

2012-212978
ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

Appeal From Greenwood County
Frank R. Addy, Circuit Court Judge

RECEIVED

SEP 21 2012

S.C. Supreme Court

THE STATE,

Petitioner,

vs.

ALONZO CRAIG HAWES,

Respondent.

APPENDIX

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The circuit court in this case did consider the mutual nature of the violence. The court specifically stated "that the statute makes no allowance or exception for cross-warrant situations in which both husband and wife are charged and convicted out of the same incident." Nevertheless, the court proceeded to "find it proper for the court to consider such circumstances in weighing the evidence presented." The court found Hawes and his wife's 1996 CDV convictions involved "a cross-warrant incident," "that there were times when both parties were primarily responsible for instigating the arguments," and "this is a close case . . . [c]ertainly, [Hawes] was also responsible for several instances of domestic violence against his wife." After weighing this evidence that the State asserts the circuit court should consider, the court found Hawes proved a history of CDV suffered at the hands of his wife by a preponderance of the evidence. We find evidence to support the circuit court's decision and no error of law.

VI. Conclusion

We find the circuit court acted within its discretion in granting early parole eligibility to Hawes pursuant to section 16-25-90.

AFFIRMED.

HUFF and SHORT, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2011-189167

The State,

Appellant,

v.

Alonzo Hawes,

Respondent.

PETITION FOR REHEARING

On July 18, 2012, this Court affirmed the trial court's decision that Respondent was entitled to parole consideration under section 16-25-90 of the South Carolina Code. The Court misapprehended or overlooked the arguments by the State and the holdings of the trial court. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the trial court erred in applying relying on an incorrect legislative intent in defining the requirements for application of the statute and failed to properly use his discretion in determining whether to apply the statute under the facts and circumstances of this case, and reverse the trial court's decision to apply section 16-25-90.

Legislative Intent

This Court found no error on the part of the trial court in its determination of the definition of "history" as well as its consideration of the legislative intent of the statute. Specifically, this Court

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Alonzo Craig Hawes, Respondent.

Appellate Case No. 2011-189167

Appeal From Greenwood County
Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 5001
Heard June 4, 2012 – Filed July 18, 2012

AFFIRMED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General William M. Blich, Jr., all of Columbia,
for Appellant.

Public Defender Ernest Charles Grose, Jr., of
Greenwood, and Assistant Public Defender Donna
Katherine Anderson, of Laurens, for Respondent.

FEW, C.J.: Alonzo Craig Hawes pled guilty to voluntary manslaughter for the death of his wife. The State appeals the circuit court's decision to grant Hawes early parole eligibility under section 16-25-90 of the South Carolina Code (Supp. 2011). We affirm.

found: "In this case, however, defining the term is not necessary because we find the circuit court did precisely what the State contends it failed to do—it considered the legislative intent of section 16-25-90." The State asserts, however, that while the trial court said it considered the legislative intent, it utilized an incorrect legislative intent.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted).

While the trial court found he could consider the "number of prior instances" as well as "the relative severity of the various instances" the court failed to make this determination in light of the legislative history that the statute is to be applied as mitigation for a victim and not a primary aggressor or instigator. The trial court specifically held:

I also note that the Defendant in this case is not asserting the affirmative defense of Battered Spouse's Syndrome. See Section 17-23-170. I opine that the legislative intent behind Section 16-25-90 may well have been to permit some middle ground for those instances where there would be insufficient evidence of abuse to maintain a defense under 17-23-170, but where sufficient evidence of abuse may exist to mitigate somewhat the usual non-parole nature of a homicide sentence. Put differently, a defendant may possess sufficient evidence of a history of domestic violence to warrant mitigation of his incarceration by allowing him parole eligibility, but he may have insufficient evidence to affirmatively assert the defense of Battered Spouse's Syndrome. Section 16-25-90 would make allowances for such circumstances.

(R.5). The trial court's holding does not properly consider the legislative intent behind the statute. The clear legislative intent of section 16-25-90 is to provide mitigation of the sentence of someone who committed an offense against their household member after repeatedly suffering domestic violence at the hands of the victim. The statute is not intended to mitigate the sentence of an individual who was the primary instigator and primary aggressor in the arguments that led to domestic violence. The legislative intent of mitigating a sentence of someone who has suffered as the clear victim of domestic violence is frustrated by applying the same statute to someone who was the primary aggressor and instigator in a relationship involving at best mutual violence.

The State asserts if the legislative intent is applied, the fact Respondent was the primary aggressor and instigator of the domestic violence would negate application of section 16-25-90. The statute was never intended to reward someone who was at best a mutual combatant and at worst, the primary cause of the domestic difficulties. Further, consideration of the events leading up to the fatal shooting indicate Respondent should not be entitled to consideration for early parole when he fired a shot, resulting in a charge of AWIK against him, and then came back on a subsequent visit and ended an argument by shooting the victim multiple times after waiting for a child to move out of the way. The legislative intent is frustrated and the statute is abused by granting early parole eligibility to Respondent.

Abuse of Discretion

This Court misapprehended the circuit court's holding and erred in finding the circuit court did not abuse its discretion when it believed it was compelled to grant early parole to Respondent. Further, this Court found: "Additionally, we believe the State's insistence on arguing that the circuit court felt compelled to grant Hawes early parole eligibility is based upon the circuit court's incorrect citation to a prior version of section 16-25-90." The Court misapprehended the State's argument.

because there existed some documentary proof of this “mutually violent relationship” the court was compelled to find in Respondent’s favor. In effect, the court refused to exercise his discretion and refused to consider the clear legislative intent in making his decision. “The failure to exercise discretion, however, is itself an abuse of discretion.” State v. Mansfield, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) (citing *inter alia* State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)(“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”)). The circuit court’s finding, especially in light of his feeling “compelled” by the statute, is an error of law and an abuse of his discretion that this Court can and should correct.

Evidence of Respondent as Primary Instigator and Aggressor

This Court misapprehends or overlooks the State’s argument that section 16-25-90 should not apply to Respondent. This Court’s opinion states: “We agree that there was mutual violence between Hawes and his wife and that this evidence weighs against application of the section. However, that fact does not automatically preclude Hawes from obtaining relief under section 16-25-90.” The State asserts the fact Respondent was the primary aggressor, and the primary instigator, and the only testimony presented indicated this, he should be precluded from early parole eligibility under section 16-25-90.

This Court concludes: “After weighing this evidence that the State asserts the circuit court should consider, the court found Hawes proved a history of CDV suffered at the hands of his wife by a preponderance of the evidence.” The court only considered half of what the State submitted it should consider in making its determination. The State has maintained the evidence, when viewed in light of the fact the legislative intent is to mitigate the sentence of a victim and not a primary aggressor or instigator, does not and cannot support application of section 16-25-90.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the trial court failed to consider the correct legislative intent and abused its discretion in considering and applying section 16-25-90 to allow Respondent to be eligible for early parole consideration, and reverse the decision of the circuit court.

Respectfully submitted,

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August 2, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2011-189167

The State,

Appellant,

v.

Alonzo Hawes,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Ernest Charles Grose, Esquire
600 Monument Street, Suite 208
Greenwood, South Carolina 29648

I further certify that all parties required by Rule to be served have been served.
This 2nd day of August, 2012.



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The South Carolina Court of Appeals

The State, Appellant,

v.

Alonzo Hawes, Respondent.

Appellate Case No. 2011-189167

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ATTORNEY GENERAL'S OFFICE

ORDER DENYING PETITION FOR REHEARING

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

John Cannon, Jr. C.J.
Thomas E. Huff J.
Paul E. Short, Jr. J.

Columbia, South Carolina

cc:

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Alan Wilson

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Donna Katherine Anderson

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FILED

23 Aug 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

Appeal From Greenwood County
Frank R. Addy, Circuit Court Judge

THE STATE,

Petitioner,

vs.

ALONZO CRAIG HAWES,

Respondent.

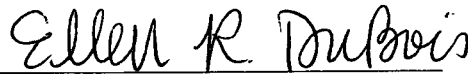
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Appendix on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record,

E. Charles Grose, Esquire
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I further certify that all parties required by Rule to be served have been served.

This 21st day of September, 2012.



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Frank R. Addy, Jr., Circuit Court Judge

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* State's Exhibit 4 and Court's Exhibit 1 have been filed separately with the court.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

THE COURT OF GENERAL SESSIONS
2007-GS-24-1129

State of South Carolina)
)
v.)
)
Alonzo Craig Hawes,)
Defendant)
_____)

ORDER REGARDING PAROLE
ELIGIBILITY

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
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THIS MATTER CAME BEFORE THE COURT on January 20, 2011. Defendant tendered a plea of guilty to the offense of Voluntary Manslaughter on January 6, 2011, in Abbeville County¹ and sentencing was deferred until January 20, 2011. On January 20, 2011, the Defendant received a sentence of twenty-two (22) years. The Defendant was represented by Charles Grose, Chief Public Defender. The State was represented by Andrew Hodges, Deputy Solicitor. At the sentencing hearing, Defendant presented testimony and maintained Section 16-25-90 should be applied so that the Defendant is eligible for parole after serving one-fourth (1/4) his sentence. Having reviewed the applicable law and considered the facts of this case, I find as follows:

1. Section 16-25-90 provides, in part, "[A]n inmate who was convicted of . . . an offense against a household member shall be eligible for parole after serving one-fourth of his prison terms when the inmate . . . presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member." The defendant has the burden of proving application of the statute by a preponderance of the evidence. State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (S.C. 2000). In determining whether Section 16-25-90 applies, "[A] sentencing judge is largely unlimited as to either the kind or the source of the information he may consider upon sentencing." State v. Blackwell-Selim, 385 S.C. 394, 684 S.E.2d 208 (Ct. App. 2009), *overruled on other grounds*, State v. Blackwell-Selim, Slip Op. No. 26948 (Mar. 21, 2011) (*citing* Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984)); State v. Cantrell, 250 S.C. 376, 379, 158 S.E.2d 189, 191 (1967) (stating that the circuit court exercises "a wide discretion in the sources and types of evidence" it considers in sentencing). "Use of the term 'credible evidence' indicates the legislature intended the

¹ The incident took place in Greenwood County, but the Defendant waived venue at the time of his plea on January 6, 2011.

defendant's evidence to be, in fact, trustworthy, not simply plausible. The defendant must persuade the judge [that the] evidence is reliable." State v. Blackwell-Selim, Slip Op. No. 26948 (Mar. 21, 2011). Additionally, use of the word "shall" in the statute notes mandatory, not precatory, language so that, if the court were to find a credible history of domestic violence suffered at the hands of the victim, the court is required to authorize application of the statute. Arthurs v. Aiken County, 338 S.C. 253, 525 S.E.2d 542 (Cl. App. 1999.); State v. Boggs, 388 S.C. 314, 696 S.E.2d 597 (Cl. App. 2010).

