no one in this
9 courtroom who would want to do that more than Miss Vivian,
10 but that can't be the basis of your verdict. I'm not going
11 to let you off that easily.

12 I'm asking you to do the difficult thing here. Based
13 on everything you know, based on the evidence you've heard,
14 based on Miss Vivian and Tony Hughes. I'm not asking you to
15 find that Tony Hughes was a monster incapable of any loving
16 emotion, he was a worthless in this world, because he was
17 not.

18 It is a genuine tragedy that he is not on this earth
19 today, but he did do some monstrous things, at least with
20 Miss Vivian, and the appropriate verdict in this case is not
21 guilty. This was an act of self-defense. It doesn't mean
22 by that verdict that you are justi- -- well, you justify the
23 act if you believe it's self-defense, justifiable homicide,
24 doesn't mean that you think it was a good idea for Vivian to
25 go over there with a gun. It doesn't mean those things.

1 It doesn't mean you approve. It simply means the State
2 has not carried the burden beyond a reasonable doubt and
3 proven malice. They also with self-defense now, it is
4 raised. It is an issue. You will have that option. The
5 State then has the burden of disproving self-defense, okay?
6 The Judge will explain that to you, but they have the burden
7 of disproving it. We've raised the issue. You've heard
8 testimony about it. You are going to be charged on the law.

9 The burden is on the State to show you it is not self-
10 defense. That's what I'm asking you to find, that this is
11 self-defense, and Vivian is not guilty of murder. So to be
12 very clear, that's a difficult decision. That's exactly
13 what I'm asking, though.

14 If you cannot reach that conclusion, then I would
15 submit to you and urge you to find that there is no malice
16 here, that even if it was not justified, that it did not
17 rise to the level of self-defense, that it is lacking the
18 critical element of malice and that, therefore, it cannot be
19 murder and instead should be voluntary manslaughter. Thank
20 you.

21 **THE COURT:** All right, Solicitor, your closing
22 argument, please.

23 **MR. GRAUSTEIN:** Thank you, Your Honor.

24 **THE FOREMAN:** Could we be excused?

25 **THE COURT:** I would prefer, if at all possible, to have

1 the closing arguments done back to back and then I will give
2 you a break before I charge you on the law. Is that
3 acceptable? Thank you very much.

4 **MR. GRAUSTEIN:** I'll try not to be as long. I will be
5 as brief as I possibly can.

6 Ladies and gentlemen, thank you for your attention
7 during this trial. I know it was long and arduous at some
8 point, and you definitely would like to be doing some other
9 stuff this week, but this is important.

10 We have a dead person here, and there's no question the
11 Defendant is the one who shot him -- shot him. She admits
12 it. All the evidence, there's no question. Mr. Fox was
13 wrong. This is a case about murder, and we have to prove
14 beyond a reasonable doubt the killing of another.

15 Well, there was a killing. There's no reasonable doubt
16 that there was a killing, and it was done by this Defendant.
17 It was done with her gun. It ballistically matched the
18 bullets that were taken from the body, and she admits it.
19 She doesn't deny that she shot the victim in this case, Tony
20 Hughes.

21 This is not a who-done-it, and the Defense would have
22 you believe that somehow the Defendant was justified on
23 March 31st in shooting Tony Hughes. That's the defense, she
24 was justified. She had a right to shoot him that morning.

25 And I don't want to belabor a lot of these points, but

1 there are -- just like Mr. Fox, I'm -- there are certain
2 things I think we really need to talk about. This whole
3 domestic violence issue, now, I don't excuse domestic
4 violence. They talked about domestic violence, battered
5 spouse syndrome, all this sort of stuff, bring an expert up
6 here to tell you about it, tell you what it is.

7 Was there any sort of domestic violence in this
8 relationship? That's the first question you've got to get
9 by. What evidence is there that Tony Hughes committed
10 violence against this Defendant in any way? She said so.
11 That's it. She said so. Nobody else can corroborate that.

12 They put an expert up here that, oh, yeah, this is a
13 battered spouse, and what does she base her opinion on?
14 What the Defendant told her. Oh, and some stuff that a Mr.
15 Deering did years ago, and some stuff Booster Jones did
16 years ago.

17 That stuff has nothing to do with Tony Hughes,
18 absolutely nothing. The question that needs to be answered
19 is was the -- any domestic violence, if it even existed, did
20 it rise to the level where she felt her life was in such
21 danger on the morning of March 31st, 2012, that she had to
22 shoot him dead right there? That's the question.

23 I don't know whether Ms. Falls had that terrible life
24 and a terrible childhood, but that's really not relevant
25 here. It's what went on between her and Tony Hughes, if

1 anything. They had people who could corroborate that
2 Booster Jones abused her and committed violence against her.
3 Her daughters could do that, as well as Mr. Deering. Her
4 daughters said, oh, they never saw any violence between her
5 and Tony. They talked quite glowingly of their
6 relationship.

7 That's the first question you've got to get around, was
8 there even any domestic violence. Was there a history of
9 domestic violence with the Defendant? Very possible, but
10 she may have been able to tell us a bunch of stories. Just
11 make sure the story was committed, by which person that
12 committed them. Again, nothing other than her word, her
13 statement, and you saw her testify. You know whether or not
14 she was being truthful or not.

15 Now, this relationship that she and Tony had, I don't
16 know much about that either. I mean, and, of course, it
17 really comes down to what the Defendant knows and what Tony
18 Hughes knows, but unfortunately Tony Hughes is not here to
19 tell you his side of this, but apparently this relationship
20 went from nothing, I just want friends to as far as I'm
21 concerned, we're married, in a month, okay?

22 Then there's all kinds of testimony about where they
23 lived, folks, when it all comes down to it doesn't matter.
24 It doesn't matter what the state of their relationship was
25 that day, because nothing Tony Hughes did justified him

1 being shot that morning, not shot once, not twice, at least
2 three times, and we're going to talk about that for a
3 minute.

4 We're going to talk about the residence, and what Dr.
5 Proctor talked about, and what the witnesses saw, but just
6 -- and they brought the expert up, and I -- and she's
7 highly credentialed, and she is a top advocate for battered
8 women in this state. She's run battered women shelters, but
9 she's an advocate for battered women.

10 She was not -- when she was brought onto this case, two
11 years. The first time she talked with the Defendant was two
12 years after this incident. The first time she ever talked
13 to her was April 1st of this year. Two years later, she
14 goes and talks to the Defendant, and has no idea what the
15 Defendant read, looked up, or anything in those two years,
16 talks to her about her abuse, seemed to concentrate a whole
17 lot on what happened before she met Tony Hughes, and talks
18 to friends and family, understandable, didn't talk to the
19 Defendant's adopted sons who lived with her this whole time,
20 never even talked to them. Was she looking for the truth?

21 I would submit to you that their expert never answered
22 that first question, did domestic violence even occur in
23 this relationship, because all she relied on was the
24 Defendant's say-so. That's it.

25 Okay, now the Defendant, there's no question that on

1 the morning of March 31st, the Defendant went to the home of
2 Diane Movsky, a complete stranger to her. She went over
3 there. She said she used her gun, it was loaded, kept it in
4 her car. She went over there. She got out of her car, took
5 her gun with her, went up to Ms. Movsky's door and knocked
6 on it.

7 Now, there were several witness accounts about what
8 happened, but ultimately, and I think Dr. Proctor spoke to
9 us about there was one wound to the chest that went across
10 this way, two wounds to the neck, one going this way, and
11 the other one going in the side and came out the back, so
12 this was tending to move to the victim's left.

13 Just for a second, does that match up with what the
14 Defendant said happened? She said she fired rapidly, bang,
15 bang, bang. We've got bullets going one way and then the
16 other way. How is that going to happen, bang, bang, bang,
17 bullets flying in every direction.

18 Before I get into that, the Defense is right. I have
19 got to prove and did prove that self-defense claim. In one
20 of these things that they get to -- is that there is self-
21 defense going on here. Okay, and let me tell you about what
22 these things are, about this stuff and how you look at it,
23 but what you've got is you've got self-defense.

24 You've got four things that can happen, the elements of
25 self-defense, and as the State, we have to disprove any one

1 of these beyond any reasonable doubt, and if we disprove any
2 one of them, there's no self-defense.

3 Okay, the first thing we've got is the Defendant can't
4 be at fault in bringing on the trouble. Number one, no
5 fault. It's undisputed she went over to Ms. Movsky's house
6 with a gun. That's the -- everybody agrees that's what
7 happened. Then they also agree she went up to the door and
8 knocked on the door with the gun. She called Tony Hughes
9 out, said send Tony out, and she still had the gun.

10 He came outside. I don't know about -- about y'all,
11 but you go over to -- even if you're -- if they -- if he was
12 cheating on her, she goes over and knocks on the door while
13 he's cheating on her, you're probably looking for a fight.
14 Will it be something like, oh, well, we'll just pass this
15 sucker off? We don't care. We'll just be able to talk with
16 real good friends out here. No. Somebody is going to be
17 mad. She was mad.

18 So, this is one of those, well, how could I have ever
19 thought he was going to get mad and there might have been a
20 fight, so was she not at fault for bringing this on? She
21 definitely forced a confrontation that could very easily go
22 volatile, very easy, not really the real timid person.

23 She was looking for a -- and even she was going to use
24 the camera and take pictures and confront him about it. She
25 wasn't avoiding everything. She wasn't just sitting in the

1 car, oh, geez, I hope Tony doesn't find out. She was going
2 to bring it up. She was going to put it right there in
3 front of him.

4 Now, she must feel -- believe she was in actual
5 imminent danger. Now, the standard for this is real
6 important. This is a reasonable person standard, and y'all
7 are reasonable people, so what would you do? Would you
8 think under these circumstances that you were in imminent
9 danger of death or great bodily injury? You're the one
10 standing there with the gun and you just called somebody
11 out. Who's in the best position now? Who's in the
12 advantageous position, you or the unarmed person there?

13 So, imminent threat. Now, if she was under an imminent
14 -- an actual imminent threat, if she believed she was
15 reasonably -- did a reasonable person believe that their
16 life was threatened at that point basing the whole thing on
17 he gave me that look, okay, and then he lunged at me. Well,
18 nobody saw the lunge. There were three witnesses to this
19 thing and none of them saw the lunge, but she had the gun
20 still. Did she need to kill him even if he did lunge?

21 Now, the Defense says, well, geez, you know, the doctor
22 said it was fifteen to twenty-four inches away. It was at
23 least eighteen to twenty-four inches away. It could have
24 been three feet away. It could have been five feet away.
25 It just wasn't any closer than eighteen to twenty-four

1 inches.

2 And a third element for this self-defense, no other
3 means to avoid it. This almost comes right back to this one
4 up here, if she wasn't there, if she hadn't gone there with
5 the gun, none of this would have happened. She had the way
6 to avoid this. Well, she could have never gone there to
7 begin with. She could have not knocked on the door. She
8 could have -- go shot the tires out if that's really what
9 she wanted to do.

10 She could have thought, oh, geez, I've got to leave.
11 When Tony came out, she could have said I'm leaving. I've
12 got to go. The evidence is she stood right there and argued
13 with him, but those are the elements. I'd say we've
14 disproved every single one of those, not just one. We've
15 disproved beyond a reasonable doubt every element. There is
16 no self-defense here.

17 Now, the Judge is going to instruct you that these get
18 modified a little bit, the battered spouse. There is no
19 evidence that she went over there because of some sort of
20 fear for her life. In fact, just the opposite is showing
21 here, and that's the -- that's the -- the battered spouse is
22 that she had to do this because she felt she was in fear for
23 her life.

24 It doesn't change any of that. It just adjusts the
25 circumstances a little bit, but she didn't go over there --

1 but she said why she went over there. She was mad. She was
2 angry. That has nothing to do with domestic violence,
3 nothing. That's a mad girlfriend.

4 Now, let's see, let's talk about this what our
5 witnesses saw. First of all, ask yourself, we've got three
6 different ver- -- we've got several different versions, and
7 the Defense says you have credibility to think about here.
8 Well, you've got three witnesses who are all neighbors. Any
9 of them got any reason to lie? They didn't even know Tony
10 except from Ms. Movsky, and she just actually just met him
11 the day before.

12 The Defendant, she's on trial, so whose story is
13 probably the most accurate, but we can match these up with
14 our forensics and with our witness statements. We've got
15 three witnesses here, three neighbors who all witnessed a
16 certain portion of what went on that morning. None of them
17 saw the whole thing. None of them saw the whole thing, but
18 each one of them saw parts, and if you put all their
19 testimony together, you add it up, you get the full picture,
20 and that picture is not the bang, bang, bang, three shots
21 and that's it.

22 First, the forensics don't match up with that. First,
23 we have Diane Movsky who says somebody knocked on her door.
24 She wouldn't answer the door the Defendant said. The
25 Defendant was angry, was agitated, as we know the Defendant

1 had the gun on her at that point.

2 She goes and talks to Tony, and he says, well, I'll go
3 talk to her. Obviously, an awkward and uncomfortable
4 situation for everybody involved. So he goes outside. Ms.
5 Movsky doesn't see what's going on then, okay, so -- but Ms.
6 Taylor, across the street, she sees what's going on. She
7 comes out and she looks across the street, and she sees the
8 Defendant and the victim standing next to his car. She
9 looks mad. She testified Tony was standing there with a
10 blank look on his face, like you guys know we get when we're
11 getting yelled at. Yeah.

12 So now, so that's -- he's not yelling at her. He's not
13 being aggressive towards her. He's just standing there
14 while she's angry, and she gets in her car, turns her back
15 to everything, starts backing out, bang, bang, bang. Diane
16 Movsky says I hear bang, bang, bang, or bang, bang.
17 Somebody may have lost one here or there, but we know how
18 many bullet holes there were.

19 And Ryan McCarty, he hears bang, bang. Ryan McCarty,
20 -- now, we're putting all this together, because it's all
21 happening real fast, all happened in real time here. Ryan
22 McCarty looks out his window, he sees Tony leaning against
23 his car with his head like this. He's shot and he starts
24 going down. I believe this is that first shot probably
25 through his heart. He's going down. As he goes down, he

1 says he sees, observes the Defendant shoot him again, says
2 I'm not going to jail for this.

3 Now, Diane Movsky is going to the front of her house.
4 She looks out. Mr. McCarty starts moving to the front of
5 his house. Both of them are calling 911, but now their
6 attention is distracted a little bit.

7 They're not hearing. They're talking to somebody in
8 their ear and they miss a shot here or there, but Mr.
9 McCarty said I saw a gunshot, and Diane Movsky looked out --
10 she looks out the window and now Tony Hughes has gone all
11 the way to the ground. She said I see her standing over him
12 and fire one more shot. And she said then I leave and I'm
13 talking to 911.

14 And Ms. Taylor, across the street, she's getting out of
15 her car. She hears pop, pop, pop, and now she's stopping
16 her car. She's getting out. She's, you know, -- her
17 attention is a million different places. She doesn't hear
18 those last two shots, and when she gets out she sees Tony
19 laying on the -- laying on the ground.

20 It happened just like those witnesses said. They
21 didn't all see the whole thing, but when you put everything
22 that they -- all of them all three together saw, that's
23 exactly what happened, so what you end up with, the first
24 group of shots, one goes through the chest.

25 At that point, Tony Hughes is dying. That bullet went

1 through his heart and he was dying at that point, and as he
2 went down, the Defendant shot her -- him again, any one of
3 these shots up here. He was taller than her. How is she
4 going to shoot him up here unless he is going down. He
5 finally hits the ground, and she shoots him one more time.

6 That is intentional, and malicious, and it's murder.
7 Whatever her intent may have been when she showed up, when
8 she started pulling that trigger, she meant to shoot him.
9 There is no reasonable doubt that that's what was going to
10 happen. That's what the evidence shows. That's what the
11 witness statements say. That's what the forensics show. It
12 did not happen the way she said it happened.