2. The following facts are undisputed. On April 4, 2007, the Defendant shot his estranged wife, Terry Anita Hawes, multiple times killing her. This incident was precipitated by the victim's refusal to permit the Defendant to take their children with him that evening. The Defendant and his wife had a tumultuous relationship at times, and during the later years of their marriage they argued frequently. In 1996 both the Defendant and his wife were convicted of Criminal Domestic Violence in a cross warrant situation. At the time of this offense, Defendant's wife had a pending indictment against her from an incident where the Defendant was allegedly struck and kicked by the victim. Although not convicted of this CDV at the time of her death, the fact the victim was indicted demonstrates the grand jury's finding of probable cause to believe she committed this offense.

3. The court had the benefit of testimony, both from expert and lay witnesses, on the issue of the argumentative nature of the Defendant's and victim's relationship, and the role of violence in their relationship. With the consent of the State, the court also listened to numerous audio recordings lasting several hours. These recordings contain messages left by the victim for the Defendants and surreptitious recordings of arguments between the victim and Defendant. At times what is said is hard to decipher, but the subject matter of the recordings and arguments relate to the Defendant's failure to answer the phone, threats to call law enforcement, and/or arguments about money and the children, and invectives concerning victim's and Defendant's dating others. At times, the victim also makes threatening, disparaging, and profane remarks about the Defendant and the Defendant's girlfriend and the fact that Defendant's girlfriend has contact with the couple's children. To describe the recordings as endemic of a deeply dysfunctional relationship is an understatement, and the court receives these recordings as

evidence of precisely that, the state of the couple's relationship. I do not accept the recordings as evidence of criminal domestic violence, as defined under Section 16-25-20 (A)(2) (Supp. 2003).²

4. I have considered the report and testimony of Dr. Schwartz-Watts which references a "documented history of mutual physical abuse." Dr. Brawley's report indicates that the Defendant's IQ is in the "extremely low/mentally retarded range," but this report does not discuss the specifics of prior episodes of domestic violence. I incorporate by reference the findings of Dr. Schwartz-Watts and Dr. Brawley. Dr. Schwartz-Watts further opined concerning Defendant's mental illness diagnosis and indicated that medication compliance had mitigated his post-incident depressive symptoms substantially. She did state that his depression was not as acute at the time of the incident.

5. All indications are that the Defendant had minimal involvement with law enforcement prior to the homicide. Before the incident, the Defendant held a regular job and operated his own business, and there were no indications of an appreciable lack of parenting skills on his part. After his arrest for the incident, the Defendant initially claimed the shooting was accidental, which indicates sufficient presence of mind to understand the wrongfulness of his conduct.³ Dr. Frierson's findings also contradict the testimony of Dr. Schwartz-Watts concerning Defendant's assertions of childhood physical and sexual abuse and PTSD. Per Dr. Frierson, Defendant did not report this to him, and the Doctor found that he functioned at a higher level than a mentally retarded individual. Dr. Frierson also noted that, at the time of the shooting, the Defendant did allow a small child to move out of the way prior to firing the fatal shots, thereby indicating Defendant's capacity to conform his conduct to the requirements of the law.

6. The State's witnesses included Brittany Roundtree, the victim's daughter and Defendant's step-daughter, who stated that both the Defendant and victim fought often, but she stated the Defendant was the primary instigator of the violence and/or primary instigator of the discord. I note the numerous individuals who spoke on the Defendant's behalf at sentencing.

² The voicemail recordings cannot be considered a violation of Section 16-25-20 (A)(2) because the threats or comments made on the recordings do not rise to the level of a threat to cause harm accompanied by "apparent present ability under circumstances reasonably creating fear or imminent peril."

³ Mr. Grose stipulated at the hearing that the Defendant was not claiming a lack of mental capacity as a defense, and Mr. Grose was satisfied with his ability to assist, despite some of the assertions in the reports of Dr. Schwartz-Watts and Dr. Brawley.

Uniformly, they informed the court that the Defendant was a hard worker and a good father. Interestingly, Stephen Geoly, the Defendant's former attorney who had been discharged by the Defendant, spoke on the Defendant's behalf and stated that he firmly believes that the Defendant "just snapped." Mr. Geoly also spoke to the Defendant's good reputation in the community prior to this incident.

7. Whether the Defendant is entitled to be eligible for early parole under Section 16-25-90 turns on the question of whether the Defendant has presented sufficient credible evidence of a history of being the victim of domestic violence at the hands of his wife. *Grooms, supra*. The Defendant bears the burden of proving a sufficient prior history of domestic violence victimization by the preponderance of the evidence. *Id.* Although a defendant has no burden of proof in a criminal trial, constitutional protections are not implicated by requiring a defendant to bear the burden of proof where mitigating factors may bear upon sentencing issues. *Id.*

8. I wish to note several curious aspects of Section 16-25-90.

(a) First, by using the word "shall" in the statute, the legislature obviously mandated that the statute to apply where a defendant has demonstrated, by the preponderance of the evidence, that he was the victim of a history of criminal domestic violence. Clearly, had the legislature intended for the statute to apply permissively, the verb "may" would have been used instead.

(b) Second, on its face the statute makes no temporal distinction between recent instances of domestic violence and more remote, distant occurrences. One might think these considerations would be proper, however, because couples who may face difficulties early on in their marriage often work through them; accordingly, more remote instances of domestic violence would, naturally, be less probative on the issue than more distant or stale incidents. Similarly, the statute requires no causal connection between the domestic violence and the circumstances prompting the defendant's commission of the underlying offense. *See c.f. Ky. Rev. Stat. Section 439.3401 (5); Com. v. Vincent*, 70 SW3d 422 (Ky., 2002) (discussing a similar Kentucky statute prohibiting application of the non-parole provisions to instances where there exists a relationship between the underlying offense and the domestic violence)⁴.

⁴ In *Vincent*, the Kentucky Supreme Court held that, by including the operative phrase "with regard" in the statute, the legislature manifested a clear intent that "a prior history of domestic violence between a violent crime victim and the criminal defendant who perpetrated the violent offense does not, in and of itself, make the defendant eligible for the parole exemption" *Vincent, supra* at 425.

Certainly, however, consideration of any causal nexus between a homicide and a pattern of domestic violence would be more probative on the issue of 16-25-90's application and would aid the court in the relative weighing of the relevant factual background. Such language does not appear in our statute, however.

(c) Third, in the same vein the statute is silent as to what constitutes "a history" of domestic violence, and the prior cases interpreting this statute do not touch upon this question. For purposes of the case before me, the court interprets reference to "a history" to connote not only consideration of the number of prior instances of domestic violence, but also the relative severity of the various instances. In this way, the court may properly weigh the relative egregiousness of the conduct. Put another way, more serious or violent instances of criminal domestic violence would be entitled to substantially more consideration, even though fewer in number, than less egregious, but more frequent, instances. Accordingly, Section 16-25-20 criminalizes two types of conduct: the first being the actual assault or injuring of a household member and the second being the attempt or threat to cause physical harm. For purposes of applying 16-25-90, I find that the first instance to be more relevant or probative than the second in determining whether the defendant has sufficiently established "a history" of domestic abuse.

(d) Finally, I note that the statute makes no allowance or exception for cross-warrant situations in which both husband and wife are charged and convicted out of the same incident. Again, however, I do find it proper for the court to consider such circumstances in weighing the evidence presented.

9. I also note that the Defendant in this case is not asserting the affirmative defense of Battered Spouse's Syndrome. See Section 17-23-170. I opine that the legislative intent behind Section 16-25-90 may well have been to permit some middle ground for those instances where there would be insufficient evidence of abuse to maintain a defense under 17-23-170, but where sufficient evidence of abuse may exist to mitigate somewhat the usual non-parole nature of a homicide sentence.⁵ Put differently, a defendant may possess sufficient evidence of a history of domestic violence to warrant mitigation of his incarceration by allowing him parole eligibility, but he may have insufficient evidence to affirmatively assert the defense of Battered Spouse's Syndrome. Section 16-25-90 would make allowances for such circumstances.

⁵ The court notes that the General Assembly passed the two sections of law as part of separate, but successive, subsections of the same act. See 1995 Act No. 7, Part I, Sections 14 and 15.

10. Turning to the issue at hand, I will discuss first the facts which weigh against application of the section and then address those facts which weigh in favor of 16-25-90's application, mindful that the Defendant carries the burden of proving application by the preponderance of the evidence.

(a) The following facts weigh against application of Section 16-25-90. I note that the testimony from Dr. Schwartz-Watts concerning prior abuse as a child was apparently obtained from the Defendant; in this sense, the testimony could be considered largely self-serving, as was the testimony with regard to the volatile nature of the relationship between the Defendant and victim. At least one witness maintained that the Defendant was the primary instigator of the arguments, but this witness' presumably closer relationship with the victim as opposed to the Defendant had the potential to affect her testimony. Although the victim was convicted in 1996 of CDV against Defendant, this was a cross-warrant incident in which both Defendant and victim were charged. Furthermore, the more recent incident involving indictment 06-GS-24-1354 did not result in the victim's conviction. Finally, viewing the evidence as a whole, and having reviewed the tapes provided by the Defendant, I find that there were times when both parties were primarily responsible for instigating the arguments; based on this and other evidence, it is reasonable to conclude that no one party was solely at fault for many of the marital difficulties this couple experienced. In short, the court could conclude that the Defendant has failed to establish a history of domestic violence sufficient to warrant application of the section.

(b) The following facts weigh in favor of Section 16-25-90's application. The 1996 incident did result in a conviction, so that incident was conclusively proven; the conviction's age, however, entitles it to less weight than more recent events. The 2006 incident referenced in indictment 06-GS-24-1354 involved the victim assaulting and kicking the Defendant. Although 06-GS-24-1354 was *nolle prosequed* after the victim's death, the Grand Jury did true bill the indictment, so a finding of probable cause was made.⁶ Dr. Schwartz-Watts' report also outlined other incidents of violence involving the victim allegedly pulling a knife on one occasion and

⁶ I note that the standard for demonstrating probable cause is almost identical to that for proof by the preponderance of the evidence.

actually stabbing the Defendant on another.⁷ Furthermore, indications are that the Defendant was a hard worker and acceptable father, and his prior criminal history was relatively minimal. Finally, as noted above, Dr. Schwartz-Watts did conclude, in her uncontradicted expert opinion, that at the time of the incident the Defendant was suffering from "PTSD, borderline intellectual functioning and severe partner relational problems" Therefore, his cognitive deficits and mental illnesses are also mitigating factors which are proper for the court's consideration on the question of how these cognitive deficits may have affected or contributed to the Defendant's perception of the conflict as well as his ability to manage that conflict.

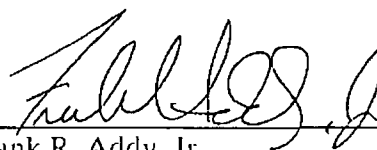
11. Viewing the record as a whole, I find that the Defendant has proven himself to be the recipient of a history of domestic violence by his wife, and he has met his burden of proof by the preponderance of credible evidence. Therefore, he is entitled to the parole eligibility provisions of Section 16-25-90.

12. In making this finding, the court wishes to note that this is a close case, and reasonable minds could certainly disagree with the court's finding. Additionally, in making this ruling the court in no way places any blame or reprobation upon the victim for the events leading to her tragic, violent death. Certainly, the Defendant was also responsible for several instances of domestic violence against his wife, and all indications are that the victim was an exceptional and loving parent and daughter, wholly undeserving of the violence which took her life. The Defendant has been sentenced to appropriate and substantial prison time for this horrible crime. This court is called upon to make a ruling based solely on the evidence and the applicable law. That the victim and defendant argued and fought is not, in and of itself, sufficient to warrant application of the section. Coupled, however, with the documented convictions for CDV and the other competent evidence of a mutually violent relationship, and despite (or perhaps because of) the statute's peculiarities as explained in paragraph 8, this court is compelled to find that the Defendant has met his burden.

⁷ To quote from her report: "The defendant and the victim had a documented history of mutual physical abuse. On 7/14/06, the defendant reported to the police that the victim had pulled his arm and kicked him: She denied assaulting him. A witness confirmed that she had thrown a basket at the defendant and told the child to lie. She was arrested for CDV 2nd. On 7/30/06, the defendant entered the victim's house and fired a shot. On 11/3/2006, Mr. Hawes notified the police that the victim had pulled a knife on him. When the police investigated, the defendant was not at home and his wife denied the allegations. Mr. Hawes reports that on 1/29/07, the victim stabbed him. Records from Self Memorial Hospital indicate he was treated for a puncture wound to the left hand with a knife. He states he told hospital personal [sic] it was a dirt bike accident but that the victim had cut him with a butcher knife."

WHEREFORE, it is ordered that the South Carolina Department of Corrections shall consider the Defendant parole eligible pursuant to the provisions of Section 16-25-90.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Resident Judge, 8th Judicial Circuit

March 23, 2011
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD

2007-GS-24-1129

2007-GS-24-1130

STATE OF SOUTH CAROLINA,

-vs-

ALONZO CRAIG HAWES,

Defendant.

January 6, 2011

B E F O R E:

HONORABLE FRANK R. ADDY, JR.

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

ANDREW M. HODGES, Esquire
Attorney for the State

E. CHARLES GROSE, JR., Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 10:05 a.m.).

3 THE COURT: All right, Solicitor.

4 MR. HODGES: Your Honor, standing before you
5 is Alonzo Craig Hawes. This is a Greenwood County
6 matter, Mr. Hawes is waiving venue and entering
7 pleas of guilty on two indictments. Those
8 indictments are 2007-GS-24-1129, where he was
9 originally indicted for the offense of murder, he
10 is pleading to the lesser included offense of
11 voluntary manslaughter, it carries up to thirty
12 years.

13 The other indictment is 2007-GS-24-1130. Mr.
14 Hawes is entering a plea of guilty to possession of
15 a firearm during the commission of a violent crime.
16 That carries an additional five years.

17 There are no negotiations or recommendations
18 with regard to sentence. However, the State is
19 dismissing indictment 2006-GS-24-1478. Mr. Hawes
20 is represented by Charles Grose of the Greenwood
21 Bar.

22 MR. GROSE: And we do waive venue to do the
23 plea here today but sentencing is going to be
24 deferred until when we're in General Sessions in
25 Greenwood.

1 THE COURT: Okay.

2 MR. GROSE: We're going to be bringing some
3 mitigation witnesses and stuff like that. This was
4 a case that could have been tried later this month
5 and so we wanted to make certain that it is cleared
6 off the deck, that way we know what we're doing,
7 but we will still have a sentencing proceeding
8 later.

9 THE COURT: All right.

10 MR. HODGES: There are several family members
11 present here in the courtroom today and I explained
12 to them they would have an opportunity to address
13 the Court during that sentencing proceeding.

14 THE COURT: All right, very good. In other
15 words, we're just going to take the plea today and
16 defer sentencing. Do we know when we're going to
17 do it in Greenwood?

18 MR. HODGES: I assume Mr. Grose will have to
19 coordinate with some of his witnesses and he and I
20 will compare schedules.

21 MR. GROSE: I have already begun that
22 process. Once we get through with this I will talk
23 with Mr. Hodges this morning about it, I think
24 we're looking at the first week of the two weeks of
25 the term for witness availability, so sooner rather

1 than later.

2 THE COURT: All right. Mr. Grose, you are,
3 then, representing Alonzo Craig Hawes, is that
4 correct?

5 MR. GROSE: It is, Your Honor.

6 THE COURT: All right. I'm informed by the
7 Solicitor he desires to plead guilty to the offense
8 of voluntary manslaughter and possession of a
9 firearm during commission of a violent crime. Is
10 that your understanding?

11 MR. GROSE: It is, Your Honor.

12 THE COURT: Have you explained to Mr. Hawes
13 that the voluntary manslaughter carries thirty
14 years, the firearm charge carries up to five years,
15 obviously the voluntary manslaughter charge is an
16 85 percent crime, meaning you would have to serve
17 85 percent of whatever I sentence you to.

18 Have you explained that to him?

19 MR. GROSE: As well as the fact the handgun
20 charge is a day for day charge.

21 THE COURT: Very good. I assume you have
22 reviewed with him all his constitutional rights,
23 including his right to a jury trial?

24 MR. GROSE: I have, and probably more
25 importantly he's been through a competency

1 evaluation by both the Department of Mental Health,
2 the Department of Disabilities and Special Needs
3 and our independent expert, and through all of that
4 we have had lots of discussions with people about,
5 you know, what his rights are, and you will hear
6 more about that, about his mental health at the
7 sentencing.

8 THE COURT: Okay.

9 MR. GROSE: But he is competent and I believe
10 he understands his rights.

11 THE COURT: Very good. Do you agree with Mr.
12 Hawes' decision to tender a plea of guilty on these
13 two charges?

14 MR. GROSE: I do, Your Honor.

15 THE COURT: And from your investigation of
16 the facts and circumstances surrounding this
17 incident do you believe the State could produce
18 sufficient credible evidence to prove Mr. Hawes'
19 guilt to a jury beyond a reasonable doubt if he
20 were to proceed to trial and conviction would be
21 probable?

22 MR. GROSE: I do. I should probably add
23 that, you know, at trial we would have been seeking
24 probably guilty but mentally ill to voluntary
25 manslaughter, so with that caveat, I do think they

1 would be able to convict him but it might be a
2 guilty but mentally ill verdict if it were a jury
3 trial.

4 THE COURT: I understand. Now, you had
5 raised the issue concerning either McNaughton or
6 capacity to assist. Have those records been made a
7 part of the court records in Greenwood, court file
8 in Greenwood, or do you know?

9 MR. GROSE: They have not but there will be,
10 there will be discussion about that at the
11 sentencing hearing.

12 THE COURT: All right. I want to be
13 satisfied that I can take the plea today, that
14 there are no concerns, there is no issue that needs
15 to be raised or needs to be made a part of the
16 record at this point in time just for purposes of
17 accepting his plea.

18 MR. GROSE: For purposes of accepting his
19 plea there is no issue and even with, you know,
20 some of the competency evaluations I felt some of
21 it was necessary by the statute after the process
22 had gotten started. I think all the doctors,
23 including our doctor, agree he is competent.

24 THE COURT: All right, very good.

25 Mr. Hawes, if you would, raise your right

1 hand, please, sir, the best you can.

2 ALONZO CRAIG HAWES,

3 after being first duly sworn, stated as follows:

4 THE COURT: Sir, are you Alonzo Craig Hawes?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Hawes, how old are you, sir?

7 THE DEFENDANT: 38.

8 THE COURT: 38? How far did you go in
9 school?

10 THE DEFENDANT: I completed the 10th grade,
11 passed to the 11th.

12 THE COURT: What kind of work have you done
13 in the past, sir?

14 THE DEFENDANT: Manufacturing.

15 THE COURT: Are you married or single or any
16 kids?

17 THE DEFENDANT: I were married, I have four
18 children.

19 THE COURT: Four children?

20 THE DEFENDANT: Yes.

21 THE COURT: Are they grown?

22 THE DEFENDANT: The oldest one.

23 THE COURT: Would you repeat that last
24 answer, Mr. Hawes, about your --

25 THE DEFENDANT: My oldest one is my

1 stepdaughter, she's grown.