13 Ladies and gentlemen, there's no question that the
14 Defendant shot Tony Hughes. The evidence supports it was
15 intentional, it was malicious. It's sad.

16 Domestic violence, I don't believe -- other than the
17 Defendant's say-so, there is no evidence of domestic
18 violence ever committed by Tony -- Tony Hughes against the
19 Defendant or anybody.

20 Ladies and gentlemen, this was a tragic -- well, I want
21 to sort of clear up one thing on this malice. Malice means
22 when she pulled that trigger, she meant to pull the trigger.
23 It was a malicious, intentional shooting resulting in the
24 death of Tony Hughes, without justification. It was not in
25 self-defense. She brought the gun. She went to a house she

1 had no business being at. She went looking for a fight and
2 shot him again and again, and I'm sure you'll return a
3 verdict of guilty of murder. Thank you.

4 **THE COURT:** All right, ladies and gentlemen, what we're
5 going to do now is take a short break. Go back to your jury
6 room and we'll call you back out in just a little while.

7 Everyone else remain seated, please. Thank you.

8 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
9 **JURY.)**

10 **THE COURT:** All right. We'll be at ease for about ten
11 minutes. Thank you very much.

12 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
13 **THE PRESENCE OF THE JURY.)**

14 **THE COURT:** All right. Solicitor, is the State ready
15 for the jury?

16 **MR. GRAUSTEIN:** Yes, Your Honor.

17 **THE COURT:** And the Defense, Mr. Fox?

18 **MR. FOX:** Yes, Your Honor.

19 **THE COURT:** All right. Thank you very much.

20 Ask the jury to come in, please.

21 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
22 **JURY.)**

23 **THE COURT:** All right, ladies and gentlemen, it's now
24 my duty and responsibility to give you the law that you will
25 apply to the facts and evidence that you find to be true in

1 the case.

2 Now, I told you at the very beginning that I would not
3 indicate to you in any way what I believe the facts of this
4 case are, and I believe I've stuck to that, but in that same
5 vein, if you came into this courtroom with any kind of
6 preconceived ideas of what the law is, or what it ought it
7 be, what it should be, what you hope it would be, you'll
8 disregard that. You will take the law as I now give it to
9 you and apply it to the facts and evidence you find to be
10 true.

11 Now, I told you at the very beginning that one of your
12 jobs, and duties, and responsibilities would be to judge the
13 credibility and the believability of the witnesses that came
14 before you and testified under oath in this case.

15 Now, in looking at credibility and believability of
16 witnesses, you can believe one witness against several,
17 several against one. You can believe a portion of what a
18 witness says and disregard the remaining portion of it. If
19 you've got a good and sound reason for doing so, you could
20 disregard in its entirety the testimony of a particular
21 witness.

22 You look at whether or not the witness has exhibited to
23 you any kind of interest, motive, bias, prejudice they may
24 have concerning the testimony they gave you. Obviously, you
25 consider the opportunity for knowledge, how did they come

1 about that information that they gave you from the witness
2 stand, and you could even consider a person's demeanor, how
3 did they appear, how did they look, how did they actually
4 testify in considering the issue of credibility and
5 believability.

6 Your objective is to find the truth. It doesn't matter
7 from whom or what combination of witnesses that truth comes,
8 but that's your job and responsibility is to find the truth
9 of this matter. Again, you're applying your good common
10 sense, your good judgment.

11 It's something you do every single day of your life in
12 judging credibility, believability of people. That's what
13 you need to do here today, use your good common sense, use
14 your good judgment, look at the facts and the evidence that
15 have been presented, find the evidence that convinces you
16 it's true.

17 You don't have any friends to reward. You don't have
18 any enemies to punish. Your verdict cannot be the result of
19 any kind of passion, prejudice, or sympathy. It has to be
20 an examination of the facts and evidence of this case and
21 find that evidence which convinces you of its truth and then
22 you weigh that evidence against the State's burden to prove
23 the Defendant guilty beyond a reasonable doubt.

24 There have been two types of evidence presented in this
25 case and virtually every single case that's tried, there's

1 these two types of evidence. They're called direct and
2 circumstantial evidence.

3 Direct evidence, that's when a person asserts or claims
4 to have actual knowledge of a fact, what they saw, what they
5 heard, what took place in their presence. Circumstantial
6 evidence, that's a proof of a chain of facts indicating the
7 existence of a fact. The law does not make any distinction
8 between the two. There's not one that is -- you have to
9 prove to a greater degree of reliability than the other.
10 You look at all the evidence in this case and you find,
11 again, that evidence which convinces you that it's true.

12 I allowed a couple of witnesses in this case to give
13 their opinion. Sometimes they're called expert witnesses,
14 but what we are actually doing is qualifying them to give
15 their opinion. Normally we don't allow people to testify
16 about their opinion. They've got to tell you what I saw,
17 what I heard, what took place, but sometimes witnesses by
18 reason of their training, education, experience in a certain
19 field, we will allow them to express their opinion.

20 Now, just because the Court allows that and that took
21 place doesn't give them any special status. You judge and
22 look at all the evidence the same. You judge and weigh the
23 credibility and believability of all the witnesses the same.
24 Again, you're finding that evidence which convinces you of
25 its truth no matter from its source.

1 I told you at the very beginning about a basic
2 principle of law that covers every single criminal case
3 that's tried in these United States and that's the
4 presumption of innocence. When somebody is charged with a
5 crime by the state or the federal government, they are
6 presumed innocent of that crime unless and until the State
7 can prove the defendant guilty beyond a reasonable doubt of
8 that particular crime.

9 Now, that presumption of innocence that the defendant
10 has, and I say has because it hasn't even ended now, that
11 presumption of innocence does not end at any point in time
12 unless and until you find from the facts you find to be true
13 the State has proved the guilt of that defendant beyond a
14 reasonable doubt.

15 This presumption of innocence is where you liken it to
16 a robe of righteousness. It's placed on the shoulders of
17 the defendant and it stays on the shoulders of the defendant
18 unless and until the State rips that robe of righteousness
19 from the shoulders of the defendant by proof that leaves you
20 firmly convinced of the guilt of the defendant beyond a
21 reasonable doubt.

22 This is not just some legal theory or legal phrase.
23 It's a substantial right to which every American is
24 entitled, and they are entitled to it throughout the
25 entirety of the proceedings, through the deliberations

1 unless and until you are satisfied the State has proved the
2 guilt of the defendant beyond a reasonable doubt.

3 Reasonable doubt, the kind of doubt that would cause an
4 ordinary, reasonable person to hesitate to act. Proof
5 beyond a reasonable doubt is proof that leaves you firmly
6 convinced that the defendant is guilty of the crime charged.

7 Now, there are very few things that we can know with
8 absolute certainty, and the State is not required to give
9 you that kind of proof, absolute certainty. What is
10 required is if based upon your consideration of the evidence
11 you find to be true you are firmly convinced that the
12 defendant is guilty of the crime charged, you must find the
13 defendant guilty.

14 On the other hand, based upon your view of the
15 evidence, the evidence you find to be true, you are not
16 firmly convinced that the defendant is guilty of the crime
17 charged, you must give the defendant the benefit of the
18 doubt and find them not guilty.

19 In order to establish criminal liability, the State of
20 South Carolina has to prove to you beyond a reasonable doubt
21 criminal intent. Criminal intent must be proven, as I've
22 indicated, beyond a reasonable doubt. It is always a matter
23 that must be determined by the jury from the circumstances
24 surrounding the situation.

25 Now, there's no way that anybody can prove it to you to

1 a mathematical certainty. You can't by medical science
2 delve into a person's body and find out what they had in
3 their mind, what their intent was, so the law says that
4 criminal intent comes from the circumstances shown to have
5 existed at a time the crime was committed. That's how you
6 make a determination whether or not the intent was present.

7 Intent can be established as any other fact by taking
8 into consideration the act of the parties and all the facts
9 and circumstances of the case. It's a mental state, a
10 conscious wrongdoing, and it's up to you to determine what
11 the defendant intended to do based on the circumstances
12 proven and shown to have existed.

13 The State of South Carolina has charged the Defendant
14 with the crime of murder. The State has to prove to you
15 beyond a reasonable doubt that the Defendant killed another
16 person with malice aforethought.

17 Malice, that's hatred, ill will, hostility towards
18 another person. It's the intentional doing of a wrongful
19 act without just cause or excuse and with an intent to
20 inflict an injury or under circumstances that the law would
21 infer an evil intent. It indicates a wicked or depraved
22 spirit intent on doing wrong.

23 Now, malice aforethought does not require that malice
24 exist for any particular time before the act is committed,
25 but malice must exist in the mind of the defendant just

1 before and at the time the act is committed, so you have to
2 have this combination of the evil intent and the act to be
3 guilty of the crime of murder.

4 If you find the State of South Carolina has not proved
5 to you beyond a reasonable doubt that the Defendant has
6 committed the crime of murder, you may consider whether or
7 not the State has proved to you beyond a reasonable doubt
8 that the defendant committed the crime of voluntary
9 manslaughter.

10 Voluntary manslaughter, according to the law, is a
11 lesser included of the crime of murder. To prove voluntary
12 manslaughter the State has to prove to you beyond a
13 reasonable doubt that the Defendant -- excuse me. I'll
14 start that again.

15 To prove voluntary manslaughter the State has to prove
16 to you beyond a reasonable doubt that the Defendant took the
17 life of another in the sudden heat of passion based upon
18 sufficient legal provocation. Both heat of passion and
19 sufficient legal provocation must be present at the time of
20 the killing to constitute voluntary manslaughter.

21 Sudden heat of passion may for a time affect a
22 person's self-control and temporarily disturb a person's
23 reason. Sudden heat of passion must be the type that would
24 make an ordinary reasonable person unable to coolly reflect
25 on their actions and would produce an uncontrollable impulse

1 to do violence.

2 Sufficient legal provocation must be the type that
3 would make an ordinary reasonable person become enraged and
4 to lose control temporarily. The provocation needed for
5 voluntary manslaughter must come from some act or related to
6 the victim.

7 Now, words alone, however vulgar or insulting, are not
8 enough to be legal provocation. The words must be
9 accompanied by some kind of overt or threatening action
10 which could have produced the heat of passion. The exercise
11 by a victim of a legal right, no matter how offensive it
12 might be, is not in and of itself sufficient legal
13 provocation for voluntary manslaughter.

14 If the heat of passion has cooled or there was enough
15 time between the provocation and the killing for the passion
16 of a reasonable person to cool, the killing is not voluntary
17 manslaughter.

18 In deciding, you consider all the circumstances
19 surrounding the killing. You consider the nature of the
20 provocation, if any, the defendant's mental and physical
21 state, and the circumstances and relationship between the
22 parties.

23 If you have a reasonable doubt as to whether a
24 defendant is guilty of a greater or a lesser included
25 offense, it is your duty to resolve that doubt in favor of

1 the defendant and find them guilty of the lesser offense if
2 that is your view of the evidence, the evidence you find to
3 be true, and again, it has been proven to you by the State
4 of South Carolina beyond a reasonable doubt.

5 The Defendant in this case has raised a defense called
6 self-defense. Now, regarding self-defense, it is a complete
7 defense, and if it is established, you must find the
8 Defendant not guilty. The State, as with everything else,
9 has the burden of disproving self-defense by proof beyond a
10 reasonable doubt.

11 If you have a reasonable doubt of the Defendant's guilt
12 after considering all the evidence, including the evidence
13 of self-defense, then you must find the Defendant not
14 guilty. On the other hand, if you have no reasonable doubt
15 of the Defendant's guilt after considering all the evidence,
16 including the evidence of self-defense, you must find the
17 Defendant guilty.

18 What must be shown to establish self-defense, and
19 again, understanding the State has to disprove this by proof
20 beyond a reasonable doubt, without fault. The Defendant
21 must be without fault in bringing on the difficulty. If the
22 Defendant's conduct was the type which was reasonably
23 calculated to and did provoke the actions, or a deadly
24 assault, the Defendant would be at fault in bringing on the
25 difficulty and is not entitled to an acquittal or a finding

1 of not guilty based upon self-defense.

2 If the Defendant killed her abuser during a
3 confrontation when the abuser clearly is the aggressor, this
4 element is satisfied. However, it may be possible to
5 characterize a battered person as the victim of a continuing
6 assault at the hands of the batterer. When this is the
7 case, the first element of self-defense may be satisfied
8 even though the battered person acts at a time when the
9 batterer is not being physically abusive.

10 The second element of self-defense, imminent danger.
11 The Defendant must believe she was actually in imminent
12 danger of death or serious bodily injury or that she was,
13 either she believed it or she actually was in imminent
14 danger of death or serious bodily injury.

15 If the Defendant was actually in imminent danger, it
16 must be shown that the circumstances would have warranted,
17 again, an ordinary person of firmness and courage to strike
18 the fatal blow to prevent death or serious bodily injury.
19 If the Defendant believed she was in imminent danger of
20 death or serious bodily injury, it must be shown that an
21 ordinary reasonable person of ordinary firmness and courage
22 would have had that same kind of belief.

23 In deciding whether the Defendant actually was or
24 believed she was in imminent danger of death or serious
25 bodily injury, again, you consider all the facts and

1 circumstances surrounding the matter, including the physical
2 condition and characteristics of the Defendant and the
3 victim.

4 Right to act on appearances. The Defendant does not
5 have to show that she was actually in danger. It is enough
6 that the Defendant believed she was in imminent danger and a
7 reasonable ordinary person of firmness and courage would
8 have had that same belief.

9 The Defendant has the right to act on appearances even
10 though the Defendant's belief may have been mistaken. It is
11 for you to decide whether the Defendant's fear of immediate
12 danger of death or serious bodily injury was reasonable and
13 would have been felt by an ordinary reasonable person in the
14 same or similar situation.

15 At times, a battered person is in imminent danger of
16 violence when they act. Depending on the facts and
17 circumstances, the Defendant may act in self-defense if they
18 believe they are in imminent danger of death or serious
19 bodily harm, even though the batterer is not being
20 physically abusive when the Defendant acts. This is because
21 a battered person can experience a heightened sense of
22 imminent danger arising from the terror of physical or
23 mental abuse.

24 Often the terror does not decrease even when the
25 batterer is absent or asleep. The belief that only death of

1 the batterer can provide relief may be reasonable in the
2 mind of the Defendant, again, if an ordinary reasonable
3 person would have had this same belief.

4 Words accompanied by hostile acts, depending on the
5 circumstances, establish self-defense. Evidence of prior
6 difficulty between the Defendant and the victim may be
7 considered in deciding whether a threat existed, whether the
8 Defendant had a reason to believe a threat existed and how
9 serious that threat was.

10 The relative size, ages, and weight of the Defendant
11 and the victim may be considered in deciding the apparent or
12 actual need for force in self-defense and the amount of
13 force needed.

14 Prior instances of violence by the victim may be
15 considered in deciding whether the Defendant actually
16 believed she was in imminent danger of death or serious
17 bodily injury or actually was in imminent danger. Threats
18 made by the victim may be considered in determining whether
19 the Defendant actually was or believed she was in imminent
20 danger.

21 The final element of self-defense is that the Defendant
22 had no other probable way to avoid the danger of death or
23 serious bodily injury than to act as the Defendant did in
24 that particular instance. The Defendant has no duty to
25 retreat if by doing so the danger of being killed or

1 suffering serious bodily injury would increase.

2 Degree of force. A person cannot be required to make
3 an exact mathematical calculation as to degree or amount of
4 force which may be needed to avoid death or serious bodily
5 harm. Therefore, in self-defense, if it is established by
6 all those elements we've talked about, the Defendant has the
7 right to use the force needed to avoid death or serious
8 bodily harm. The force used in self-defense does not have
9 to be limited to the degree or the amount of force used by
10 the victim, if any.

11 The Defendant has the right to use so much force as
12 appeared to be necessary for complete self-protection, and
13 again, under the circumstances that a reasonable ordinary
14 person of ordinary firmness and courage would have had that
15 same belief that this type of force was needed to prevent
16 the death or serious bodily harm.

17 If the Defendant is justified in defending themselves
18 and in firing the first shot, then the Defendant is also
19 justified in continuing to shoot until it is apparent that
20 the danger of death or serious bodily injury has completely
21 ended.

22 That, ladies and gentlemen, is the law that you must
23 use and apply to the facts and evidence you find to be true
24 in this particular case.

25 Now, the Court has prepared for you for your use a

1 verdict form. It's fairly straightforward. It has the
2 caption of the case and it has Roman Numeral I, murder. On
3 the charge of murder, we, the jury, by unanimous consent,
4 find the Defendant, Vicki (sic) Lynn Schrader-Falls, two
5 choices -- I put one before the other; don't assign anything
6 to that. I've got to put one before the other -- not guilty
7 or guilty.

8 If you find the Defendant not guilty, if you have --
9 that's your view of the evidence, that the State hasn't
10 proven that to you beyond a reasonable doubt, you proceed to
11 count two. Obviously, if you find the Defendant guilty of
12 the crime of murder, then you would so indicate and knock on
13 the door regarding that situation.

14 Regarding voluntary manslaughter, on the charge of
15 voluntary manslaughter, we, the jury, by unanimous consent,
16 find the Defendant, Vicki (sic) Lynn Schrader-Falls, again
17 two choices, put one before the other, not guilty or guilty.

18 Now, once your jury has reached a verdict, Mr. Foreman,
19 you will so indicate on the verdict form. You will check
20 the appropriate block. You will sign your name. You will
21 put today's date. You will notify the bailiff by knocking
22 on the door and let the bailiff know.

23 I've said unanimous I don't know how many times at the
24 beginning and now. It means exactly what you think it
25 means. It means twelve/zero. It does not mean eleven/ one,

1 ten/two, any combination thereof.

2 Mr. Foreman, when you check the appropriate block, you
3 sign your name, you put today's date, you are telling the
4 Court every single member of the jury agrees that's their
5 verdict, whatever it is.

6 All right. What we're going to do is I'm going to have
7 the twelve members of the jury go to your jury room. The
8 two alternates, please stay with us.

9 Do not, do not, begin your deliberations until the
10 bailiff hands to you the verdict forms and the exhibits.
11 Once those come to you, you may begin your deliberations.

12 At some point in time, and it's probably going to be, I
13 would think, at least a half hour or more, lunch will come
14 to you, and my suggestion is to take a break and enjoy it,
15 but y'all do whatever you want to do regarding that, but as
16 soon as it arrives, it will be brought in to you by the
17 deputies or the bailiffs, but before that, as soon as you
18 get the verdict form and the exhibits, you may begin your
19 deliberations.

20 So, Mr. Foreman, take the twelve members of the jury to
21 the jury room at this time.

22 The alternates, please stay with us.

23 **(AT 12:01 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE**
24 **PRESENCE OF THE JURY.)**

25 **THE COURT:** All right. At this point in time from the

1 State, is there any reason the Court should not excuse the
2 alternates?

3 MR. GRAUSTEIN: No, Your Honor.

4 THE COURT: From the Defense, Mr. Fox?

5 MR. FOX: No, Your Honor.

6 THE COURT: All right.

7 Mr. Mishoe and Ms. Sexton, as the alternates, your job
8 was to step in the shoes of the regular members of the jury
9 if they are unable to perform. You would think it would be
10 unusual, but it's not unusual at all that something happens
11 during a trial. Unfortunately somebody coming to and fro
12 gets in a fender-bender, or they get sick and they can't
13 continue, and we often use alternates.

14 It didn't turn out that we did in this particular case,
15 but I want to tell you you served a valuable service and
16 there's a significant portion of cases that you have to step
17 in. Alternates have to step in and become a regular member
18 of the jury, so you -- your service now has ended. I am
19 able to excuse you and release you from your service for the
20 week.

21 Please, I understand you get to this part of the
22 process, you want to continue on, you know. That's not how
23 it works, but I tell you you served a valuable purpose and I
24 appreciate it. You are excused. Thank you very much.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

1 **ALTERNATE JURORS.)**

2 **THE COURT:** Exceptions, deletions, additions to the
3 charge from the State?

4 **MR. GRAUSTEIN:** None, Your Honor.

5 **THE COURT:** From the Defense, exceptions, deletions,
6 additions?

7 **MR. FOX:** None, Your Honor.

8 **THE COURT:** Thank you very much.

9 All right, Counsel, all of you, Solicitor, Mr. Fox, Ms.
10 Wilson, y'all did everything that the Court expec- -- would
11 have expected of all of you in presenting your respective
12 matters to the jury and to the Court in this matter, and I
13 want to thank all of you for your diligence and your hard
14 work and what y'all have done in setting the matter before
15 the jury in this case. Thank you very much.

16 All right. We will be at ease then until the jury
17 needs us. Please get with the Court Reporter, make sure we
18 have all the exhibits, and then those will go in to the
19 jury.

20 We will be at ease then until the jury needs us. Thank
21 you.

22 **(THE EXHIBITS ARE REVIEWED BY COUNSEL FOR THE STATE AND**
23 **THE DEFENSE WITH THE COURT REPORTER, AGREED UPON, AND ARE**
24 **SUBMITTED, ALONG WITH THE VERDICT FORM, TO THE JURY AT 12:15**
25 **P.M.)**

1 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
2 **JURY.)**

3 **THE COURT:** All right, ladies and gentlemen, I
4 understand the jury has reached a verdict in this matter.
5 Is the State ready to receive it?

6 **MR. GRAUSTEIN:** Yes, Your Honor.

7 **THE COURT:** Is the Defense ready to receive it?

8 **MR. FOX:** Yes sir.

9 **THE COURT:** All right.

10 I speak to everyone in attendance. In this particular
11 matter, I do not know what the verdict is. We will all
12 receive it at the exact same time. We have asked this jury
13 to do a very difficult thing, that is to arrive at a
14 unanimous verdict where all twelve members of the jury must
15 agree on that verdict.

16 I expect and will demand that this verdict of the jury
17 be received with respect and silence. I will not tolerate
18 any kind of outburst of any kind in response to the jury's
19 verdict. If you do not believe you can follow these
20 instructions, you have an opportunity now to leave the
21 courtroom.

22 If you do not and there is any type of outburst,
23 disturbance of any kind in response to the jury's verdict,
24 you will be detained by a member of the Horry County
25 Sheriff's Office after which I will hold a contempt of court

1 hearing by which I could send you to the Department of
2 Corrections up to one year. If anyone would like to leave
3 the courtroom, please do so now.

4 Ask the jury to come in.

5 (NOTE FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 1.)

6 (AT 2:00 P.M., THE FOLLOWING TAKES PLACE WITHIN THE
7 PRESENCE OF THE JURY.)

8 THE COURT: All right. Mr. Foreman, has your jury
9 reached a verdict in this matter?

10 THE FOREMAN: Yes sir.

11 THE COURT: All right. Could you hand the verdict form
12 to the Clerk, please sir.

13 Thank you, ma'am.

14 All right, ma'am, you may publish the verdict.

15 THE DEPUTY CLERK: Indictment Number 2012-GS-26-2679,
16 State of South Carolina, County of Horry, versus Vivian Lynn
17 Schrader-Falls. On the charge of murder, we, the jury, by
18 unanimous consent, find the Defendant, Vivian Lynn Schrader-
19 Falls guilty. Dated May 8, 2014, signed by Foreperson
20 Cortez Lynch.

21 Ladies and gentlemen of the jury, if this is your
22 verdict, so signify by raising your right hand. Thank you.

23 THE COURT: The jury having affirmed their verdict by
24 the raising of the right hand, does the State wish the jury
25 polled?

1 **MR. GRAUSTEIN:** No, Your Honor.

2 **THE COURT:** Does the Defense wish the jury polled?

3 **MR. FOX:** No, Your Honor.

4 **THE COURT:** Very good.

5 Ladies and gentlemen of the jury in this case, I want
6 to thank you for your service in this matter. I understand
7 and respect that we asked you to do a very difficult thing
8 and that is to arrive at a unanimous verdict in this
9 particular matter.

10 As indicated by Counsel, I also observed you during the
11 course of the trial and you paid particular attention to the
12 evidence and testimony in this case, and I commend you for
13 that.

14 Thank you for your service. You are excused from your
15 jury service for the week. Remember, you've earned an
16 exemption for three years from coming back to Circuit Court.

17 You are welcome to leave at this point in time, or if
18 you wish to stay, then I will be glad for you to do so,
19 whichever you choose to do so regarding sentencing. If you
20 wish to leave, please -- the bailiff and the deputy sheriff
21 will accompany you at this present time.

22 I tell you what, why don't you all go out, and whoever
23 wants to come back in can. All right, why don't we do that.

24 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
25 **JURY.)**

1 **THE COURT:** Let's just wait one minute and check and
2 see if any of them want to come back, please.

3 While that is happening, motions on behalf of the
4 Defense.

5 **MR. FOX:** Your Honor, at this time we would renew all
6 previous motions, specifically motions for a directed
7 verdict on the count of murder. We believe the State had
8 not proved that jury verdict, all the elements of murder
9 beyond a reasonable doubt, nor did they disprove self-
10 defense, each element beyond a reasonable doubt. I think it
11 is against the weight of the evidence, and we would renew
12 our motion for a directed verdict.

13 **THE COURT:** Thank you, sir.

14 All right. Regarding the Defense's motion for a new
15 trial, this -- in ruling on this particular motion, I am
16 ruling on whether or not the evidence is sufficient to --
17 and there is competent evidence which sustains the jury's
18 verdict. I may not substitute my judgment if I had a
19 decision that was different than that of the jury, but I may
20 not substitute my judgment for that of the jury and overturn
21 the verdict.

22 I am only reviewing the evidence to see if there is
23 competent evidence, and I do find that there is more than
24 sufficient competent evidence as presented in this
25 particular trial to sustain the jury's verdict of guilty of

1 the crime of murder beyond a reasonable doubt. In that
2 respect, then, the Court respectfully denies your motion for
3 a new trial.

4 Any further motions on behalf of the Defense?

5 **MR. FOX:** No, Your Honor.

6 **THE COURT:** Is the State ready to proceed with
7 sentencing?

8 **MR. GRAUSTEIN:** Yes, Your Honor. And for the Court's
9 information, there are a few family members who would like
10 to address the Court at the appropriate time.

11 **THE COURT:** All right.

12 Do you have a sentencing sheet, sir?

13 **MR. GRAUSTEIN:** Yes, I do.

14 **THE COURT:** Thank you, sir.

15 All right, Mr. Fox, is the Defense ready for
16 sentencing?

17 **MR. FOX:** Yes, Your Honor.

18 **THE COURT:** All right. Very good.

19 All right, Solicitor, you indicated there was a
20 representative of the victim which -- or a member of his
21 family which wanted to address the Court, is that correct?

22 **MR. GRAUSTEIN:** Yes, Your Honor.

23 **THE COURT:** All right. If you would call them forward.

24 **MR. GRAUSTEIN:** Ms. Tara Hughes, and also his son, the
25 victim's son, would like to address the Court.

1 **THE COURT:** All right. If you would just come forward
2 one at a time, please, and if you would first start off by
3 giving me your name; and then I'll be glad to hear from you.

4 **TARA HUGHES:** My name is Tara M. Hughes, Your Honor.

5 **THE COURT:** Yes ma'am.

6 **TARA HUGHES:** I want to thank the Court and I want to
7 thank you for today, for your decisions. I know a family
8 shouldn't have to go through what my family is going
9 through, neither the Defendant family, and I just want to
10 say thank you so much for everything that y'all have done.
11 I can put a closure now to my son's death. Thank you, Your
12 Honor.

13 **THE COURT:** Thank you, ma'am.

14 Yes sir. If you would just tell me your name, please,
15 sir, and then I'll be glad to hear from you.

16 **TONY MARVIN BORIS:** Tony Marvin Boris.

17 **THE COURT:** All right, sir.

18 **TONY MARVIN BORIS:** I just want to thank the justice
19 system and I just want to, on behalf of my family, you know,
20 we hurt, but we are strong enough to pull through, and I
21 just wanted to tell the Defendant that I forgive her -- I
22 forgive you. We pulled through, and even though it's a
23 death in the family, you know, we are of the (inaudible),
24 but I hope you get right with God because he always give --
25 he always give you chances and mercy.

1 **THE COURT:** Thank you, sir.
2 Anything further from the State?

3 **MR. GRAUSTEIN:** No, Your Honor.

4 **THE COURT:** All right. Very good.

5 Mr. Fox, be glad to hear from you, sir.

6 **MR. FOX:** Judge, I respect the jury's decision. I
7 can't say I've ever been more disappointed or disagreed more
8 with one, but I respect -- I know they paid -- I meant what
9 I said. They paid very, very close attention throughout,
10 and I have no doubt they took it very seriously and listened
11 carefully, and they did come to a conclusion I think was not
12 justified in this case.

13 However, on behalf of Vivian, let me say the woman is
14 fifty-one years old. I think whatever the jury chose to do
15 with it, that we presented very compelling and credible
16 evidence of her history. Let me say first she has no
17 criminal history. I think she has a possession of marijuana
18 or something many, many, many years ago. She has nothing
19 that would rise to the level of General Sessions.

20 I think the evidence concerning her background and
21 history, both from her and Ms. Bourus, although perhaps not
22 enough to establish self-defense, I think was very credible
23 and very compelling. I just don't know how anyone could
24 listen to Vivian and observe her and think that she had made
25 this up or exaggerated all this.

1 I'd ask Your Honor specifically to give her the minimum
2 sentence today. I'm absolutely convinced that she did not
3 go there with the intent. The jury has obviously found that
4 intent, that malice aforethought, was present, but as Your
5 Honor well knows, that can be formed in an instant before a
6 fatal event, and I'm absolutely convinced that when she went
7 to the home that day, on March 31st, she did not have that
8 in mind.

9 Ms. Bourus was of the same conclusion, who has done
10 this for twenty-seven years, has dealt with countless women
11 who have been abused in incidents, many, many incidents,
12 including incidents like this one that unfortunately result
13 in death, and her opinion was that Vivian did not have that
14 intent when she went there.

15 That being said, it's still at this point a sentencing
16 for murder. Of course, Your Honor knows that involves a
17 minimum of thirty years. That is a very substantial
18 sentence for a woman of Ms. Bourus -- or Ms. Falls' age at
19 fifty-one. That's no small thing.

20 Your Honor has seen, I'm sure, family members that are
21 present, her daughters, pastor. She had a cousin that came
22 here in ill health. There are other members of the family
23 and friends that are here.

24 Your Honor, I would hand up -- I'm going to refer to,
25 but that has a stack of letters that have come in. I've

1 represented Vivian for over two years. She is without
2 question the kindest, gentlest client that I've ever had,
3 one of the kindest, gentlest women -- people that I've ever
4 met in my life, and when you read through the letters from
5 loved ones, and co-workers, and people who have known
6 Vivian, you see the same phrases that pop up over and over
7 again.

8 I think she is genuinely horrified about what happened.
9 Despite everything that happened, she still loved Tony
10 Hughes. She wished no ill to his family. I can tell Your
11 Honor over and over again during our conversations, her
12 concerns about the outcome of this trial were not about
13 herself. They were about Mr. Hughes' family, about her
14 family.

15 When Diane Movsky testified the other day and said
16 that, in fact, she had sought counseling because of the
17 events that she had witnessed in her front yard, Vivian
18 leaned to me and said I'm so glad that she got help that she
19 needed. That's the kind of person that she is. It's not a
20 facade. There's nothing manufactured about that. That's
21 the person that she is, and that's what everyone that you
22 come in contact with describes her as.