2 THE COURT: Make sure that microphone is on.

3 THE COURT: Make sure that microphone is on.

4 MR. GROSE: It is on.

5 THE COURT: Mr. Hawes, within the last 24
6 hours have you taken any medication, drugs or
7 alcohol that affect your ability to understand
8 what's taking place here today?

9 THE DEFENDANT: I don't think so but I have
10 to take, I take medication daily.

11 THE COURT: What kind of medicine do you
12 take?

13 THE DEFENDANT: High blood pressure and
14 depression, sinus medicine, some more medicine for
15 heartburn.

16 THE COURT: All right. The medicine you take
17 for depression and for your other ailments, does it
18 affect your ability to understand what is going on
19 right now? Do you understand where you are and
20 what's happening?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Tell me where you are and what is
23 going on right now, if you could.

24 THE DEFENDANT: I'm in the Abbeville
25 courthouse standing before the judge.

1 THE COURT: Okay. And you're engaged in a
2 guilty plea right now. What does that mean, to
3 plead guilty to something?

4 THE DEFENDANT: That I messed up and pleading
5 guilty.

6 THE COURT: And the gentleman standing right
7 next to you, who is that and what is his job?

8 THE DEFENDANT: My attorney Charles Grose.

9 THE COURT: And what is he trying to do for
10 you?

11 THE DEFENDANT: Keeping me out of the
12 penitentiary.

13 THE COURT: The gentleman in the glasses, I
14 don't know you have met him previously, perhaps you
15 have, but he's the Solicitor or prosecutor. Do you
16 know what the prosecutor does?

17 THE DEFENDANT: Yes. He is against me. I
18 don't know what all he does, you know, but he's
19 against me.

20 THE COURT: Yes. I'm the judge. Do you know
21 what my role would be in all this?

22 THE DEFENDANT: (No response).

23 THE COURT: Just as best you can in your own
24 words.

25 THE DEFENDANT: I can't remember.

1 MR. GROSE: He's a little nervous.

2 THE COURT: I understand.

3 MR. GROSE: Do you understand what decision
4 he's going to have to make in a couple weeks in
5 Greenwood?

6 THE DEFENDANT: Decision between if I'm
7 guilty or --

8 MR. GROSE: He is making that decision today,
9 you're making that decision by pleading guilty but
10 as far as, you understand what he's going to do as
11 far as how much time, he's the one who decides how
12 much time you're going to get sentenced for all
13 this?

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: Do you understand that, Mr.
16 Hawes?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And I understand that you're
19 nervous. I want to be sure that the medicine
20 you're taking isn't affecting your ability to
21 understand what is happening right now, okay? I
22 understand that medicine affects people
23 differently. I just want to make sure you
24 understand what is going on right now, that you're
25 doing this with a relatively clear head. Do you

1 understand that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: How does the medication affect
4 you, that you are taking, Mr. Hawes?

5 THE DEFENDANT: I don't know how it affects
6 me.

7 THE COURT: Does it make you feel intoxicated
8 or drunk or anything, or do you feel like you're
9 understanding what's happening here and you're
10 fairly lucid and clear as to what's going on?

11 THE DEFENDANT: Yes, sir, I feel like I'm
12 understanding.

13 THE COURT: Okay, very good. Now, Mr. Hawes,
14 Mr. Grose alluded to mental health problems or some
15 physical problems that you might be having. You
16 had mentioned you have high blood pressure, I
17 believe, and he had mentioned that you had seen
18 some psychiatrist for some mental health issues?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I think we have gone over that
21 you understand what is taking place here today. Do
22 you understand that today my role is to simply
23 accept or refuse to accept your guilty plea, those
24 are the options you have today. Do you understand
25 that, Mr. Hawes?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand, do you feel
3 like you have a good understanding of what is going
4 on here today?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Hawes, obviously we are in
7 Abbeville County today and these charges originally
8 arose in Greenwood County. Are you okay to go
9 forward with your plea today in Abbeville even
10 though you have the right to have it heard in
11 Greenwood?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Hawes, you were indicted for
14 the offense of murder and possession of a firearm
15 during the commission of a violent crime. Do you
16 understand, Mr. Hawes, that you're tendering a plea
17 of guilty to voluntary manslaughter? Voluntary
18 manslaughter, Mr. Hawes, is a violent and most
19 serious offense. It carries, carries a potential
20 sentence of up to thirty years in prison. Do you
21 understand that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Additionally, because of the way
24 it's classified under our law, you would have to
25 serve 85 percent of whatever I sentence you to. Do

1 you understand that, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So, if I sentenced you to ten
4 years you would have to serve at least 8.5 years.
5 If I sentenced you to twenty years you would serve
6 seventeen years at least. Do you understand that,
7 sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The possession of firearm during
10 commission of a violent crime, that carries up to
11 five years. Do you understand that, Mr. Hawes?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Hawes, are you in fact guilty
14 of voluntary manslaughter and possession of a
15 firearm during commission of a violent crime?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is it your desire to tender a
18 plea of guilty to those two charges?

19 THE DEFENDANT: Say that again.

20 THE COURT: Is it your desire to plead guilty
21 to those two charges, then?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Solicitor, give me the facts,
24 please.

25 MR. HODGES: Your Honor, this offense

1 occurred on April 4th of 2007 at 241 Epting Avenue
2 in the city of Greenwood. That was a residence of
3 Terry Hawes, the victim in the case. Miss Hawes
4 was in a relationship with the defendant. They
5 have a number of children together. They were
6 estranged at the time of this incident, were living
7 apart.

8 The afternoon of April the 4th Mr. Hawes came
9 to her residence at 241 Epting Avenue and his
10 desire was to take the children that were at the
11 residence, take them with him to the country to a
12 family member's residence. She did not want the
13 kids to go with him and an altercation ensued
14 between the two of them. During that altercation
15 she called 911 complaining he was trying to take
16 the kids and she didn't want that to happen. So
17 law enforcement was responding to the scene, to
18 this domestic disturbance. In the meantime the
19 victim Miss Hawes and several of the children and
20 Mr. Hawes were all in a bedroom at that residence.
21 Mr. Hawes produced a firearm from his waistband,
22 according to the statement of the children who were
23 also in the room he produced a firearm from his
24 waistband and fired a number of shots at Miss
25 Hawes.

1 In speaking with the pathologist, it was
2 difficult to tell exactly how many shots because it
3 appeared that a number of them may have traveled
4 through her arm and then into her body, so there
5 were multiple entry and exit wounds. But she was
6 shot quite a number of times, which the pathologist
7 indicated was an over-kill type situation that
8 would be consistent with someone who had a lot of
9 emotion towards the victim, which would be
10 consistent with Mr. Hawes as the shooter in this
11 incident.

12 He then fled the residence, the children ran
13 out into the street and flagged down a passing
14 motorist. The first statement they gave to the
15 passing motorist was that, "Our daddy just shot our
16 mommy." Law enforcement was arriving
17 contemporaneously because of the domestic
18 disturbance call and found Miss Hawes inside the
19 residence. She was deceased.

20 A witness located a firearm in the ditch by
21 their mailbox on West Alexander Avenue and notified
22 law enforcement that a firearm was recovered a
23 short distance down the road from Epting Avenue.
24 That firearm was recovered, ballistics was
25 completed and it did match up with the evidence

1 collected from the crime scene.

2 Mr. Hawes drove his vehicle to another
3 residence where he left it and then walked up to
4 City Hall on foot and turned himself in to law
5 enforcement at that time.

6 THE COURT: At this point, Mr. Hodges, I
7 don't see any need to talk about any prior record
8 Mr. Hawes may or may not have, If we could address
9 that later.

10 MR. HODGES: Certainly.

11 THE COURT: Mr. Hawes, you heard what the
12 State alleges happened back on April the 4th of
13 2007 on Epting Avenue. You heard what they allege
14 you did to Miss Hawes, Terry Hawes.

15 Is that what happened, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Hawes, I need to review with
18 you certain rights that you have, that any citizen
19 has anytime they're charged with a crime, okay?
20 The reason I need to go over these rights with you
21 is so that I can be sure you understand the rights
22 you're giving up today by pleading guilty, okay?
23 Do you understand that, sir?

24 THE DEFENDANT: Uh-huh (Affirmative).

25 THE COURT: I need you to answer outloud,

1 sir.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If at anytime, Mr. Hawes, you
4 have any questions about anything I have asked you
5 feel free to ask Mr. Grose. If Mr. Grose can't
6 explain it to you, you can ask me about it, about
7 whatever you have confusion on, okay, sir?

8 THE DEFENDANT: Uh-huh (Affirmative).

9 THE COURT: First of all do you understand,
10 Mr. Hawes, by pleading guilty you will be waiving
11 your right to a jury trial?

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: In that jury trial you and Mr.
15 Grose would normally select twelve people from
16 Greenwood County, they would be the jury. The
17 State would have to bring in all the witnesses they
18 have against you on this particular case.

19 Do you understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You would be able to confront and
22 cross-examine all those witnesses. That means you
23 would be able to ask them any question that's
24 relevant to any issue involved in this particular
25 case.

1 Do you understand that, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If you plead guilty, though, you
4 won't get a jury trial, meaning the State won't
5 have to bring those witnesses in. Do you
6 understand also that in a jury trial I would
7 instruct that jury that you're presumed innocent of
8 any wrongdoing whatsoever. As it stands right now,
9 Mr. Hawes, in the eyes of the law you're still
10 presumed innocent of this crime.

11 Do you understand that, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You're presumed innocent right
14 now because I haven't accepted your guilty plea and
15 a jury has not convicted you at trial for this
16 offense.

17 Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Therefore in the eyes of the law
20 you're an innocent man and I would explain that to
21 the jury and I would instruct the jury accordingly
22 that you are presumed innocent. I would also
23 instruct the jury that the State has the burden of
24 proving your guilt beyond a reasonable doubt. That
25 burden would stay with the State throughout the

1 entire trial. You would have no burden of proof
2 whatsoever. The State would always have the burden
3 of proof, the burden of proving your guilt beyond a
4 reasonable doubt.