23 Judge, I know there's at least -- we won't have
24 everyone, but I know at least a couple of people that are
25 here would like to address the Court.

1 **THE COURT:** All right.

2 **MR. FOX:** And after that, Your Honor, I would like to
3 address, I believe, because of the evidence that's been
4 presented, I'd like Your Honor to address the issue of
5 Section 16-25-90 and the eligibility for early parole, one-
6 quarter parole where there is a credible -- in fact, Your
7 Honor, I'm going to go ahead and -- let's just go ahead and
8 address it now.

9 Your Honor, 16-25-90 states that where there's been a
10 conviction to an offense against a household member, that
11 that person convicted is eligible for parole after serving
12 one-fourth of the prison term when there's presented
13 credible evidence of a history of criminal domestic
14 violence. Clearly, there's been some dispute, I think she
15 definitely fits the definition of household member. If you
16 look at the domestic violence statute, household member
17 includes persons that cohabit or previously cohabited.

18 There has been a great deal of testimony from both Ms.
19 Falls and her daughters, kind of circumstantially from her
20 cousin, Ms. Saylor, who testified about the phone call on
21 the night of the suicide and Mr. Hughes being there.

22 If they broke up at some point during the relationship,
23 it doesn't matter. I think it's pretty clear that she meets
24 the definition of household member. They were dating and
25 they lived together, cohabited. I don't believe any

1 definition requires that they're together twenty-four/seven
2 or that they spend each and every night together, but
3 clearly she spent a great deal of time at his home and he at
4 hers, and they shared those residences, so I think she meets
5 that definition.

6 Then it becomes an issue of whether there has been
7 presented credible evidence of a history of criminal
8 domestic violence at the hands of this case of Mr. Hughes.
9 Your Honor has had the chance to observe and hear the
10 testimony of Ms. Falls, who I think was very credible.

11 Again, the jury may not have believed that the abuse
12 that she suffered rose to the level that entitled her to
13 self-defense. However, I do think that doesn't mean that
14 they've rejected the idea that there was not some abuse
15 there. The verdict, we can't tell one way or the other from
16 that.

17 You had Vicki Bourus, who is as qualified as anyone in
18 this State to make that determination, I believe, has
19 twenty-seven years of experience dealing in exactly these
20 issues. She had a substantial amount of time, seven hours,
21 to meet with Ms. Falls, and then to go and do corroboration,
22 to talk to family members, to talk to people that knew of
23 the situation.

24 Your Honor knows from sitting on the bench for so many
25 years that quite often domestic violence goes unobserved.

1 There's not always police reports. There's not always trips
2 to the hospital. There's not always those things that would
3 be independent of the sufferer of the violence.

4 In this case, you did have -- and I did mean to hand up
5 -- Vicki Bourus testified that she was able to speak to Ms.
6 Ann Rich. Ann Rich is a relative of Ms. Falls. Ann Rich
7 first-hand witnessed, and you'll see in that letter,
8 witnessed an incident of abuse between Mr. Hughes and Ms.
9 Falls. She lives in Georgia.

10 I can tell Your Honor she would have been here but for
11 severe illnesses in her family, with her son and another
12 family member, and she was simply unable to take even a day
13 or so away to get here. However, again, Ms. Bourus was able
14 to interview her. I was able to speak to her, and she has
15 written a letter to the Court indicating eye witness first-
16 hand an incident..

17 Your Honor did hear, and present in Court was Ms.
18 Beverly Saylor, who also described an incident, although
19 not physically abusive, I believe falls in that category
20 when Ms. Falls had taken an overdose of pills and Mr. Hughes
21 declined to seek medical attention for her. And Ms. Bourus
22 testified about the way that you can have a domestic
23 violence without there being physical abuse and how that
24 fits into the pattern.

25 So I believe all toll, Judge, that there is credible

1 evidence of a history of domestic violence between Mr.
2 Hughes and Ms. Bourus (sic). A finding on your part on that
3 issue that, in fact, Ms. Falls is eligible and entitled to a
4 quarter parole eligibility would not be any kind of comment
5 on the part of Your Honor, I believe, on the character of
6 Mr. Hughes.

7 It would not be even a recommendation on the Court's
8 part that Ms. Falls should get parole. It simply means that
9 she would be eligible. That would be a determination for
10 the Parole Board after she had served a fourth of her
11 sentence, which is still going to be seven and a half years,
12 so she is still going to spend a substantial amount of time
13 behind bars before she is even eligible for parole, but I
14 think it's justified in this case based on the evidence Your
15 Honor has, based on the witnesses that you heard from.

16 Ms. Bourus said this is as much corroboration and as
17 much detail as I've been able to have in my twenty-seven
18 years. You don't often have anything other than the victim.
19 This is what she does. She talks to victims. Then she
20 assesses whether or not they are credible in making her
21 determination.

22 I can tell Your Honor as an officer of the Court the
23 reason Ms. Bourus was brought on board was obviously we felt
24 there were issues of domestic violence and battered women's
25 syndrome, but I frankly didn't know if she met that level.

1 I'm not an expert in that area, and the reason Ms.
2 Bourus was consulted was to see whether that was something
3 we should pursue, and once she told us, oh, yes, you should,
4 then, of course, we kept her on board as part of our defense
5 team, so she was certainly not hired for her opinion. I
6 think it's obvious from the way she presents herself that
7 that's not how she operates.

8 Your Honor, I would ask Your Honor to find that under
9 16-25-90 Ms. Falls is eligible for parole after a quarter of
10 her sentence, and I believe it's justified. I feel it is
11 justice in this case, and the final thing I'll say, Your
12 Honor, and I'll let the family speak, is that I would
13 request, of course, that whatever your sentence, Ms. Falls
14 get credit for the time she was in J. Reuben Long.

15 She also has been on, Judge, an ankle monitor. She
16 bonded out, I believe, in July of 2012. She has been on an
17 ankle monitor ever since. There has been not one incident,
18 one complaint.

19 I've not received one phone call in all that time from
20 her bondsman, from the Solicitor, from the GPS people at the
21 jail saying there has been any problem of any kind, and I
22 would ask Your Honor as the law allows to grant her that
23 time as credited jail time, credited towards whatever
24 sentence she gets. Thank you.

25 **THE COURT:** All right, sir..

1 **MR. FOX:** Your Honor, this would be Ms. Vanessa
2 Johnson.

3 **THE COURT:** All right. Please come around, ma'am.
4 Again, if you'd state your name for the record, then I'd be
5 glad to hear from you, ma'am.

6 **VANESSA JOHNSON:** Vanessa K. Johnson.

7 **THE COURT:** Yes ma'am.

8 **VANESSA JOHNSON:** I want to thank the system, and I'm
9 sorry for this family and the pain that it's caused them, so
10 for the family, we have to go through too, and I just ask
11 the Court to have mercy on my mother, please.

12 **THE COURT:** Thank you, ma'am.

13 **MR. FOX:** Your Honor, this is Ms. Pegg, who is the
14 other daughter.

15 **THE COURT:** Yes ma'am. Just state your name and I'll
16 be glad to hear from you.

17 **ROSANNA PEGG:** Rosanna Pegg.

18 **THE COURT:** Yes ma'am.

19 **ROSANNA PEGG:** I am saying that I love my mother so
20 much. She is more than just a mom to everyone. She's the
21 glue to our family, and the two that she adopted, and has
22 many disabilities. She is there from the beginning until
23 now and they still need her, and we will pull together for
24 the family, and she's never, ever been in trouble or
25 anything. And I apologize to the family. She carries this

1 burden, and she will, and I know she is so sorry, as we are.
2 I just wanted to let you know she is so loved. Thank you.

3 **THE COURT:** Yes ma'am.

4 **MR. FOX:** We have one more.

5 **THE COURT:** Yes sir.

6 Just tell me your name and I'll be glad to hear from
7 you.

8 **BRAD McELROY:** Brad McElroy.

9 **THE COURT:** Yes sir.

10 **BRAD McELROY:** I've known Vivian for a little more than
11 two years or so, and I just want to -- I first of all
12 express our deepest condolences to the family. We have
13 covered Vivian and this family in prayer. We originally met
14 Vivian through our jail ministry, and once she got out of
15 jail, she began coming to our church.

16 And we have seen that not really change, just since
17 I've known her, I've seen genuine evidence that this is a
18 person who really, genuinely loves God, and there's tangible
19 evidence of the Holy Spirit in her life, so it's been an
20 honor to know you, Vivian. We're going to stay in touch
21 with you no matter what happens, and we love you.

22 And again, we've covered Vivian and this family in
23 prayer, and our deepest condolences to everyone. Thank you.

24 **THE COURT:** Thank you, sir.

25 Yes sir. Just tell me your name.

1 **CHARLIE MORRIS:** My name is Charlie Morris. I am an
2 ordained, licensed minister.

3 **THE COURT:** Yes sir.

4 **CHARLIE MORRIS:** And I would like to say that we're
5 very sorry for the family, and your loss, and what you've
6 had to go through.

7 Vivian has been a very great influence in a lot of
8 people's lives. This is not something that is just a
9 tragedy. It's a horrifying tragedy in her life. We ask
10 that the Court would be very lenient with her and give mercy
11 to her today, that the grace of God would rest in her life,
12 and I would ask that you, Your Honor, would think and pray
13 before you make a great decision and give her the mercy that
14 she deserves today.

15 **THE COURT:** Thank you, sir.

16 **MR. FOX:** Very briefly, I'm going to ask Vivian if she
17 wishes to speak.

18 Ms. Bourus pointed out while we were speaking yesterday
19 and I would like to point out to Your Honor, throughout a
20 lifetime of abuse, Vivian has not one time fought back, or
21 struck back, or sought revenge, done any of those things to
22 any of those that have done these things to her. It is not
23 in her nature. It is not in her character. And she made
24 the comment a while ago that she understands that her facing
25 God requires that she be forgiving in order to get God's

1 grace in bringing this upon herself, and that is how she
2 sees it.

3 Ms. Bourus found that rather striking in the history as
4 extensive and long as Miss Vivian has undergone and had to
5 suffer, that she has not turned into a bitter person, she
6 has not turned inward and instead has turned outward, and
7 that she has shared herself and her love with everyone
8 around her rather than taking that and becoming a bitter,
9 rather hopeless type of person. That's all I have to say,
10 Your Honor.

11 **VIVIAN FALLS:** I really want to say thank you for my
12 trial, and Mr. Graustein, and you all for doing something
13 that I know was very difficult to have to do, and I'm sorry
14 I put you in the position to have to do that.

15 But most of all I'm very sorry each and every one of
16 you that I hurt that caused this pain because they were my
17 family, too, and I love them very dearly and I still do, and
18 I just pray somehow they can forgive me. I pray about that,
19 and I am so very sorry to my family, and friends, and
20 everybody that supported me that I've hurt and put through
21 this.

22 And, Your Honor, I truly do care and love them, and I
23 know what they say, but I never have meant to hurt him. I
24 always wanted to help, but it has happened and I can't take
25 it back, and I'm sorry, and I pray that the family forgives

1 me, and that's about all I've got to say.

2 **THE COURT:** Thank you, ma'am. Thank you.

3 Anything else, Mr. Fox?

4 **MR. FOX:** No, Your Honor.

5 **THE COURT:** All right.

6 Solicitor, did you wish to respond to the Defense's
7 request that the Court consider the relief afford by 16-25-
8 90?

9 **MR. GRAUSTEIN:** Yes, Your Honor, just very briefly.
10 The domestic violence for parole eligibility purposes -- the
11 State contends there's no credible evidence -- that there
12 was presented no credible evidence with regard to domestic
13 violence between the Defendant and the victim in this case.

14 There was corroboration regarding older domestic
15 violence instances, but all the information regarding
16 domestic violence between the Defendant and this victim in
17 their relationship came from the Defendant.

18 Her own daughters testified that they never saw any
19 domestic violence between the two and, in fact, they stated
20 that they appeared to be a very loving relationship. Also,
21 it doesn't appear to be that domestic violence contributed
22 to this incident at all. The evidence bears out, the jury's
23 verdict bears out that the Defendant acted on anger and
24 jealousy alone and went looking for a confrontation with a
25 gun, and that it had nothing to do with any domestic

1 violence.

2 In fact, I would suggest that that goes counter to the
3 entire domestic violence argument in this case, that she was
4 looking for a confrontation, not trying to avoid one.
5 Therefore, I don't believe that there is any credible
6 evidence that domestic violence contributed to this issue or
7 to this incident and that she not be made parole -- be
8 parole eligible for this offense.

9 **MR. FOX:** Your Honor, very briefly, I think that part
10 of that is just absolutely incorrect. There is
11 corroboration that was testified to about Tony Hughes that
12 was by Ms. Ann Rich. Vicki Bourus said I talked to
13 personally Ann Rich who witnessed an incident. Your Honor
14 has a letter from Ann Rich that described the incident, so
15 there absolutely is.

16 You also had Beverly Saylor who had the incident at
17 the time of the suicide attempt, so there is absolutely in
18 the record before Your Honor today and during the trial of
19 corroboration.

20 I think other things, I understand Mr. Graustein's
21 point. To say the jury found that there was jealousy
22 involved, that she was looking for a confrontation, those
23 things, I think, those are his characterization.

24 The jury found she acted with malice. Clearly other
25 points of -- elements of murder were there. There was a

1 killing of a person, and then it became an issue about
2 malice, and clearly the jury found that, but again, that may
3 have formed in the incident.

4 The idea that they agree with the Solicitor that there
5 was jealousy and she went looking for a confrontation is, I
6 think, stretching it.

7 **THE COURT:** Thank you.

8 Mr. Fox, let me ask you a question about 16-25-90. In
9 that particular section, it's talking about parole
10 eligibility.

11 **MR. FOX:** Yes sir.

12 **THE COURT:** Certainly this Court has no -- is not the
13 one that would be making a decision about parole
14 eligibility. That comes later on at the hands of the Parole
15 Board through their terms and regulations, and the section
16 indicates that they would be eligible for parole after
17 serving one-fourth of the prison term when they presented
18 that credible evidence of history of criminal domestic
19 violence as set forth in previous sections in how it's
20 further defined. That is for a later date by a
21 determination not by this Court.

22 **MR. FOX:** Your Honor, I understand the question. I
23 think if you continue to read, it says if an inmate is
24 convicted of, pled guilty to, or nolo contendere to an
25 offense against a household member who is eligible for

1 parole after serving one-fourth of his sentence, when the
2 inmate at the time he pled guilty to, et cetera, or was
3 convicted of, presented credible evidence as provided in
4 this section, ---

5 **THE COURT:** Right.

6 **MR. FOX:** And also, Judge, I draw your attention to
7 State v. Hawes, which is a Court of Appeals from 2012.
8 That's at ---

9 **THE COURT:** Tell me the Southeast cites, please.

10 **MR. FOX:** Yes sir. 730 S.E.2d 904, and in that case -
11 - it clearly contemplates -- I think the statute doesn't --
12 the few cases that address it in South Carolina contemplate
13 that determination of only eligibility being made at the
14 sentencing phase, and in Hawes -- in fact, the State
15 appealed that, that they felt that there was not credible
16 evidence of a history of abuse presented, but the Court of
17 Appeals addressing a determination of the Circuit Court at
18 sentencing. I think the statute and the case law that's
19 developed since indicate that's the proper procedure.

20 **THE COURT:** Do you agree with that, Solicitor?

21 **MR. GRAUSTEIN:** Your Honor, I believe I -- I'm sorry I
22 don't have the statute in front of me. I think the -- this
23 is the proper time to at least to make a determination of
24 whether or not there was credible evidence. Whether or not
25 the parole eligibility is decided at this point I think is

1 -- it's unclear in the statute, but I think at this point
2 the Court would need to determine -- make the determination
3 of whether or not the -- there is credible evidence of
4 domestic violence.