5 Do you understand that right, Mr. Hawes?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you plead guilty, though, you
8 waive your presumption of innocence. You also
9 waive your right to hold the State to its burden of
10 proving your guilt beyond a reasonable doubt. You
11 would have no burden of proof in a criminal trial,
12 Mr. Hawes. If you wanted to, however, you could
13 certainly call any witnesses that you might want to
14 call, who could testify for you.

15 Do you understand that, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If these witnesses were hesitant
18 to come into court to testify for you, you could
19 use the subpoena power of the Court to force those
20 witnesses to come in.

21 Do you understand that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Additionally, Mr. Hawes, you
24 would have no obligation to take the witness stand
25 in any way. The State could not call you to

1 testify in your trial, Mr. Grose could not force
2 you to testify in your trial. If you wanted to
3 testify certainly you would be able to testify, you
4 would be free to do so but you would be subject to
5 the same rules of cross-examination as any other
6 witness.

7 Do you understand that, Mr. Hawes?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: However, if you didn't want to,
10 didn't want to testify, Mr. Hawes, I would instruct
11 the jury they couldn't use your failure to testify
12 as evidence of guilt. That's your Fifth Amendment
13 right against self incrimination.

14 Do you understand that, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: So in a jury trial if you wanted
17 to tell your side of the story you would be free to
18 do so. But if you didn't want to testify, and
19 nobody can make you testify at any trial where
20 you're a criminal defendant, if you didn't want to
21 testify I would instruct the jury they couldn't use
22 your failure to testify as evidence of guilt.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: When you plead guilty, though,

1 Mr. Hawes, you waive this Fifth Amendment right in
2 that you admit to me the truth of the allegations
3 against you.

4 Do you understand that, Mr. Hawes?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Additionally, Mr. Hawes, in a
7 trial you could present any defenses that you may
8 have to these charges. Mr. Grose alluded to a
9 possible defense of insanity, or possible defense,
10 I know you talked about not guilty, or guilty but
11 mentally ill.

12 MR. GROSE: It would not be, the experts,
13 including our expert, have ruled out insanity, so
14 it would just be potentially guilty but mentally
15 ill which has some legal but not so much practical
16 significance.

17 THE COURT: Of course. I understand you 100
18 percent, Mr. Grose.

19 Mr. Hawes, you understand that in a jury
20 trial you could present any defenses you might have
21 to this charge. A defense to any homicide could
22 be, "I was acting in self defense."

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Or it was justified on some other

1 ground.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If you plead guilty, though, you
5 waive your right to present any defense to this
6 particular charge.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Additionally, Mr. Hawes, I don't
10 know, I presume because you turned yourself in, I
11 presume that you have cooperated and gave
12 statements to law enforcement at some point in
13 time. Maybe you did or maybe you didn't.

14 He did not?

15 MR. HODGES: No, sir.

16 THE COURT: You understand, Mr. Hawes, if you
17 plead guilty you waive your right to challenge any
18 evidence the State collected in this particular
19 case. Do you understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Hawes, are you quite certain
22 that you want to waive all these important rights
23 and plead guilty?

24 THE DEFENDANT: Could I speak with my lawyer?

25 THE COURT: Certainly, please.

1 (Brief pause).

2 MR. GROSE: What we're talking about, Your
3 Honor, you know, he is saying that it didn't happen
4 exactly the way the state laid it out and I think
5 that the basic facts are correct, and one of the
6 things that I have learned over the years is that,
7 you know, a lot of clients want to be able to tell
8 their side of the story and sometimes their side of
9 the story is different than the State's but still
10 has them guilty of the charge, and I think that
11 that is the case here.

12 THE DEFENDANT: Yes, sir.

13 MR. GROSE: And not in contesting the
14 charges, but in the matter of mitigation he will be
15 telling his side of the story when we're in front
16 of you for sentencing so that you can hear, I think
17 you know from what Mr. Hodges presented that there
18 was an altercation which would be provocation and
19 the over-kill from the pathologist and the heat of
20 passion, that sort of thing, we're going to be
21 talking a little bit more about that and I think
22 that is what his hesitation is.

23 THE COURT: He doesn't want me to have the
24 impression that it was entirely one sided and
25 agrees 100 percent to the factual representation.

1 Is that correct, Mr. Hawes?

2 THE DEFENDANT: Yes, sir.

3 MR. GROSE: And it is probably my fault a
4 little bit, too, that I haven't really discussed
5 with him, you know, there are, sort of the
6 difference in the procedure, that all we're
7 interested in right now is the factual basis and
8 then when we get to the next proceeding, then
9 you're going to be interested in more the scope of
10 it, the scope of it changes and so I take
11 responsibility for that.

12 THE COURT: That's all right.

13 Mr. Hawes, the law defines voluntary
14 manslaughter as the killing of another human being
15 in sudden heat of passion with insufficient legal
16 provocation.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Even though you may take issue
19 with certain facts placed on the record a moment
20 ago, would you agree that definition of voluntary
21 manslaughter meets what you did?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Hawes, I think the question
24 we left off on, I had reviewed with you all your
25 rights under the laws of this state and guaranteed

1 to you under the Constitution. Are you quite
2 certain you want to waive all these rights and
3 plead guilty, Mr. Hawes?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Grose, the plea negotiations
6 in the case, thirty years potential sentence, I can
7 give him anywhere from zero to thirty, is that your
8 understanding?

9 MR. HODGES: Yes, sir. It's straight up.

10 THE COURT: Straight up, very good. Do you
11 understand that, Mr. Hawes?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Grose, are you satisfied with
14 the State's discovery response?

15 MR. GROSE: Well, except for the fact they
16 lost the photographs, but other than that, yes.

17 THE COURT: Okay. The fact the State lost
18 the photographs, you don't feel that is so crucial
19 as to warrant --

20 MR. GROSE: I would tell you that I have
21 consulted with a crime scene expert and we have
22 been able to work through it without the aid of
23 those photographs.

24 THE COURT: So you're comfortable going
25 forward despite the fact those photographs are

1 missing?

2 MR. GROSE: Yes, sir.

3 THE COURT: And I'm sure that you have
4 explained the options that Mr. Hawes would have
5 from a legal standpoint in light of those missing
6 photographs?

7 MR. GROSE: We have discussed that. I don't
8 think this would rise to the level of something
9 that would be dismissed because I think, we would
10 have used those photographs but we were able to
11 accomplish the same same things without them.

12 THE COURT: Okay. The discovery you were
13 provided with, Mr. Grose, you have shared that with
14 Mr. Hawes to the extent he wanted or needed to see
15 it?

16 MR. GROSE: Yes, sir.

17 THE COURT: Very good. Mr. Hawes, are you
18 satisfied with the way Mr. Grose has represented
19 you on these charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has he done everything you wanted
22 him to do?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And have you met with Mr. Grose
25 as often as you wanted to and spoken to him for as

1 long as you needed to to prepare a defense for you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you need any more time to talk
4 to Mr. Grose?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you understood all your
7 conversations with him?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So you're totally satisfied with
10 his work for you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Hawes, has anyone promised
13 you anything or held out any hope of reward to get
14 you to plead guilty to these charges?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has anyone tried to threaten you
17 or force you in any way to get you to plead guilty
18 here today?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Are you quite
21 certain?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right.

24 MR. GROSE: And I can tell you that he feels
25 the stress and the anxiety that anybody going

1 through this would, probably a little bit more
2 because of some of his medical condition which
3 we'll talk about a little bit at sentencing but I
4 don't think there has been any inappropriate or
5 undue pressure, which is what I think you're trying
6 to get at.

7 THE COURT: All right. Mr. Hawes, I
8 understand that this is an extremely stressful time
9 for you and you are under a great deal of anxiety
10 because of what is taking place right now.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anyone inappropriately tried
13 to force you or threatened you or coerced you in
14 any way to get you to go forward with this plea
15 today?

16 THE DEFENDANT: No, sir.

17 THE COURT: They have not?

18 THE DEFENDANT: No.

19 THE COURT: That is what I was getting at.

20 THE DEFENDANT: Me and my lawyer feel like
21 this is in my best interest for me.

22 THE COURT: Very good. Mr. Hawes, do you
23 have any complaints to make against the Solicitor's
24 office, law enforcement, any court officials,
25 anyone involved in the prosecution of this case?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you had enough time to make
3 up your mind on how you want to proceed with these
4 charges?

5 THE DEFENDANT: I don't understand what
6 you're saying.

7 MR. GROSE: Have you had enough time to
8 consider your decision?

9 THE DEFENDANT: Oh, yes, sir.

10 THE COURT: Do you need any more time to
11 think about this before you proceed?

12 THE DEFENDANT: No, sir.

13 THE COURT: Mr. Hawes, are you pleading
14 guilty of your own free will, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you pleading guilty because
17 you are guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you understood all my
20 questions?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is there anything that you need
23 to ask me about anything we have gone over?

24 THE DEFENDANT: No, sir.

25 THE COURT: And have you been truthful to me

1 in all your response to my questions?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anyone suggested to you how
4 you should answer my questions?

5 THE DEFENDANT: No, sir.

6 THE COURT: And are you quite certain, again,
7 Mr. Hawes, you want to waive all these right and
8 all the rights I have reviewed with you and plead
9 guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I find that there is a
12 substantial factual basis for the plea, it is
13 freely, voluntarily, knowingly, intelligently made,
14 Mr. Hawes is fully satisfied with the services of
15 Mr. Grose, so I will accept his plea.

16 Is there anything you want me to address
17 before we adjourn on this matter?

18 MR. HODGES: No, sir.

19 THE COURT: Mr. Grose?

20 MR. GROSE: I don't think so. I mean, I
21 think everything else we would have would be
22 appropriately addressed at the next phase.

23 THE COURT: All right, very good.

24 MR. HODGES: We'll prepare a schedule for
25 sentencing.

1 THE COURT: Mr. Hawes, I have accepted your
2 plea, okay? Where we stand now is at some later
3 point in time, Mr. Grose has probably already
4 explained to you we will reconvene, Mr. Hodges will
5 have an opportunity to allow the victim's family to
6 say what they want to say and Mr. Grose will have
7 witnesses on your behalf that will be able to
8 testify as to what he needs to tell me about it.
9 Okay?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: We'll be at ease until some later
12 point in time. I will note on the sentencing sheet
13 the the plea is accepted today and sentencing is
14 deferred.

15 MR. GROSE: Thank you, Your Honor.

16 THE COURT: Thank you.

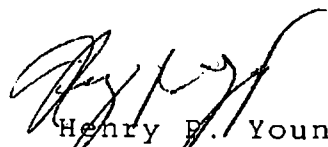
17 Good luck, Mr. Hawes.

18 (Hearing Concuded at 10:35 a.m.).
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3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Greenwood County,
11 South Carolina, on the 6th day of January, 2011.

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

14 June 7, 2011

15
16
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18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2007-GS-24-1129

COUNTY OF GREENWOOD

2007-GS-24-1130

STATE OF SOUTH CAROLINA,

-vs-

ALONZO CRAIG HAWES,

Defendant.

January 20, 2011

B E F O R E:

HONORABLE FRANK R. ADDY, JR.

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

ANDREW M. HODGES, Esquire
Attorney for the State

E. CHARLES GROSE, JR., Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

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I-N-D-E-X

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(Recorded conversations between the Defendant and the Victim were later ordered by the Court to be marked Court Exhibit Number 1).

1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 10:37 a.m.).

3 THE COURT: Mr. Grose, do you have your
4 client here?

5 MR. GROSE: He's in there.

6 THE COURT: Okay.

7 MR. HODGES: If it please the Court, Your
8 Honor?

9 THE COURT: Yes, sir.

10 MR. HODGES: This is the matter of State of
11 South Carolina versus Alonzo Craig Hawes. As the
12 Court may recall, Mr. Hawes entered a plea of
13 guilty in Abbeville County on January the 6th on
14 two indictments. Those are indictments
15 2007-GS-24-1129 and 1130. He entered pleas of
16 guilty to voluntary manslaughter and possession of
17 a firearm during the commission of a violent crime.

18 He is represented by Charles Grose of the
19 Greenwood Bar. We are here this morning for the
20 purpose of sentencing, that sentencing being in the
21 Court's discretion. The State, Your Honor, has a
22 number of family members and friends who would like
23 to address the Court at the appropriate time.
24 There are co-workers Cynthia White, Jametria
25 Harris, also Carol Hinrichs, family member Dorothy

1 Roundtree and potentially Pastor Crystal Bryant.
2 She is not present now but if she arrives on time
3 she wishes to address the Court. Our victim
4 advocate Angie Castillo has a letter from another
5 individual she would like to read to the Court.

6 I can present the defendant's prior record.
7 I have a number of documents I would like the Court
8 to consider. It is also my understanding, Your
9 Honor, the defense is going to present some
10 testimony from their expert, Dr. Donna
11 Schwartz-Watts, and you were notified as well as I
12 via email they were raising an issue with regard to
13 parole eligibility. I would ask with regard to
14 both the mental health issues and the domestic
15 violence that since the defense is kind of proving
16 those matters, that I be allowed to respond to them
17 if necessary, but the State is prepared at this
18 time to present criminal record and victim impact.

19 THE COURT: All right, very good.

20 MR. GROSE: Just as a matter, I don't know
21 what they mean by respond because largely the
22 domestic violence is a matter of public record and
23 there has been judicial findings. I think they are
24 estopped from arguing the indictment is not valid
25 and I don't see where that is really a

1 controversial issue. I don't have a problem with
2 them responding but I also don't want them taking
3 positions that they are legally not entitled to
4 take.

5 THE COURT: All right. I appreciate that,
6 Mr. Grose. The way I have been thinking this
7 through since I received your email of January
8 17th, and of course the record should reflect I
9 have been presented with indictments 07-GS-1129 and
10 1130 regarding Mr. Hawes, I have those before me,
11 and I recall the plea which took place in Abbeville
12 County on the voluntary manslaughter charge. The
13 way I was thinking of proceeding, gentlemen, is
14 obviously, Mr. Grose, you bear the burden of proof
15 on the domestic violence issue and obviously the
16 mental health issue that you wanted to bring to the
17 Court's attention, so I was going to allow you to
18 proceed first and take that evidence. Certainly
19 the State can present whatever they want in the way
20 of impact evidence at a later point in time. It is
21 a matter of course that we receive, it's a matter
22 of routine we would receive information concerning
23 Mr. Hawes' prior criminal history.

24 As far as the State being collaterally
25 estopped from denying the conviction for criminal

1 domestic violence, I would tend to agree, but at
2 the same time I feel it is proper if you go into
3 details perhaps that is going to open the door and
4 allow them to go into details but we'll see how
5 that plays out.

6 MR. GROSE: Well, let me, on that note I
7 would, and I think these are self authenticating, I
8 would go ahead and put into the record Defendant's
9 Exhibit 4 which is a conviction from municipal
10 court of Mrs. Hawes under the name Terry Roundtree,
11 and Defendant's Exhibit Number 5, which is an
12 indictment that was true billed by the grand jury,
13 so the conviction in Number 4 would be proof beyond
14 a reasonable doubt and the conviction, or the
15 indictment is proof that has already been found by
16 a finder of fact by preponderance of the evidence
17 or probable cause more likely than not, and I think
18 we are going to present more testimony but I think
19 that based on those alone we're entitled to the
20 parole eligibility as a matter of law because that
21 is two documented incidences with the burden of
22 proof of preponderance of the evidence or greater
23 having already been established by another fact
24 finder, and again judicial estoppel would apply to
25 the indictment because, I know they use stamps but,

1 you know, this is Mr. Peace's indictment and under
2 Rule 3.8 the Solicitor couldn't have proceeded as a
3 matter of law unless they believed there was
4 probable cause.

5 THE COURT: Mr. Hodges, any objection to
6 Defendant's 4 and 5 being introduced into evidence
7 at this point in time?

8 MR. HODGES: No objection to that, Your
9 Honor.

10 THE COURT: Very good, Exhibits 4 and 5 will
11 be in evidence.

12 (Municipal Court conviction marked and
13 received in evidence as Defendant's Exhibit
14 Number 4)

15 (Indictment marked and received in evidence
16 as Defendant's Exhibit Number 5).

17 Mr. Grose, call your first witness please,
18 sir.

19 MR. HODGES: I call Dr. Donna Schwartz-Watts.

20 THE COURT: Doctor.
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25

1 DR. DONNA SCHWARTZ-WATTS,
2 after being first duly sworn, testified as follows:

3 THE COURT: Doctor, if you will, state your
4 film name for the record, please.

5 THE WITNESS: Certainly. Donna Marie
6 Schwartz-Watts, S-c-h-w-a-r-t-z, hyphen, W-a-t-t-s.

7 THE COURT: Mr. Grose.

8 DIRECT EXAMINATION

9 BY MR. GROSE:

10 Q Where are you currently employed?

11 A Well, today I'm in the private practice of
12 forensic psychiatry.

13 Q Okay. What is your training and education to
14 be a forensic psychiatrist?

15 A I went to college at Furman University and
16 graduated from there in 1985 with a Bachelor of
17 Arts Degree in psychology. I finished medical
18 school in 1989 at the University of South Carolina
19 School of Medicine. I completed a residency in
20 general psychiatry in the Department of Mental
21 Health in 1993. I completed an additional year in
22 forensic psychiatry in mental health in 1994. I
23 worked at the Department of Mental Health from 1994
24 until 1997, then I went to the University of South
25 Carolina School of Medicine full time from 1997

1 until this past July, and then since then I have a
2 position, I work at Bryan Hospital taking care of
3 patients and then I also have a practice in
4 forensic psychiatry.

5 Q Okay. Have you been employed by the
6 Department of Mental Health to do competency
7 evaluations and criminal responsibilities for them?

8 A I have.

9 Q And have you done those types of evaluations
10 in your private practice?

11 A At the University of South Carolina I did
12 many. Over my thirteen years I did many there.
13 There is different parameters now because I'm
14 actually employed by the Mental Health, part of my
15 job is I'm a senior psychiatrist at Bryan Hospital,
16 so we have some pretty strict guidelines. I can't
17 do the cases that I used to do because of
18 guidelines there. If it is a case where Mental
19 Health has already been involved I'm precluded
20 ethically from doing those cases but I have done
21 many, many over the years.

22 Q And you have done other types of evaluations,
23 too?

24 A Oh, yes.

25 Q Okay. And just for the record, you got

1 involved in Mr. Hawes' case when you were at the
2 University of South Carolina?

3 A That's correct, I saw him for the first time,
4 Your Honor, back in 2009. I was still a full-time
5 employee at the medical school.

6 Q I'm going to hand you what we have marked as
7 Defendant's Exhibit Number 1. Can you tell the
8 Court what this is?

9 A This is my updated c.v.

10 Q Okay.

11 MR. GROSE: I would offer that as evidence
12 for this hearing.

13 MR. HODGES: No objection.

14 THE COURT: No objection? Without objection
15 Defendant's 1 is in evidence.

16 (Witness' c.v. marked and received in
17 evidenced as Defendant's Exhibit 1).

18 MR. GROSE: And I could ask more questions
19 about her background but I think you're probably
20 familiar with her and I would offer Dr.
21 Schwartz-Watts as an expert in forensic psychiatry.

22 MR. HODGES: Without objection.

23 THE COURT: No objection to her
24 qualification?

25 MR. HODGES: No.

1 THE COURT: All right, Dr. Schwartz-Watts
2 will be recognized as an expert in the field of
3 forensic psychiatry.

4 THE WITNESS: Thank you.

5 BY MR. GROSE:

6 Q By way of history, I was not Mr. Hawes' first
7 lawyer, Stephen Geoly was?

8 A That's correct.

9 Q Was it Mr. Geoly who contacted you about
10 doing a forensic psychiatric evaluation of Mr.
11 Hawes?

12 A Yes. I was actually in the Abbeville
13 courthouse testifying and as I was leaving Mr.
14 Geoly approached me about the case.