5 **THE COURT:** All right. In a case that you had cited,
6 and I think it's also important that I establish the
7 evidentiary standard. Regarding this particular issue, it's
8 a preponderance of the evidence then as indicated by the
9 Court, but in that particular instance there that the
10 preponderance of evidence supported the finding that the
11 defendant had proved a history of criminal domestic violence
12 warranting a grant of early parole eligibility by presenting
13 evidence of the victim's prior convictions of criminal
14 domestic violence with that particular defendant, as well as
15 testimony of an expert in forensic psychiatry concerning a
16 history of mutual violence between the defendant and the
17 victim, as well as incidents of domestic violence -- other
18 incidents of domestic violence between the defendant and the
19 victim.

20 He talked about -- as I indicated, there were
21 convictions, indictments, numerous reports, voice mail
22 messages, testimony of other individuals, then the testimony
23 of an expert in forensic psychiatry regarding the history of
24 mutual violence, and based upon that presentation of
25 evidence, the Court of Appeals upheld the Circuit Court's

1 finding under the preponderance of the evidence standard of
2 the parole eligibility.

3 If the Defendant would please stand.

4 2012-GS-26-2679, State of South Carolina, County of
5 Horry, versus Vivian Lynn Schrader-Falls, regarding the
6 crime of murder, the Court finds that the Defendant shall be
7 committed to the State Department of Corrections for a
8 determinate -- shall be committed to the State Department of
9 Corrections for a determinate term of thirty years, the
10 minimum sentence for murder in this State. The Defendant is
11 given credit for the time that she has already served.

12 As to the issue of parole eligibility, understanding
13 that it is a preponderance of evidence standard, I do
14 believe, though, -- even though that there was some evidence
15 presented of domestic violence, I do not believe that it
16 rises to the standard of the preponderance of evidence
17 required and, therefore, the Court does not make a finding
18 under 16-25-90 of parole eligibility.

19 Thank you very much.

20 **MR. FOX:** Your Honor, for the record, -- Ms. Falls,
21 would you wait just a moment, please.

22 **THE COURT:** I'm sorry. Yes sir.

23 **MR. FOX:** Yes sir. I understand the Court's ruling. I
24 do have a quick matter for the record.

25 **THE COURT:** Yes sir. Certainly. Be glad for you to do

1 so.

2 **MR. FOX:** With the Court's determination made clear,
3 you feel that not even a preponderance standard, which is
4 the standard, I agree, a preponderance standard is met with
5 the early parole eligibility, that, therefore, you are
6 making a finding that the testimony of Ms. Falls and the
7 expert, Ms. Bourus, was not credible?

8 **THE COURT:** I am finding that in weighing the evidence
9 and using a preponderance of evidence standard, I do not
10 find that the evidence presented by the Defendant on this
11 issue of parole eligibility does not rise to the level of
12 the preponderance of the evidence, and I am saying the
13 evidence fails to satisfy that standard is what the Court is
14 saying and, therefore, based on that, I am not finding
15 parole eligibility pursuant to that statute. Thank you.

16 **MR. FOX:** Your Honor, to find -- I know you've given
17 credit for time served. Is Your Honor granting credit for
18 the GPS?

19 **THE COURT:** Yes, I am.

20 **MR. FOX:** Thank you, Your Honor.

21 **THE COURT:** These proceedings are now at an end. Thank
22 you very much.

23 (Conclusion of Transcript of Record.)
24
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, May 5th, 6th, 7th, and 8th, 2014.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

August 6, 2014



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2012-GS-26-02679

STATE OF SOUTH CAROLINA)
-vs-) TRANSCRIPT OF RECORD
VIVIAN SCHRADER-FALLS) May 22, 2014
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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

SCOTT E. GRAUSTEIN, ESQ.
ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

ERIC FOX, ESQ.
KIA T. WILSON, ESQ.
OFFICE OF THE PUBLIC DEFENDER
ATTORNEYS FOR DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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1 **THE COURT:** All right. This then is 2012-GS-26-2679,
2 the State of South Carolina versus Vivian Lynn Schrader-
3 Falls. In this matter, the Defendant in this matter -- I'm
4 sorry. I thought she was already in here.

5 (Ms. Schrader-Falls enters the courtroom.)

6 **THE COURT:** All right. We will start again.

7 2012-GS-26-2679, the State of South Carolina, County of
8 Horry, State of South Carolina versus Vivian Lynn Schrader-
9 Falls. Regarding this particular matter, the Defendant was
10 convicted by a jury of the crime of murder and this Court
11 issued a sentence on 5/8/2014, sentencing the Defendant to a
12 determinate term of thirty years, with credit for time
13 served, including the time on the ankle monitoring. The
14 Court did not give the relief requested by the Defendant to
15 grant early parole eligibility pursuant to Section 16-25-90.

16 In this particular matter, the Defendant has, through
17 her attorney, has filed a Motion to Reconsider. It was
18 filed May 9th, 2014, at 11:55 A.M. I have the Clerk of
19 Court's file and also notice that the Defendant filed a
20 Notice of Intent to Appeal also on May 9th after a few
21 minutes after the Motion to Reconsider, at 12:01 P.M.,
22 approximately six minutes later.

23 I guess the very first thing we have to talk about then
24 is since the Defendant filed a Motion for Reconsideration,
25 at least was filed prior to Notice of Appeal, did the filing

1 of the Notice of Appeal after the filing of the Motion for
2 Reconsideration remove jurisdiction of this Court to hear
3 the motion until the matter is returned from -- if it is
4 returned by the Court of Appeals for the Court to consider
5 the motion of reconsideration.

6 Mr. Fox.

7 **MR. FOX:** Judge, that had not occurred to me. What
8 happened was, of course, Ms. Falls on the 8th was -- the
9 jury found her guilty of murder, and Your Honor sentenced
10 her on May the 8th. The Motion to Reconsider is not to
11 reconsider -- and she was sentenced to thirty years, so the
12 Motion to Reconsider is not about -- certainly about the
13 jury verdict or the sentence.

14 **THE COURT:** Well, we'll have to talk about that, too,
15 so, anyway ...

16 **MR. FOX:** The Motion to Reconsider is specifically on
17 the issue of 16-25-90, which parole eligibility, it's a
18 mitigating -- it's not actually a sentencing issue. It's
19 certainly related to sentencing, but a sentence is a
20 sentence as only relates to early parole eligibility.

21 The Notice of Intent to Appeal is based on the trial
22 verdict and the sentence of thirty years. Those are
23 separate. That's something that our office does
24 automatically. I hadn't even thought about that being an
25 issue, to be honest, but that is something that we

1 automatically do when there is a verdict against our clients
2 in a trial.

3 The Motion to Reconsider and determination of parole
4 eligibility is something that's in your jurisdiction.
5 That's something that has to be done at the trial level. We
6 had to raise that issue after -- at sentencing, you know,
7 after there's a conviction, according to 16-25-90, at the
8 time of -- a person that's convicted of, pled guilty, or
9 nolo contendere to an offense that applies, and we allege it
10 is, then that's something we had to raise then.

11 And that's what this motion today was specifically
12 about is that, the Court's denial of a finding that Ms.
13 Falls was eligible for early parole under 16-25-90. I don't
14 believe that touches in any way on the trial issues and the
15 trial appeal, that is that Notice of Intent to Appeal,
16 because we're not appealing -- now, there may be an appeal
17 for your determination here, but the Notice of Appeal
18 specifically relates to the trial, the verdict, and the
19 sentence, not any parole eligibility.

20 **THE COURT:** Yeah, but I don't know how you can
21 distinguish that. It was the Court's ruling all at the same
22 time you filed your Notice of Appeal. The Notice of Appeal
23 would be as to any issues that might be in the brief. All
24 you have to do is file your Notice of Intent to Appeal. You
25 don't have to file your Notice of Intent to Appeal grounds

1 and set the grounds forth in the Notice of Intent to Appeal.

2 **MR. FOX:** Well, Judge, our -- we don't, but we do have
3 ten days from sentencing, ---

4 **THE COURT:** And I appreciate that, and I understand
5 that, but what normally -- I would say the normal procedure
6 then is if you find yourself in that position, you file a
7 petition with the -- it would be the South Carolina Court of
8 Appeals to remand the matter back to the Circuit Court, back
9 to the Circuit Court to hear the Motion for Reconsideration.

10 **MR. FOX:** I understand, but they are separate -- this
11 technically is not the ---

12 **THE COURT:** Well, and I appreciate it's separate ---

13 **MR. FOX:** --- they were separate motions at sentencing,
14 and with all due respect, you had the jury verdict, and we
15 had sentencing. We certainly did handle it the same day,
16 but there was a separate determination. You heard from us
17 and you sentenced Ms. Falls to thirty years. That's one
18 issue. That's closed, and that's in one box.

19 Then we separately requested you to make a finding
20 pursuant to 16-25-90 as a ---

21 **THE COURT:** I disagree, though. See, I disagree. You
22 presented the issues to me, and in imposing the sentence, I
23 took into consideration that I had denied the grant of early
24 parole eligibility, so I took that into consideration in
25 imposing the sentence, so if the Court reconsiders the grant

1 of early parole, I'm also reconsidering the sentence because
2 I took it into consideration in imposing the sentence, and
3 the denial.

4 So if I grant it, I will also take it into
5 consideration in imposing the sentence, so I -- I appreciate
6 how you've worded your motion, but I imposed a sentence at
7 the same time I denied the early parole eligibility and I
8 imposed a sentence that I thought was appropriate in denying
9 the early parole eligibility.

10 So what I did was in my sentence, I tied them together,
11 so I don't believe and, again, I don't know what I'm going
12 to do, but if I granted early parole eligibility, I have to
13 take in consideration then the sentence that was imposed,
14 because they were inextricably tied together when I imposed
15 her sentence in giving her the minimum sentence.

16 I'll just tell you, I would not have given her the
17 minimum sentence had I -- had I intended to grant her early
18 parole eligibility.

19 **MR. FOX:** Well, I don't know, obviously I don't know
20 what Your Honor was thinking at the time. They are
21 certainly intertwined, but it's clear from the case law and
22 from the statute that there have to be separate determin- --
23 that this is a separate determination from the sentence.
24 Obviously you can't separate out, and I certainly can't
25 suggest -- I don't recall any findings by Your Honor at the

1 time that you were imposing ---

2 **THE COURT:** And it might very well be that I need to
3 reconsider, okay? I'm not disagreeing with you that I think
4 the case law requires me to reconsider the decision ---

5 **MR. FOX:** I don't think I ---

6 **THE COURT:** --- of grant of early parole eligibility.

7 **MR. FOX:** I'm going to turn this back a little bit,
8 Judge. I don't think you can reconsider your sentence. The
9 motion before you is not to re- -- there is no motion to
10 reconsider your sentence. I don't think at this stage you
11 can reconsider your sentence. There is no motion there.

12 You passed sentence. You had the information.
13 Whatever your reasons for doing so, that has now been
14 sentenced. The motion before you now is not a motion to
15 touch that sentence. I understand exactly what you are
16 saying in terms of how they're intertwined and the reason
17 you gave that thirty year sentence, which is the minimum
18 under murder. She could have gotten all the way up to life
19 in prison until the end of her natural life.

20 However, that's not the motion that's before Your Honor
21 and I would say you don't have the jurisdiction at this
22 point to take that -- that issue up.

23 Now, whether that affects how you're going to rule on
24 her early parole eligibility is only you can say. Judge,
25 this came about because at the -- after the motion or during

1 the motion on parole eligibility, you did deny, and I asked
2 you specifically on the record, asked Your Honor, whether it
3 was your finding -- of course, the standard is there must be
4 -- we must establish by a preponderance of the evidence a
5 credible history of domestic abuse or domestic violence
6 between Ms. Falls and the victim, Mr. Hughes.

7 The only evidence at trial was -- testimony presented
8 on that issue was testimony from Ms. Falls and from our
9 expert, Vicki Bourus.

10 Vicki Bourus testified that her conclusion that there
11 was, in fact, a credible history was based on, of course,
12 her experience and training, based upon her own
13 investigation. Obviously, it was based on her seven hours
14 of interviews with Ms. Falls, so Ms. Falls was certainly the
15 primary source of the expert's information, but also based
16 on testimony or rather conversations she had with family
17 members both as to Ms. Falls' entire history of abuse, but
18 also specifically Ann Rich and Beverly Saylors.

19 Beverly Saylors testified at trial that she although
20 did not witness physical abuse, was privy to an episode
21 where Ms. Falls had attempted to commit suicide and Mr.
22 Hughes had allegedly refused to take her, seek any medical
23 treatment. She was there to testify at trial.

24 Ms. Rich was unavailable. She was in Georgia dealing
25 with a relative, and the way this came about, I did ask Your

1 Honor whether it was your specific finding in denying early
2 parole eligibility whether it was your finding that you did
3 not find Ms. Falls and Ms. Bourus to be credible witnesses.

4 Your Honor declined to make that statement is my
5 recollection of the event, but then later let it be known to
6 me that you thought it would be a good idea that we had a
7 very clear record where you could make findings, no
8 indication that you would grant early parole or anything
9 like that, but it was made clear to me that you would like
10 to have a hearing so that we could have a clear record and,
11 in fact, if possible have Ms. Ann Rich present as a witness.
12 She is, in fact, here as a witness to testify.

13 There was no discussion or suggestion that there would
14 be any reconsideration of the thirty year sentence. The
15 motion was filed. I considered the proper way to address
16 that would be to file a Motion for Reconsideration, which I
17 did, specifically on the issue of parole eligibility, and I
18 believe the motion states that.

19 **THE COURT:** Yes sir, it does.

20 **MR. FOX:** Now, as I say, I can't -- I don't believe you
21 have lost jurisdiction by the filing of a Notice of Intent
22 to Appeal because that is a trial and sentencing issue.
23 This is a separate issue from sentencing. I can't deny that
24 they are intertwined to some degree, that they touch on each
25 other, but I believe you absolutely have jurisdiction to

1 hear that without going into reconsidering sentencing
2 because sentencing is not being -- is not before Your Honor
3 today.

4 **THE COURT:** What's the Solicitor's position?

5 **MR. GRAUSTEIN:** Your Honor, I believe by filing the
6 Notice of Appeal that jurisdiction has then been transferred
7 to the Court of Appeals and to characterize the sentencing
8 and then the grant of early parole as two separate issues, I
9 just -- I have to agree with the Court that I don't see how
10 you can separate those two out.

11 And I would venture to guess that if we -- that in an
12 ultimate appeal of this case the issue of whether or not the
13 early parole was granted will most certainly come up in that
14 appeal if it does not go in the Defense's favor, so I don't
15 see how if that issue is not part of the Notice of Appeal
16 that has been -- has been filed and transferring
17 jurisdiction to the Court of Appeals.

18 I would agree with the Court -- in fact, in preparing
19 for this hearing, I asked myself if the Court may have taken
20 into consideration the parole issue with the sentencing, but
21 I didn't think it was proper for me to bring any of that up.
22 I just don't see how you can separate those two out so that
23 one has nothing to do with the other, and also, in --
24 according with that, if there is a grant of -- a parole
25 grant and the sentence could not be adjusted accordingly,

1 then some of the -- in that discretion of the Court in
2 issuing the sentence has been taken away.

3 **MR. FOX:** Very briefly, because I want to clarify my
4 position, too, and I'm not going to re-argue everything I've
5 already said.

6 The legislative intent, and this is in State v. Hawes,
7 which is from the Court of Appeals, South Carolina, in 2012,
8 at 730 S.E.2d 904, they go through -- and that's where
9 there's a discussion about what a credible history is and
10 what has to be shown.

11 Well, one of the things they've discussed is the
12 legislative intent behind 16-25-90, and it states that it is
13 to permit some middle ground for those instances where there
14 would be insufficient evidence of abuse to maintain a
15 defense under battered spouse syndrome, but where sufficient
16 evidence of abuse may exist to mitigate somewhat the usual
17 non-parole nature of a homicide sentence.

18 If all you're going to do -- if the legislative intent
19 is to grant early parole, but all this Court is going to do
20 -- it's free to just, you know, tie it to a higher sentence
21 and basically negate, then there is no purpose to that
22 statute. The whole point is to mitigate in certain
23 specific situations -- we may or may not be able to meet
24 that burden with Your Honor, but in certain instances, to
25 mitigate a no-parole offense, if all the Court is going to

1 do is give a fifty year sentence when they would have given
2 a thirty year sentence and then grant the -- the parole,
3 then they've completely negated the legislative intent of
4 that statute.

5 **THE COURT:** Well, no. They're eligible -- if it's
6 granted by the Court, they're eligible for parole after
7 serving one-fourth of the sentence, so even using your
8 example, that would not be correct because that would still
9 be a lesser sentence than the original sentence, ---

10 **MR. FOX:** Well, the point was not so much about the ---

11 **THE COURT:** --- one-fourth of fifty -- I understand
12 that, but I'm just saying what you've argued, that's not
13 correct, and if the Court -- and I think it's proper for the
14 Court to consider if somebody is going to get out in one-
15 fourth of the time that somebody else might get out, it's
16 important to understand that -- and just say, you know, just
17 say whatever the -- whatever the sentence is, one-fourth of
18 it is obviously much less than the entirety of it, so
19 it's ---

20 **MR. FOX:** It is but, Your Honor, it's an eligibility.
21 You're not making a determination. The statute doesn't let
22 you make a determination that she would be granted parole.
23 It's eligible for parole after a fourth, so for any Judge to
24 make that calculation to say I'm going to set it at fifty,
25 sixty, ninety years, if she lives that long, you get a

1 fourth of it, which would be twenty some years.

2 To do that, then maybe that she would be granted parole
3 eligibility by a parole board that Your Honor would have and
4 no court would have any control over at some point,
5 indefinite point, in the future, as early as a board of
6 parole, -- again, that just turns the statute inside out.

7 You're not -- this statute doesn't say she will be
8 granted parole el- -- it's that she will be eligible. The
9 parole board may well say this was a murder. There was a
10 dead person. Certainly, Mr. Hughes' family has the right to
11 be present and be heard. There is absolutely no way of
12 knowing whether she will be given parole. It's just does
13 she fit the very specific prescribed circumstances the
14 statute lays out that makes her eligible for that parole.

15 **THE COURT:** All right. It still doesn't solve the
16 problem. You filed the notice of an appeal ---

17 **MR. FOX:** Well, the only thing I would say, Your Honor,
18 is I do believe there was not a finding on the record at the
19 time, and if Your Honor says I don't have jurisdiction,
20 where are we going to be if there's going to be an appeal?
21 I believe, my own opinion is, that at least on the issue of
22 finding a specific factual determination by the Court on
23 this issue of parole eligibility, I believe an appellate
24 court is going to say there was not that finding and we're
25 going to -- it's going to be sent back ---

1 **THE COURT:** Just assume I -- assume I agree with you,
2 okay? Just assume I agree with you. It doesn't mean I can
3 go ahead and do it if I've lost jurisdiction, all right?

4 What I can do is hold the hearing, hold the decision in
5 abeyance pending a filing with the South Carolina Court of
6 Appeals to return jurisdiction to the Court for
7 consideration of the Motion for Reconsideration.

8 So that I don't have to inconvenience any parties that
9 are here, I can hear from everybody, hold the decision in
10 abeyance, allow you to follow the process that is normally
11 followed, a motion with the Court of Appeals, say here's how
12 the timing went. We'd like the matter, if it is necessary,
13 we want the matter remanded back to the Circuit Court for
14 consideration of the Motion for Reconsideration.

15 There's a routine granted by the -- by the Court of
16 Appeals, or they may say it's unnecessary, and then that
17 clears it up, one of the two. They'll just say it's
18 remanded or it's unnecessary, and then I can go ahead and
19 issue my ruling.

20 Is there any problem with that from the State?

21 **MR. GRAUSTEIN:** No, Your Honor.

22 **THE COURT:** All right.

23 Is there any problem with doing that, Mr. Fox?

24 **MR. FOX:** No, as long as we're talking about a limited
25 hearing on this and not a ---

1 **THE COURT:** Well, I understand. I understand your
2 position, okay, all right?

3 **MR. FOX:** Yes sir. I think that will be the best
4 procedure in this case, Your Honor, so in that respect, no,
5 I don't have any objection to it.

6 **THE COURT:** I understand your position, all right? I
7 appreciate what you have said.

8 **MR. FOX:** Yes sir.

9 **THE COURT:** So proceeding in that way, I'll be glad for
10 you to present anything you want to regarding your Motion
11 for Reconsideration.

12 **MR. FOX:** Okay. Thank you, Your Honor.

13 And again, to make a record, what I first want to do is
14 give sort of what I believe the standard and applicable law
15 should be in this case. Of course, we refer many times to
16 16-25-90, which is that early parole eligibility after a
17 person has served a -- twenty-five percent or a quarter of
18 the imposed sentence.

19 **THE COURT:** How about -- how about let me ---

20 **MR. FOX:** Yes sir.

21 **THE COURT:** --- say what I think it is and then you
22 tell me whether you disagree with it.

23 **MR. FOX:** That's fine.

24 **THE COURT:** Okay. In accordance with 16-25-90, a
25 person convicted of an offense against a household member is

1 eligible for parole after serving one-fourth of their prison
2 term if the person presents credible evidence of a history
3 of criminal domestic violence as defined in 16-25-20,
4 suffered at the hands of that household member. That
5 history has to be proven by a preponderance of the evidence
6 standard, a preponderance of the evidence standard meaning
7 something is, you know, more likely than not.

8 We usually say in civil court tipping the scales of
9 justice ever so slightly in favor of the defendant. That's
10 a far cry from beyond a reasonable doubt, which the State's
11 burden was, so the defendant has a much less burden of proof
12 regarding this particular issue, but the mere production of
13 evidence does not automatically result in that earlier
14 parole eligibility finding. Instead, the defendant has to
15 present evidence to the sentencing judge by proof which
16 leads the sentencing judge to find that the existence of the
17 contested fact is more probable than its non-existence.

18 Credible evidence indicates an intention that the
19 defendant's evidence to be, in fact, trustworthy, not simply
20 plausible or possible. The defendant has the burden under
21 this preponderance of the evidence standard to persuade the
22 sentencing court that their evidence is reliable, and the
23 Circuit Court is required to make specific findings on
24 parole eligibility or ineligibility.

25 Do you disagree that that's the standard?

1 **MR. FOX:** No, Your Honor.

2 **THE COURT:** All right. Very good. Be glad to hear
3 from you.

4 **MR. FOX:** Your Honor, I think that's exactly the
5 standard, so I won't waste any time going through that. I
6 want to briefly -- I'm not going to go through the entire
7 testimony, but we believe there's a credible history for
8 these reasons.

9 First of all, the testimony that Your Honor heard at
10 trial, first from Ms. Schrader-Falls specifically, she was
11 able -- if you're, as the finder of facts, and that's
12 basically what you are in this case, she was able in
13 describing her relationship with Mr. Hughes to provide
14 specifics and details about the his- -- about the abuse.

15 She was able to say on this occasion we were in the car
16 and we had an altercation and he punched me in the chest.
17 On another occasion we were in bed late at night. A phone
18 kept ringing. I asked him about it, who was calling, and he
19 reached over and choked me.

20 We also had -- you had Ms. Saylors who testified
21 specifically about the incident where he refused to provide
22 or at least assist in seeking necessary medical treatment or
23 what would reasonably be interpreted, the situation, that
24 called for CP medical treatment, an overdose of a large
25 number of prescription pills.

1 You also had -- so she was able to provide details. In
2 assessing her credibility, I would also point out, although
3 it's not directly related, her testimony regarding her prior
4 history of abuse, going back into childhood and to her first
5 two marriages. It is not directly on point in reference to
6 16-25-90, but in terms of Your Honor assessing her
7 credibility, her believability as a witness.

8 Again, she's able to describe specific incidents,
9 locations, persons that molested her, that raped her, that
10 abused her, and I think that goes to her credibility, and,
11 Your Honor, of course, had the chance to assess her as a
12 witness first-hand from the witness stand in terms of her
13 demeanor and all the things anyone would assess a witness
14 for.

15 The other witness at trial, specifically that testified
16 about this, would have been Vicki Bourus. Vicki Bourus was
17 qualified by Your Honor as an expert in the area of battered
18 woman syndrome, as well as abuse, domestic violence. She
19 testified that she has over twenty-seven years' experience
20 dealing exclusively in those areas.

21 She has the highest level of training for a social
22 worker in this state, that she has undergone constant and
23 repeated continuing education on that regard, and
24 specialized education on that subject, that she's been
25 qualified as an expert numerous times. She testified that

1 she had as much opportunity to interview a person as she has
2 ever had and had as much corroborating information as she
3 has ever had access to.

4 As an expert, her job is to assess credibility in part.
5 What she does is talk to women who are in these situations
6 and assess are they, in fact, a battered spouse. Sometimes
7 that amounts coming to court and testifying as she did in
8 Ms. Falls' trial, that, in fact, there was battered spouse
9 syndrome and it may have affected state of mind which goes
10 to malice, and that, of course, was our argument with regard
11 to the murder charge, Your Honor.

12 But Ms. Bourus was not the least bit hesitant. She was
13 very specific and very certain that, in fact, genuinely
14 speaking Ms. Falls did suffer from battered spouse syndrome,
15 that she exhibited the characteristics that a battered
16 spouse would.

17 Some of those characteristics, Your Honor, that bear
18 out are specified and -- or at least enumerated in Bertha
19 Ann Robinson vs. State of South Carolina, which is from the
20 Supreme Court in 1992, 417 S.E.2d 88, a battered woman is a
21 woman who is repeatedly subject to any forceful, physical,
22 or psychological behavior by a man in order to coerce her to
23 do something he wants her to do without any concern for her
24 rights.

25 Ms. Bourus specifically testified about instances and

1 examples of things that Mr. Hughes did, physical things,
2 yes, also mental things, words, verbally abusive, sexual
3 control, things of that nature. Some of the characteristics
4 listed in that opinion include fear, hypersuggestability,
5 isolation, guilt, emotional dependency.

6 Again, these are specific things that Ms. Bourus
7 testified that she found in Ms. Falls, so the expert
8 specifically interviewed witnesses, interviewed Ms. Falls,
9 and made a finding that, in fact, not just that she was
10 battered in general, but that she had a specific history
11 with Mr. Hughes.

12 I think, again, Your Honor had the opportunity to
13 assess her credentials, to listen to what her methodology
14 was in general and in this particular case, to listen to the
15 resources that she had at her disposal in this case, which
16 included court records, Ms. Falls' divorces, speaking with
17 the attorney that handled those divorces and the reasons for
18 those, speaking with Ms. Falls' therapist in North Carolina,
19 speaking with family members, including Ann Rich, who is
20 here today, that knew first-hand of Miss Vivian's
21 relationship with Tony Hughes, as well as her interviews and
22 her assessment of Ms. Falls, so again, Your Honor had the
23 opportunity to assess those things and to see if Ms. Bourus
24 was, in fact, a credible witness.

25 I just don't see how she could be found to be anything

1 else. It is true that a great deal of her information came
2 from Ms. Falls, but she also testified, Ms. Bourus
3 testified, that sometimes that is just the case, there are
4 not always -- because of the nature of domestic violence,
5 there are not always police reports or hospital records or
6 numbers of witnesses, and that seems to be the case here,
7 although we do have witnesses that you will hear from.

8 Your Honor, I think that that's the information that
9 you have with regard to a history.

10 The State, in rebuttal and reply, did put up two
11 witnesses that had a prior unconnected relationship to Mr.
12 Hughes that said I never had any problems with him, but that
13 has absolutely nothing to do with the relationship between
14 Mr. Hughes and Ms. Falls. It may well be true that he had a
15 long-term relationship -- one woman was just a few months,
16 but he may have had relationships that were fine, but that
17 has nothing to do whether there's a credible history of
18 abuse between Ms. Falls and Mr. Hughes.

19 In addition, Mr. Hughes' parents testified, but they
20 admitted -- I think Your Honor recalled that they admitted
21 they didn't know what happened when their son was down in
22 Myrtle Beach where he frequently stayed, they weren't around
23 all the time, and they couldn't say, for instance, whether
24 -- for sure whether, in fact, they had stayed together after
25 January of 2012. That was some issue at trial, whether, in

1 fact, they were still a couple after January 2012 or not,
2 but even his parents admitted although they thought they had
3 broken up, they couldn't say for sure. They did not have
4 that kind of direct knowledge, although they certainly had
5 some knowledge of the relationship.

6 Really, the only testimony and evidence you had before
7 -- that was before the jury and is before Your Honor today,
8 from the trial, came from Ms. Falls and Ms. Bourus, so I
9 believe that between the two and the whole context of the
10 situation, that there is, in fact, a credible history that's
11 presented to Your Honor with plenty of facts, specific
12 facts, that make it more likely than not, that meet the
13 preponderance standard, that, in fact, there was a pattern
14 of domestic violence.

15 Your Honor, I would briefly address -- I'm not going to
16 go through all the definitions. Obviously, we've got to
17 prove there's a household -- these are household members,
18 and that was some controversy at trial whether they, in
19 fact, cohabited.

20 Again, you had Ms. Falls who said we each had separate
21 homes, but at one place or the other, just about every night
22 we were together. We kept our stuff there. We were quite
23 often at his house in Marion. We were quite often at mine.
24 He borrowed my car. We held ourselves out as man and wife.
25 We exchanged rings. He referred to us as married in the

1 eyes of God.

2 Her daughter testified that when she would be there
3 visiting and stay overnight that Mr. Hughes was frequently
4 there spending the night, and that one of the daughters also
5 testified that she had seen a phone bill that had Vivian
6 Hughes and Tony Hughes which serviced the Marion residence.

7 We, every day in this state, Your Honor, we treat
8 boyfriends and girlfriends who live together the majority of
9 the time as household members for purposes of domestic
10 violence.

11 We don't -- we seldom get into, well, do they live
12 together seventy-five percent of the time or eighty percent,
13 or do they have a home they could go back to, and so I think
14 clearly the definition of household member is met in this
15 case, which is a current household member or a current
16 couple that are cohabiting or have cohabited in the past.
17 Even if they broke up in January, which I dispute, they
18 cohabited in the past, and I think we're definitely within
19 the definition of the statute.

20 Judge, at this point, I would call Ann Rich to the
21 stand and she will offer testimony regarding this issue.

22 **THE COURT:** All right, sir. Very good.

23 Come around to be sworn, ma'am.

24 **ANN RICH,** being first duly sworn, testifies
25 as follows:

1 **THE DEPUTY CLERK:** Please state your full name and
2 spell your last name.

3 **MS. RICH:** Ann Rich, R-I-C-H.

4 **DIRECT-EXAMINATION BY MR. FOX:**

5 Q. Ms. Rich, where do you live?

6 A. I live at 211 Z-E-L-P-H-A, Zelpha Lane, Rising Fawn,
7 Georgia 30738.

8 Q. Okay. And do you know Ms. Vivian Falls?

9 A. Yes, I do. She is my niece.

10 Q. Okay. And did you know her during the time -- did
11 you ever know Tony Hughes?

12 A. Yes sir, I did, at the time that they were at my
13 house, and they were at my house in October of 2011.

14 Q. And did -- what was your understanding -- did they
15 arrive at your house together?

16 A. The first time that I met them was at the cemetery
17 when they were putting up a tombstone for her -- for
18 Vivian's -- my husband, David's, brother, a bench marker,
19 and that's where we first met, and then they all came to my
20 house and we all just got together and had a good time, and
21 Vivian and Tony spent the night, several nights, there at
22 the house, at my house.