15 Q All right. When was the first time you saw
16 Mr. Hawes at Mr. Geoly's request?

17 A May 25th, 2009.

18 Q Okay. And what information did you have
19 available to you at that time?

20 A Nothing other than Mr. Geoly, the
21 conversation we had in court, he said that he had a
22 client that had some mental health issues and
23 wanted me to evaluate him, so my initial evaluation
24 was nothing more than an interview and then I had
25 Mr. Hawes sign some medical releases. One of the

1 things I had done is when he was there for
2 evaluation I had some medical records I needed so I
3 had him sign releases for a number of places, Self
4 Memorial Hospital, Uptown Family Practice, that
5 sort of things.

6 Q All right. And I don't want to get the cart
7 in front of the horse but you eventually, you
8 eventually got those records and you got the
9 discovery in the case?

10 A Yes, absolutely.

11 Q All right. Are those types of things, the
12 discovery in the case, court records and medical
13 records the type of things that forensic
14 psychiatrists rely on in their profession?

15 A Yes.

16 Q And why is that? Why did you want to consult
17 those sources?

18 A Well, for a number of reasons. Not only to
19 issue opinions for the courts, Your Honor, but
20 we're trying to make sure we have an accurate
21 diagnosis, so a prior history of treatment and
22 those sorts of things are important. Also there
23 are medical conditions that could play into
24 competency issues and criminal responsibility
25 issues. We have to get those things. Also school

1 records. In Mr. Hawes' case that is very important
2 because he has low IQ, and so those records are
3 needed to not only complete the evaluation but also
4 to make sure there is, to make sure the patient
5 reports similar to what legal documents exist, what
6 collateral documents exist.

7 Q And are you looking for facts and information
8 in those documents?

9 A That's right.

10 Q And when we're talking about court documents,
11 we're not just talking about the court documents,
12 discovery in a particular case, sometimes you go
13 back in time and get more of a history?

14 A Oh, certainly, and that is usually a normal
15 methodology. If we're conducting an evaluation in
16 General Sessions and it is a criminal case we'll
17 look at the rap sheet and try to get prior
18 convictions and those sorts of things, that's
19 normally done.

20 Q All right. Going back to your, the first
21 time you saw Mr. Hawes in May of 2009, what was his
22 mental health condition at that time?

23 A He was very depressed.

24 Q Okay.

25 A He had some clinical symptoms of depression.

1 It took him a very long time to answer questions.
2 His thought processes were very slow, his speech
3 was very slow, he had what is called psycho motor
4 retardation, he moved slowly, he cried a lot during
5 the evaluation and he was feeling very hopeless and
6 in my opinion after evaluating him he also in
7 addition to being depressed, I could tell his IQ
8 was low, that he had cognitive deficit.

9 Q What did you do as result of that?

10 A I wrote Mr. Geoly a letter and I told him
11 what information I needed for further evaluation
12 and I also asked for a neuropsychological
13 examination which is a study of his brain function.

14 Q Before we get into that neuropsychological
15 evaluation, did you get any history or factual
16 information from Mr. Hawes at that time?

17 A Yes. Even though he was depressed, it took
18 more time than normal to do the evaluation just not
19 because he wasn't cooperative but because he was
20 slow in his words and that sort of things but, yes,
21 I was able to get a good bit of factual history.

22 Q Okay. And did you get any information about
23 the history of his relationship with the victim in
24 this case, Terry Hawes?

25 A Yes.

1 Q And what did you learn about that?

2 A That they had been mutually violent, that he
3 had certainly abused her in the past and she had
4 also physically abused him in the past.

5 Q So that was something that went in both
6 directions?

7 A Yes.

8 Q Okay. You said that you referred him for a
9 neuropsychological evaluation. Who did you send
10 him to?

11 A Dr. Tora Brawley.

12 Q And I'm going to show you Defendant's Exhibit
13 Number 3, and with the exception of the fax and the
14 handwriting where it was sent to me, is that a copy
15 of Dr. Brawley's report to you?

16 A Actually that is my handwriting, I think I
17 faxed it to Charles Grose. But, yes, that is a
18 copy of her report.

19 Q All right.

20 A And what type of information -- now, these
21 neuropsychological tests, that is something you
22 normally rely on as a forensic psychiatrist?

23 A Yes. In cases where we suspect, it is a
24 consultation, just like I would rely upon
25 laboratory evidence, it's a consultation, I need

1 further information about someone's functioning, so
2 yes, it is relied upon in general psychiatry,
3 forensic psychiatry.

4 Q Essentially if I go to the hospital with a
5 hurt arm they might send me to get an xray, a
6 different doctor but that is information that the
7 treating physician can rely on?

8 A That's correct. It is useful for diagnosis,
9 may be useful actually in rendering opinions to the
10 Court.

11 Q All right. Now, what did you learn from Dr.
12 Brawley?

13 MR. GROSE: And I would move Dr. Brawley's
14 report into evidence.

15 MR. HODGES: Without objection.

16 THE COURT: Without objection Defendant's 3
17 is in evidence.

18 (Dr. Tora Brawley report marked and received
19 in evidence as Defendant's Exhibit 3).

20 BY MR. GROSE:

21 Q Go ahead.

22 A Well, there are a number of things that were
23 important about her evaluation. First of all she
24 does tests to make sure people are not faking
25 memory deficits, and he did very well on those

1 tests, there was no evidence that he was trying to
2 exaggerate or feign that he had memory
3 difficulties.

4 Q So there is a high degree of confidence in
5 her result, then?

6 A Yes.

7 Q And what did you learn about his cognitive
8 deficits from Dr. Brawley?

9 A That he had a number -- first of all, his IQ
10 was low. He had a verbal IQ of 65 and a
11 performance IQ of 75. That would place him in the
12 borderline range of intellectual functioning. In
13 addition to having the low IQ, he had some
14 difficulties which Dr. Brawley thought may have
15 been related to his depression, and also he has
16 another diagnosis of post traumatic stress
17 disorder. But he had cognitive slowing in his
18 memory, he had learning deficit and a low IQ, his
19 reading ability was poor, he had difficulty
20 shifting from one topic to another. So at that
21 point she had recommended if he were competent to
22 stand trial to make sure that the proceedings were
23 slow and methodical so he could understand them.
24 Q Okay. And he's on antidepressant medication
25 right now, too?

1 A Yes, he is.

2 Q And that helps him understand the proceedings
3 as well, doesn't it?

4 A Yes. There is a marked improvement in mental
5 state between when I saw him in May of 2009 and I
6 saw him again in June, and I saw him again today
7 and his mental state is much better.

8 Q All right. Now, those IQ's raise some
9 concerns about mental retardation but in this case
10 we're not claiming that Mr. Hawes is mentally
11 retarded?

12 A No, I have no evidence that he's mentally
13 retarded. He did not have any adaptive
14 difficulties I know of but he certainly had severe
15 learning disabilities.

16 Q So this is something that has been present
17 with him all his life but does not raise, cross
18 that threshold for mental retardation?

19 A That's correct. That would have been a very
20 difficult diagnosis. He had not had any school
21 testing, we didn't have records that would have
22 existed, and you have to be, you have to have that
23 diagnosis before age eighteen. It would have been
24 virtually impossible to get that kind of records.

25 Q And some of this testing could potentially

1 raise concerns about competency to stand trial but
2 we're not contesting his competency?

3 A No, and in fact, Your Honor, I saw him today,
4 he clearly knows what he is doing. And when I saw
5 him back in June of 2010 he clearly, he understands
6 the proceedings, he knows what he is here today
7 for, he understands what is going on, generally
8 trusts you, Mr. Grose, I have watched him work with
9 you.

10 Q You eventually, I guess, received the records
11 from the hospital?

12 A Yes.

13 Q And did that help confirm some of the things
14 he had told you about the mutually violent
15 relationship?

16 A It did.

17 Q All right. Can you tell us about that?

18 A Yes. There was just, and this was not, this
19 was not in legal history, so this is probably
20 separate from the indictment and the conviction
21 before. He stated to me and I included this in my
22 report that -- let me get the time line exactly
23 correct for you. If you go back in history between
24 the victim and defendant, they had some mutual
25 batteries. There were charges on July 14th, 2006;

1 July 30, 2006; November 30 of 2006; and Mr. Hawes
2 reported to me in the evaluation that in January of
3 2007 that he was stabbed by the victim. He stated
4 that when he went to the hospital he told them he
5 was in a dirt bike accident. And that is why I
6 asked for his records, and his records did indeed
7 show that he was seen at the hospital for a
8 puncture wound, and these records did, his
9 information of going to the hospital was certainly
10 consistent with his report and did he have a
11 puncture wound.

12 Q All right. And is it uncommon or common for
13 people who might be involved in a domestic incident
14 to sometimes give different information to the
15 medical providers?

16 A That happens commonly.

17 Q And why does that happen?

18 A Different reasons. It probably depends on
19 the person. Sometimes they still love the person
20 and they are protecting them, maybe they have
21 issues with their children, maybe they just choose
22 not to be forthcoming. It could be different
23 reasons.

24 MR. GROSE: Your Honor, do you have the court
25 documents that we introduced a moment ago?

1 THE COURT: I have the report, I have the
2 copy you had emailed me last week, I believe, the
3 report from Dr. Brawley, and I have the document
4 dated June 29th, 2010, from Dr. Schwartz-Watts. I
5 have the indictments as well.

6 MR. GROSE: I'm looking for the Numbers 4 and
7 5, I believe.

8 THE COURT: That is what I have.

9 MR. GROSE: All right, thank you.

10 BY MR. GROSE:

11 Q Dr. Schwartz-Watts, I'm going to hand you
12 Defendant's Number 4, which is a conviction for
13 Terry Roundtree, the victim in this case from I
14 believe 1996 in the municipal court. Did you look
15 at a copy of an incident report that went along
16 with that?