23 Q. Okay. Did they stay in the same room?

24 A. Yes sir, they did.

25 Q. Okay. How did Vivian describe Tony to you?

1 A. As her husband at the time. She said, Aunt Ann,
2 we're fixing to have a wedding at the beach, said that's
3 what their intentions, was to have a wedding at the beach,
4 and I said that's great as long as things go good, but I
5 seen off of the bat something wasn't right.

6 Q. What did you see that made you think something wasn't
7 right?

8 A. When I seen him get out of the car and come up there,
9 they was just something about him that, huh-uh, this ain't
10 who she needs to be with. There was just too much push for
11 money there.

12 Q. Did you ever witness anything more than just ---

13 A. Yes sir, I did.

14 Q. --- a try for money?

15 A. Yes sir, I did.

16 Q. And could you tell us what that was?

17 A. Yes sir, I can.

18 Q. Okay.

19 A. I seen him grab her by her arms in my back yard.

20 Q. Was it an affectionate hug?

21 A. No sir, it was not. She was standing up against the
22 car, and if you was in here, I'll show you how ---

23 MR. FOX: Your Honor, if she may, if she can step ---

24 A. If it's okay with you ---

25 THE COURT: Yes sir.

1 **MR. FOX:** Yes. If you can come around.

2 Q. Okay.

3 A. He was standing up against the car -- she was
4 standing up against the car, and he went up against her ---

5 **THE COURT:** Ma'am, I'm sorry. Could you turn maybe so
6 you ---

7 A. Oh, I'm sorry. Yes sir.

8 **THE COURT:** --- so that the Court Reporter -- because
9 the Court Reporter has got to take down everything, so turn
10 back this way.

11 A. Okay.

12 **THE COURT:** Go ahead.

13 A. He was standing up against -- she was standing up
14 against the car, and he walked up against her and grabbed
15 her like this, and already there was a bruise on her arm
16 that was the size of a fist, or bigger, and it was as purple
17 as it could be, and she was very, very jittery.

18 Q. Okay. Could you hear anything being said during that
19 time?

20 A. The only thing that night that I heard him say is
21 that's all I'm going to say right now, and then that's when
22 I said Vivian, are you all right, and they came in the
23 house. And I stopped -- I have five steps that you have to
24 go up to my back porch, and I stopped and I said, David, you
25 and Vivian can go on in the house, and Vivian never knew

1 what I said to him, and I never told her.

2 And I looked at him and I said, Tony, you stop right
3 there, and I said, Tony, if I ever again, while you're here
4 in my yard, in my house, see you grab her like this again or
5 mistreat her just like you done out here a while ago, I said
6 you will see some police cars in my yard after you because I
7 will call the police after you. I would not allow it.

8 Q. Did you see any other incidents than that one?

9 A. The next month, her sister was to get married and she
10 was supposed to come down and make the wedding pictures, and
11 she and I were supposed to go like on, I think it was
12 November the 6th, somewhere along in there she was supposed
13 to come down, and she and I were going to go and decorate
14 the church for her sister's wedding. She was real tickled
15 to go do that.

16 She called me on the phone, and she was crying her
17 heart out. She said, Aunt Ann, I'm sick. I can't do that.
18 I can't come down. I said, Vivian, what is wrong with you?
19 And she said my stomach, and about the time she said my
20 stomach, I heard in the background you don't need no other
21 family. I'm all the family you need.

22 Vivian never knew that I heard Tony say this in the
23 background, and she was in South Carolina and I was in
24 Georgia, and I could not get to her.

25 Q. You never did call law enforcement or you never

1 called the law?

2 A. No sir, because I didn't know the address of where
3 his -- where he was.

4 Q. When he was at your house, you didn't on that
5 occasion, ---

6 A. No, I didn't, no sir.

7 Q. But what you saw was him grab her hard enough to
8 leave bruising on her arm?

9 A. The next morning when she got up, she put up -- and
10 he also -- she had went down to my brother-in-law's and had
11 bought a boat and was going to buy a motorcycle, and got up
12 the next morning to check her bank account, and she told
13 him, she said I do not have enough money in the bank to buy
14 the boat and the motorcycle, and he said then we've got to
15 do something, said something has got to be done. And he had
16 a very evil, mean look in his eye and his face, as if you
17 don't get me the motorcycle, you will pay for it later.

18 Q. Did you have a chance in the days or weeks leading up
19 to Vivian's trial to speak to Ms. Vicki Bourus?

20 A. Yes sir, I did.

21 Q. And did you tell her everything that you told the
22 Court today?

23 A. Yes sir, I did.

24 Q. Okay. And were you able to -- we don't have to go
25 into specifics at this time. Were you able to tell her

1 about your knowledge of Vivian's background or her
2 upbringing ---

3 A. Yes sir. Yes sir.

4 Q. --- or things of that nature?

5 A. Yes sir.

6 **MR. FOX:** Thank you. Please answer any questions that
7 Mr. Graustein has for you.

8 **THE COURT:** Cross examination.

9 **MR. GRAUSTEIN:** Yes, Your Honor.

10 **CROSS-EXAMINATION BY MR. GRAUSTEIN:**

11 Q. Ms. Rich, ---

12 A. Yes sir.

13 Q. --- so the only incident of physical contact was this
14 incident in October when he grabbed her by the arms?

15 A. Yes sir.

16 Q. Okay. And you said you only heard him say -- one
17 thing he said?

18 A. He said in the background of the phone call ---

19 Q. Not the phone call. I'm talking about when he
20 grabbed -- when you say he grabbed her.

21 A. He said I'll talk to you later ---

22 Q. Okay. And other than that ---

23 A. --- in a very hateful mood -- mode.

24 Q. But other than that, you have no idea what the
25 context of that contact was?

1 A. No sir, because I was standing at my table.
2 MR. GRAUSTEIN: All right. Thank you.
3 THE COURT: Any redirect?
4 MR. FOX: No, Your Honor.
5 THE COURT: All right.
6 Ma'am, you may step down.
7 MR. FOX: Your Honor, we would next call Raphael Falls.
8 THE COURT: All right.
9 Please come around.
10 MR. GRAUSTEIN: Your Honor, I didn't have any notice of
11 this witness, don't know anything about them.
12 THE COURT: Well, I'm going to hear the testimony and
13 then I'll hear anything you say at that point in time.
14 MR. GRAUSTEIN: All right.
15 RAPHAEL FALLS, being first duly sworn, testifies
16 as follows:
17 THE DEPUTY CLERK: Please state your full name and
18 spell your last name.
19 MR. FALLS: Raphael Falls, F-A-L-L-S.
20 THE COURT REPORTER: Spell your first name, please.
21 MR. FALLS: R-A-P-H-A-E-L.
22 DIRECT-EXAMINATION BY MR. FOX:
23 Q. And, Raphael, do you go by Quan? Do people call you
24 Quan?
25 A. Yes sir.

1 Q. Okay. And, Mr. Falls, how old are you?

2 A. Twenty.

3 Q. And how do you know Vivian Falls?

4 A. She's my mother.

5 Q. Is she your biological mother?

6 A. She's actually my grandmother. She adopted me when I

7 was real young.

8 Q. And she raised you?

9 A. Yes sir.

10 Q. And she raised a brother also?

11 A. Yes sir.

12 Q. Were you living with her during the summer of 2011

13 and into 2012?

14 A. Yes sir.

15 Q. Where were y'all living?

16 A. 341 Vesta Drive.

17 Q. That's in Myrtle Beach?

18 A. Yes sir.

19 Q. Did -- at any time did you have a chance to meet a

20 Mr. Tony Hughes?

21 A. Yes sir.

22 Q. How did that happen?

23 A. What I know of my knowledge, they met over the

24 Internet, and he came to the house and they met in person.

25 Q. Did they begin dating at some point?

1 A. Yes sir.

2 Q. Was there ever a time when Mr. Hughes began to spend
3 the night at your house?

4 A. Yes sir.

5 Q. Did he, for lack of a better phrase, move in at some
6 point?

7 A. Yes sir.

8 Q. Did he keep his clothes and his belongings there?

9 A. Yes sir.

10 Q. Okay. Did he ever borrow or use your mom's car to
11 get back and forth to work?

12 A. Yes sir.

13 Q. Okay. Did she ever stay, as far as you know, ever
14 stay at his home in Marion?

15 A. Yes sir. We all did.

16 Q. You all did, okay. How did -- after that stage when
17 they began staying together and obviously now it's more than
18 just talking on the Internet, how would your mom describe
19 her relationship to Mr. Hughes?

20 A. She loved him very much..

21 Q. How did you -- she describe him, as her boyfriend
22 or ---

23 A. Husband.

24 Q. Husband. She used the word husband?

25 A. Yes sir.

1 Q. During the time that you were around, that you
2 personally saw, did you ever see any incidents of violence
3 between your mother and Mr. Hughes?

4 A. Yes sir. I seen him grab her a few times, and she
5 tried to take cover from -- and she had bruises all the way
6 up her arms, and he did choke her, because I seen a bruise
7 mark on her neck like a thumb print.

8 Q. Okay. When he would grab, in what manner would --
9 describe how he would grab her ---

10 A. Aggressive.

11 Q. --- when you saw.

12 A. Aggressive.

13 Q. Would it be with one hand, both hands, or ---

14 A. Both.

15 Q. Both hands, okay. Both hands on one arm, both hands
16 on ---

17 A. Each one.

18 Q. Okay. Hard enough to leave marks?

19 A. Yes sir.

20 Q. And this happened on more than one occasion?

21 A. Yes sir.

22 Q. Okay. Did he ever do more than that?

23 A. A few occasions, I seen him take money from her purse
24 and her wallet.

25 Q. Well, I'm thinking more about anything physical. Was

1 there other than the grabbing and leaving marks, did you
2 ever see anything further physically?

3 A. Of my knowledge, that when they got back from Georgia
4 from my Aunt Ann's house, a few hours later she walks in the
5 room and he walks through the door, through the front door
6 and shuts it, said she will regret not getting me that bike,
7 so he was making threats.

8 Q. Okay. Did you ever hear any other kind of threats
9 made to her in your presence, that you know yourself?

10 A. He said she's no good in my presence.

11 Q. Okay. Anything else?

12 A. Not to my knowledge.

13 Q. Okay. And nothing else -- the grabbing that you saw
14 on several occasions, but anything other -- any other
15 physical contact that you witnessed yourself?

16 A. No sir, just the grabbing.

17 Q. Okay. Thanks.

18 **MR. FOX:** Please answer any questions that Mr.
19 Graustein has for you.

20 **THE COURT:** Cross-examination.

21 **MR. FOX:** Your Honor, I'm sorry. I just have one -- I
22 don't mean to set you down.

23 **CONTINUING DIRECT-EXAMINATION BY MR. FOX:**

24 Q. Mr. Falls, you were -- you never talked to Ms. Vicki
25 Bourus, did you?

1 A. No sir.

2 Q. Okay. Is there any -- you didn't talk to me until a
3 few days ago, is that correct?

4 A. Yes sir.

5 Q. What is the reason for that? Why didn't you make
6 your information known or come forward previously?

7 A. My mother told me not to. I was respecting her
8 wishes.

9 Q. Did she seem to feel strongly about that?

10 A. Yes sir.

11 Q. Did you have, because of what you had seen between
12 Mr. Hughes and your mother, did you have problems yourself
13 with Mr. Hughes?

14 A. Yes sir. He told me he didn't like me and ---

15 **MR. GRAUSTEIN:** Objection, Your Honor.

16 **THE COURT:** All right. I appreciate that. I'm not
17 going to hear it on Direct. If the State wants to go into
18 it as far as ---

19 **MR. FOX:** All right.

20 Q. Did you mother take steps for you and Mr. Hughes to
21 avoid contact with each other?

22 A. Yes sir.

23 **MR. FOX:** Okay. Thank you, Your Honor.

24 **THE COURT:** Yes sir. That's fine.

25 All right, go ahead, Solicitor.

1 **MR. GRAUSTEIN:** Thank you, Your Honor.

2 **CROSS-EXAMINATION BY MR. GRAUSTEIN:**

3 Q. You said that you saw some bruising on your mother's

4 neck?

5 A. Yes sir.

6 Q. Okay. But you didn't see the actual choking?

7 A. No sir.

8 Q. Okay. So you're just speculating as to how that

9 bruise got there?

10 A. Yes sir, the size of his hand.

11 Q. And you say that he grabbed her arms several times?

12 A. Yes sir.

13 Q. All right. And made some threats, you said?

14 A. Yes sir.

15 Q. All right. You didn't like Tony, did you?

16 A. No sir.

17 Q. Okay. Were you present for the trial of this case?

18 A. Yes sir.

19 Q. And you didn't testify, you say, because you were

20 respecting your mother's wishes?

21 A. Yes sir.

22 Q. But she wants you to testify now?

23 A. No sir.

24 Q. She doesn't?

25 A. No sir.

1 Q. So you're going against your mother's wishes today?

2 A. Yes sir.

3 Q. All right.

4 A. It has to be heard.

5 Q. Did in any of these incidents where you say you saw
6 violence or heard threats, did you ever call the police?

7 A. No sir.

8 Q. Did you ever do anything to document any of these
9 incidents?

10 A. No sir.

11 Q. Did you ever get along with Tony Hughes at all?

12 A. No sir.

13 Q. Okay.

14 **MR. GRAUSTEIN:** That's all I have.

15 **THE COURT:** Redirect, and Mr. Fox, I believe the State
16 has asked questions if you want to go into that issue that
17 you didn't before.

18 **REDIRECT-EXAMINATION BY MR. FOX:**

19 Q. Did you, yourself, ever confront Mr. Hughes about his
20 treatment of your mother?

21 A. Yes sir.

22 **MR. FOX:** Okay.

23 Thank you, Judge.

24 **THE COURT:** All right, sir. Very good.

25 You can step down, sir.

1 Further witnesses, Mr. Fox?

2 **MR. FOX:** No, Your Honor. At the appropriate time,
3 I'll sum up briefly, but that would be the Defendant's
4 presentation.

5 **THE COURT:** Solicitor, is there any testimony that you
6 would like to make at this point in time?

7 **MR. GRAUSTEIN:** No, Your Honor. The State will rely
8 upon the record of testimony and the evidence presented at
9 the trial of this matter.

10 **THE COURT:** All right, sir. Thank you.

11 All right. So what we'll do now is, Mr. Fox, I'll be
12 glad to hear from you regarding your arguments and then I'll
13 let the Solicitor make his comments as well.

14 **MR. FOX:** Yes sir. Judge, really very briefly, I
15 summarized the prior testimony, what our position is. I
16 would just emphasize again the testimony Your Honor heard at
17 trial from Ms. Falls, Ms. Bourus, the specificity of the
18 testimony, the punching, and when and where that happened,
19 the choking, when and where that happened.

20 Now you've got specific instances of grabbing. I would
21 admit that by themselves, one or two instances of grabbing
22 wouldn't be the history that we need, and, Your Honor,
23 before I forget, I want to make sure that the testimony of
24 Ms. Bourus and Ms. Falls from the trial is a part of --
25 specifically a part of this record.

1 **THE COURT:** Obviously, what transpired at the trial,
2 both from the State and the Defense, is part of the hearing,
3 yes sir.

4 **MR. FOX:** Yes sir, okay, and I believe it would be.
5 But again, the specificity, Your Honor, of incidents, it's
6 not just that they're there. They're specific incidents
7 described by multiple parties, by Ms. Falls, certainly from
8 Ms. Saylor, from Ms. Rich, from Mr. Falls, from Quan Falls
9 today, the threats, the threat at one occasion that I'll
10 push your teeth down your throat, the sexual threats, to
11 commit what would amount to -- would not just amount to, to
12 commit rape, to have non-consensual intercourse in a violent
13 way that she did not care to have, and the testimony that,
14 in fact, that had happened on previous occasions.

15 But I think there is certainly a credible -- credible
16 evidence before Your Honor, in other words, evidence that
17 would make these allegations more likely than not, tipping
18 the scales in Ms. Falls' favor, of a history of what
19 certainly is domestic violence.

20 Domestic violence, as Ms. Bourus told the Court, does
21 not have to be -- put you in the hospital with broken limbs,
22 a bloody nose, a broken bones type of violence. The
23 violence can be bruising. The violence can be threats. The
24 violence can be grabbing. The violence can be sexual, and
25 we believe that all of those things are there when taken in

1 the entire picture, and we would certainly urge Your Honor
2 to make a finding under 16-25-90 that, in fact, she is
3 eligible, eligible for parole after a fourth percent.

4 **THE COURT:** All right, sir.
5 Solicitor.

6 **MR. GRAUSTEIN:** Thank you, Your Honor.

7 As the Court has stated, the standard for making this a
8 parole eligible -- making parole eligibility a factor in
9 this case under 16-25-90, first it has to be a household
10 member. There's been conflicting testimony and evidence as
11 to whether or not these were household members, and given
12 the broad nature of what a household member is, I'll leave
13 it up to the Court to determine whether or not these were
14 household members.

15 But the -- the more importantly, the question is, and I
16 think there was the question presented at the trial was is
17 there any credible evidence of domestic violence in this
18 case. This case, the whole trial was about domestic
19 violence.

20 Now, the evidence of domestic violence, and most of it,
21 the vast majority of what was testified to was provided by
22 the Defendant, and I think if we -- if the Court were to
23 look at State v. Grooms, it seems to say when the defendant
24 is alleging it, that has to be corroborated.

25 Just to simply state it by the defendant is

1 insufficient because in that event, as the Court stated,
2 every crime against a household member would be parole
3 eligible if all it took was the defendant to say it happened
4 and that was sufficient to meet the standard, so there needs
5 to be some corroboration here of what the Defendant states,
6 and the problem with this case throughout the whole case was
7 that there's been evidence and testimony regarding past
8 violence and abuse.

9 So we come to -- the Court is faced with a problem here
10 of what evidence, what incidents were actually committed by
11 the victim in this case versus some other perpetrator. The
12 Defendant can easily come in and say that there are -- that
13 this happened to me, and this happened to me, and this
14 happened to me, and they very well may, because the State
15 takes no position on the past abuse or the past violence
16 against the -- but -- and she can very believably say this
17 happened to me. It very well may have, but at the hands of
18 another, not this victim.

19 In fact, I would say in this situation that there
20 actually needs to be more corroboration of domestic violence
21 given the nature of the evidence presented in this case, but
22 as far as corroboration, there's no police reports at all of
23 any -- reporting any domestic violence. There's no medical
24 reports, no pictures, and the Defendant stated that she was
25 a picture-taker, very few witnesses, and those witnesses who

1 do say that they witnessed it, say that they witnessed a
2 grabbing of the arms.

3 Now, I do not want to diminish domestic violence, but I
4 think the Court needs to be very mindful that somebody did
5 die in this case, but conversely, there are witnesses -- the
6 Defendant's own daughters testified they witnessed no
7 domestic violence whatsoever.

8 The Defendant (sic) has no history of domestic
9 violence. He has no history of violence against anybody
10 ever. Forty-six years old at the time of this incident, and
11 I can hand the Court a copy of his NCIC, and he has
12 absolutely no criminal record whatsoever. So as far as the
13 corroboration of the credible evidence, I think the credible
14 evidence on this occasion shows there was no domestic
15 violence perpetrated by the victim.

16 The State put up two rebuttal witnesses, prior
17 girlfriends. I think the Court needs to be -- remember that
18 those witnesses covered approximately ten years. One of
19 those witnesses, Ms. Goss, lived with the defendant -- lived
20 with the victim for multiple years, eight to ten years, and
21 reports absolutely no domestic violence, and that's borne
22 out by the defendant's -- the victim's criminal record here,
23 that -- and I find it hard to believe that the defendant
24 (sic) would have no history of domestic violence and then
25 some day -- one day when he was forty-six years old he

1 decides to start being violent towards women on a routine
2 basis.

3 Also, there needs to be a history. Now, a history --
4 what the statute means by a history of domestic violence,
5 that hasn't been defined, but State v. Hawes does remark
6 that while they cannot define it, they know it's more than
7 one incident, and also they noted -- it is to be noted that
8 the Court can consider -- may consider the relative
9 egregiousness of the corroborated instances in determining
10 whether or not there is a history of domestic violence.

11 The Defendant needs to prove beyond a preponderance of
12 the evidence. It needs to be more likely than not. Again,
13 there's a significant amount of evidence presented by people
14 who have no dog in this fight that there was no domestic
15 violence. In fact, I would even suggest that some with a
16 dog in the fight, the Defendant's daughters, who testified
17 no domestic violence whatsoever, never saw any.

18 I don't -- I don't -- I would not lend the expert, Ms.
19 Bourus, the credibility that the Defense seems to want the
20 Court to give her. I believe that most of her information
21 came from the Defendant, from the Defendant -- people that
22 the Defendant talked to. She's basically relying on hearsay
23 evidence.

24 She didn't speak with anybody else who witnessed
25 anything, so she's basically just being able -- being able

1 to repeat back as far as instances what the Defendant told
2 her and what Ms. Rich told her, but -- but again, we come to
3 the problem with her ultimate opinion regarding this matter,
4 is which domestic violence is she diagnosing, which domestic
5 violence, what -- those factors that the Defense has pointed
6 out, well, what caused those? Were those previous
7 instances? I mean, were they long-lasting effects?

8 Which -- it would seem you would need to be able to
9 separate those out to some extent, and I don't think
10 anything of that was done, and by all accounts it was a
11 horrendous upbringing and the first two marriages could
12 easily be the cause of these factors showing up that the
13 Defendant -- that the expert, Ms. Bourus presen- --
14 mentioned in her -- forming her opinion.

15 Also, finally, Your Honor, I think this was not a
16 guilty plea. This was a trial, and I think the jury's
17 verdict in this matter should be given some sort of
18 deference. They found -- they were given the opportunity to
19 find the manslaughter, or not guilty. This trial was all
20 about domestic violence. The jury heard all of it. The
21 jury heard all the evidence regarding a history of domestic
22 violence, and -- and I think they, through their verdict,
23 voiced where they thought credibility lies in this matter.

24 **THE COURT:** Thank you very much.

25 All right. Mr. Fox.

1 **MR. FOX:** Your Honor, just briefly. I'm not going to
2 reiterate everything. There were some specific points that
3 Mr. Graustein raised that I hadn't discussed that I do want
4 to respond to.

5 I don't believe -- the statute certainly doesn't
6 require corroboration. I agree that simply a defendant
7 can't simply say, oh, I've had a problem. I have a history,
8 and that would be enough, but we've had more than that. We
9 do have corroboration. We do have other witnesses
10 specifically about Mr. Hughes, and we have, of course, the
11 whole pattern. We had witnesses today about specific
12 physical abuse, but we also have testimony regarding physi-
13 -- sexual and verbal abuse as well.

14 Your Honor, this -- you've got to consider, I believe,
15 also what constitutes domestic violence, and I think Ms.
16 Bourus tells you, and we have a domestic code about domestic
17 violence that talks about, you know, the offer to do
18 violence, threats. It doesn't require physical injuries.
19 We have some in this case, but again, that's not required.
20 It doesn't require hospitalization.

21 I would ask Your Honor to look -- the Solicitor
22 mentioned Hawes, H-A-W-E-S. There was a -- this case is
23 very fact-specific. There was a finding there, and what you
24 have in Mr. Hawes' case, he shot his wife. They had a
25 history of beating on each other. He had a clear history of

1 beating on her, but he was able to overcome that because it
2 was basically mutual.

3 Again, Judge, this is to be -- this statute is for that
4 situation where a jury does find -- I don't disagree with
5 Mr. Graustein -- they did have a chance to find an absence
6 of malice and did not, hence the murder verdict. That does
7 not mean that they did not find the evidence of abuse to not
8 be credible. They could easily have said, yes, we believe
9 there is a history of abuse. However, it does not rise to
10 the level of self-defense that was worth the removal of
11 malice.

12 Those are not inconsistent things, and we don't know,
13 but to suggest, well, there was a verdict of guilty and,
14 therefore, a finding of malice, and, therefore, they must
15 not have believed the evidence of -- about domestic abuse
16 doesn't follow, and Ms. Bourus, the last thing I'll say,
17 Judge, is Ms. Bourus very specifically in her testimony
18 separated out -- obviously it's intertwined, the prior
19 history of abuse that Ms. Falls suffered with the history of
20 Mr. Hughes. However, Ms. Vicki Bourus in her testimony did
21 specifically separate that out.

22 She described how they are related, but she did
23 specifically separate that out, and with regard to the past
24 abuse, there was all kinds of corroboration from family
25 members, therapists, attorneys, who could corroborate the

1 past, and the reason I think that's important is because it
2 does go to the credibility of -- in general of both
3 witnesses.

4 Judge, the last thing I will say, there is a reason
5 that the eligibility determination is outside the province
6 of the jury. It's a mitigating factor, and again, in a
7 quote, Robinson, it's for those instances where there is
8 insufficient evidence to maintain a defense under battered
9 spouse, but where sufficient evidence of abuse may exist to
10 mitigate somewhat the usual non-parole nature.

11 We're not trying to excuse. It's not letting her off.
12 The verdict will still be guilty of murder. There will be
13 no determination that she should get parole by Your Honor,
14 no endorsement of that idea. It will simply be that we have
15 satisfied by a preponderance of the evidence that there is a
16 credible history of abuse, credible witnesses presented,
17 specific instances of abuse, and that, therefore, she may be
18 granted early parole if at a later date a parole board
19 determines. Thank you, Your Honor.

20 **THE COURT:** All right, sir. Thank you.

21 All right. Taken the matter under consideration, what
22 I would ask Mr. Fox is that you follow up with the proper
23 petition to the Court of Appeals regarding your Notice of
24 Appeal and get some clarification, whether the Court of
25 Appeals believes it's necessary to remand the matter or it

1 was unnecessary, whatever they determine. Based upon that,
2 then I will issue my Order in this matter.

3 If you -- I would not have a problem with you
4 indicating to -- in your filing with the Court of Appeals
5 that the lower court believes it's proper for the matter to
6 be considered by the Circuit Court, whether it's by a remand
7 or they're saying it was not necessary to make that motion,
8 however, but I, you know, indicate that I am in favor of it
9 and not opposed to considering the matter.

10 **MR. FOX:** Yes sir.

11 **THE COURT:** All right, sir?

12 **MR. FOX:** Yes sir.

13 **THE COURT:** All right. So we will leave the matter
14 open until we hear back from the Court of Appeals one way or
15 another, and as soon as that happens, obviously, Counsel,
16 y'all will be in charge of doing that, so you need to notify
17 the Court immediately upon some answer from the Court of
18 Appeals so that I can properly issue my ruling thereafter,
19 which I will do shortly after notification from you about
20 the Court of Appeals, all right?

21 **MR. FOX:** Yes sir. Thank you, Your Honor.

22 **MR. GRAUSTEIN:** Thank you.

23 **THE COURT:** I previously issued an Order holding Ms.
24 Vivian Schrader-Falls here for the pendency of this hearing,
25 and I thought it was appropriate so that Counsel could

1 communicate with her and get prepared for the Motion for
2 Reconsideration.

3 At this point in time, what I believe is now proper is
4 that she be released from my further Order and she is
5 released to the custody and control of the South Carolina
6 Department of Corrections pursuant to the condition and the
7 sentence. All right. Thank you very much.

8 **MR. GRAUSTEIN:** Thank you, Your Honor.

9 **MR. FOX:** Thank you, Your Honor.

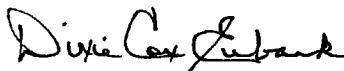
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 22nd day of May, 2014.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

August 7, 2014



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

WITNESSES
Neal Frebowitz Horry County Police Department

DOCKET NO. 2012-GS-26-02679

C The State of South Carolina

County of Horry

Scott A. Graustein

12H01428

COURT OF GENERAL SESSIONS

JULY, 2012 TERM

ARREST WARRANT NUMBER

M972065

CDR: 0116 16-03-0010, 0020

DOA: 3/31/2012

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JUL 26 2012

VERDICT

Foreperson of Petit Jury
Date:

THE STATE

vs.

Vivian Lynn Schrader Falls
W/F
341 Vesta Dr
Myrtle Beach, SC 29579-7412
DOB: 1962-07-17
SSN: 255214544

ATTORNEY: Fox, J. Eric

Indictment for
MURDER

J. Gregory Hembree, Solicitor

ORIGINAL

2014 JUL 23 PM 4:07

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on JULY 26, 2012, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Vivian Lynn Schrader Falls did in Horry County, on or about March 31, 2012, willfully, feloniously, and intentionally kill the victim, Tony Hughes, with malice aforethought, either express or implied, by means of SHOOTING HIM SEVERAL TIMES WITH A HANDGUN, and the victim did die as a proximate result thereof on or about MARCH 31, 2012 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1978, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HAMBREE
FIFTEENTH CIRCUIT SOLICITOR

2014 JUL 23 PM 4:07

8

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) INDICTMENT NO.: 2012-GS-26-02679

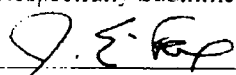
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State of South Carolina)
)
vs.) MOTION TO RECONSIDER
)
Vivian Lynn Schrader-Falls.)
)
Defendant.)

Defendant Vivian Lynn Schrader-Falls, by and through her attorneys, J. Eric Fox and Kia Wilson, hereby moves to have the Honorable Steven H. John reconsider his decision of May 8, 2014 whereby he denied Defendant's motion to grant early parole eligibility pursuant to S.C. Code of Laws Section 16-25-90.

Defendant intends to base her Motion upon evidence and testimony to be presented at a hearing on said Motion.

Respectfully Submitted,



J. Eric Fox
Kia Wilson
Attorneys for Defendant
15th Circuit Public Defender's Office
203 Laurel Street
Conway, South Carolina 29526
(843) 915-5385

May 9, 2014
Conway, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Stephen H. John, Circuit Court Judge

Case No.: 2012-GS26-02679
Appellate Case No.: 2014-001679

The State,

Respondent,

v.

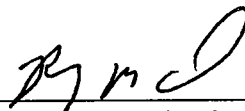
Vivian Schrader-Falls,

Appellant.

CERTIFICATE OF COUNSEL

As required by Rule 210 SCACR, the undersigned certifies that this Record on Appeal contains all material relevant to the question before this Court and not any other material.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Beth B. Richardson
SC Bar # 69552
Benjamin R. Gooding
SC Bar # 100620
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
Tel No.: (803) 929-1400

Robert M. Dudek
S.C. Commission on Indigent Defense
rdudek@sccid.sc.gov
1330 Lady Street, Suite 401
Office Box 11286
Columbia, South Carolina 29201
Tel No.: (803) 734-1330

*Attorneys for Appellant,
Vivian Schrader-Falls*

Columbia, South Carolina
September 11, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Stephen H. John, Circuit Court Judge

Case No.: 2012-GS26-02679
Appellate Case No.: 2014-001679

The State,

Respondent,

v.

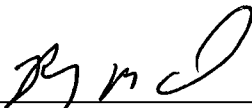
Vivian Schrader-Falls,

Appellant.

CERTIFICATE OF COUNSEL

As required by Rule 210 SCACR, the undersigned certifies that this Record on Appeal contains all material relevant to the question before this Court and not any other material.

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*Attorneys for Appellant,
Vivian Schrader-Falls*

Columbia, South Carolina
September 11, 2015