17 A Yes.

18 Q All right. And does that incident report
19 also confirm this mutual violent relationship?

20 A Yes, it does. Both parties had injuries to
21 them when the police came.

22 Q Okay. And both parties were charged,
23 according to this report, anyway?

24 A That's correct.

25 Q Okay. And I'm going to hand you what is

1 Defendant's Exhibit Number 5, which is a certified
2 copy of a true bill indictment where Mrs. Hawes was
3 the defendant. Did that relate to one of the
4 incidents you were talking about in 2006 and 2007
5 time frame?

6 A Yes, it did. Mr. Hawes, it's really
7 interesting, Mr. Hawes mentioned this one to me.
8 In the interview he never mentioned the 1996
9 conviction, which is interesting; but yes, he had
10 reported this one to me and this is consistent with
11 his report.

12 Q Okay. And is it usual, common that we have,
13 in cases where we're talking about this parole
14 eligibility special provision, is it common to have
15 court documentation of the history?

16 A Not really, not often. I mean, this case is
17 a luxury compared to some of the other cases we
18 have looked at. Many times we send for hospital
19 records and police reports and there aren't any,
20 and the fact there is actually some evidence
21 showing mutual battery, there is prior
22 convictions,, at least from my clinical experience
23 it is not that common.

24 Q All right. So you're not just relying on
25 what Mr. Hawes told you, you're relying on hospital

1 records and court records and police records and
2 incident reports?

3 A Yes.

4 Q And so that is more documentation than what
5 you usually have in these situations?

6 A Yes, absolutely.

7 Q Now, we talked a little bit about Mr. Hawes
8 being on antidepressant medications and that made
9 a difference in how he presents?

10 A Absolutely, and it was my opinion back in May
11 of 2009 he wasn't competent and after being
12 medicated he clearly became competent and stayed
13 so.

14 Q And you have seen the competency report that
15 the Department of Mental Health did. Do you know
16 whether or not he was under his medication when
17 they saw him, versus when you saw him?

18 A Yes, he was medicated at the time. Evidently
19 Mental Health had seen him prior to me and he was
20 clearly medicated then, and then by the time I saw
21 him he was no longer being medicated, and after
22 that evaluation he was again placed on
23 antidepressants and he has been on them ever since.

24 Q Okay. Now, PTSD has come up in your
25 testimony a little bit already. Can you give us,

1 give us some information as to why Mr. Hawes
2 qualifies for the diagnosis of PTSD?

3 A Certainly. First of all you have to have a
4 history of something, either witnessing something
5 that is life threatening or threatens your bodily
6 integrity or you have to be convinced of it, and he
7 had been both. He reports a history of sexual
8 abuse as a child. More importantly, he was in a
9 car when a train, he and his brother were involved,
10 were in a car that got hit by a train. His father
11 was severely injured from that train wreck. In
12 fact Mr. Hawes has a metal plate in his head, and
13 the father became pretty violent after that closed
14 head injury from the train wreck. Mr. Hawes was
15 actually in the car with his brother during that
16 train wreck.

17 And then after that he was physically abused
18 by his father for years, so he certainly had
19 pre-existing trauma. He has memories of those
20 things, he becomes anxious, has a, what is called
21 auto-arousal, he gets nervous, he startles easily,
22 he meets the criteria for it.

23 Q So, there were multiple traumas really early
24 in his life?

25 A Yes. Each one of those alone, the train

1 wreck alone could have done that, the physical
2 abuse by his father, the sexual abuse by the female
3 babysitter, each one of those could have caused
4 PTSD in itself, the events.

5 Q And this was something that you observed when
6 you met with Mr. Hawes?

7 A Absolutely.

8 Q Is it also something that Dr. Brawley
9 observed and reported to you in the copy of her
10 report that is in evidence?

11 A Yes.

12 Q Okay. Now, I provided you with a copy of the
13 discovery in this case?

14 A Yes.

15 Q And we also provided you with some audio
16 tapes?

17 A Yes.

18 Q I believe?

19 A Yes.

20 Q Did you listen to those tapes?

21 A Yes, I did. As I told Mr. Hawes, Your Honor,
22 those were long tapes, this took a long time. They
23 were many hours of tapes between he and the victim.

24 Q These were things obviously that were
25 recorded before she passed away and before he was

1 incarcerated?

2 A Yes.

3 Q And did those enter into your opinion in any
4 way of this mutually abusive relationship?

5 A Yes. I mean, I was upset hearing the tapes.
6 They argued constantly in front of their children,
7 you could hear the children in the background while
8 some of these arguments were taking place, and also
9 I believe the victim's mom, so it was very
10 upsetting to listen to them. They argued and it
11 was the same stuff, what I remember it was the same
12 kind of argument over and over, it was very
13 repetitive.

14 Q And there was arguments about the children?

15 A Yes, and their relationship with each other.
16 I remember one of the themes, he was very upset
17 with the victim because she told somebody he had
18 threatened her. It was painful to listen to.

19 Q And there were some threats by her towards
20 Mr. Hawes in those tapes, too, wasn't there?

21 A Yes.

22 Q And can you describe those for the judge?

23 A In detail I don't remember but certainly they
24 threatened each other. I think that is very, very
25 obvious.

1 Q This was another piece of the puzzle
2 regarding the mutual violence that went back and
3 forth between the two of them?

4 A Yes, and the point was it was occurring in
5 front of people, they even did it publicly, in
6 front of other witnesses, including the children.

7 Q Now, there is a little, you know, I think a
8 little tension here because some of the information
9 that I have from everybody is that both of these
10 people cared about the children?

11 A Absolutely.

12 Q Okay.

13 A There is no question.

14 Q And you have that situation where they are
15 fighting and arguing with the children present but
16 yet they both appear to love them?

17 A Lots of people with marital problems fight in
18 front of their children. It depends on how
19 controlled you are about your emotions. It
20 happens.

21 Q And would his diminished mental capacity have
22 any impact on his perception of how that might
23 affect the children?

24 A Absolutely. It is very poor judgment on his
25 part.

1 Q And is poor judgment something that goes with
2 the lowered mental capacity?

3 A Yes. What you see mainly in listening to
4 those tapes, that applied to his capacity, is he
5 would argue about the same thing over and over
6 again, which is probably more a function of his IQ.
7 To listen to the arguments, it was literally on his
8 part the same issue over and over again. The
9 victim would try to bring up something different
10 and he would always go back to whatever his
11 argument was, he would never deviate from that, and
12 when it was apparent they were trying to work
13 through some issues he would always go back to the
14 same thing. That certainly was from diminished IQ.
15 He would be difficult to argue with.

16 Q All right. Now I'm going to hand you, the
17 judge made reference a minute ago to a report, I'm
18 going to hand you what has been marked as
19 Defendant's Exhibit Number 2.

20 Is that a copy of your report?

21 A Yes, it is.

22 Q Actually the original of your report, it
23 should be?

24 A Yes, it is.

25 Q Okay.

1 MR. GROSE: And just for the record, Your
2 Honor, the one originally sent you was not signed
3 and it was not on her letterhead and I think she's
4 corrected a couple typographical errors but
5 substantively what you have is --

6 THE COURT: The same report?

7 MR. GROSE: It's the same report, yes, sir.

8 BY MR. GROSE:

9 Q Now, based on the history and the discovery
10 and your interviews with Mr. Hawes and everything
11 that you had to consider, were you able to form an
12 opinion about what was going on with him at the
13 time of this incident?

14 A Yes.

15 Q Okay. And could you tell His Honor what that
16 opinion is?

17 A Yes. Your Honor, it was my opinion he was
18 suffering from post traumatic stress disorder, his
19 low IQ is borderline intellectual functioning and
20 what we call severe partner relational problems, he
21 and the victim were having problems, separating,
22 raising the children together. He was suffering
23 from all those disorders at the time he killed her.

24 Q Let's break this down just a little bit. I
25 mean, obviously with the domestic situation

1 involved, what you refer to as severe partner
2 relationship problems, that played a role in that?

3 A Yes.

4 Q If you take that plus the, the borderline
5 intellectual functioning, does that complicate what
6 is going on with him at the time?

7 A Absolutely. They all compound each other.
8 Basically what happens, Your Honor, I also forgot
9 to mention, they had been robbed previously, too,
10 he had, so after that robbery he carried a gun with
11 him.

12 Q And that is important because you asked him
13 about why he had a gun with him that day?

14 A Yes, why would he be carrying a gun in his
15 truck and having it on his person, especially given
16 earlier he had fired a shot in the house and the
17 police had been involved in that.

18 Q So he had a reason independent of her to have
19 that weapon?

20 A That was, that's correct, that is what he
21 stated to me. He stated they had, the home was
22 burglarized, there was an incident report to
23 confirm on November 30, 2005, that the alarm system
24 had been activated, which the police went to his
25 residence, the front door was open, jewelry had

1 been removed from his property and he stated again
2 a few months after that incident the house was
3 broken into and he stated after that he did not
4 sleep well, he would stay up at night and he even
5 had home surveillance cameras, and that is part of
6 post traumatic stress disorder, he took extra
7 measures to protect himself.

8 Q So the three together, the PTSD, the
9 borderline functioning and the relationship
10 problems all played a role in that?

11 A Absolutely.

12 Q Okay. Now, we have not pled guilty but
13 mentally ill but in your opinion would he have met
14 that criteria?

15 A That was my opinion, yes.

16 Q Okay.

17 A And just to add to that, Your Honor, what he
18 told me, and this is why I had the
19 neuropsychological test done, too, he can give an
20 account of everything that happened up to the point
21 of firing. He remembers pushing but when he
22 actually, first he told me he cannot remember and
23 that is why I was concerned, because you can see
24 that in PTSD, you can see that in cognitive
25 deficit, that is why I had testing done, to be sure

1 he wasn't feigning memory loss, and he indeed has
2 cognitive deficit, but up to the point of firing he
3 has memory.

4 Q As part of the discovery did you look at Mr.
5 Hawes' criminal history?

6 A Yes.

7 Q And he doesn't have much of a criminal
8 history, does he, really?

9 A No.

10 Q I mean, I think the State can correct me if
11 I'm wrong but I think the only convictions prior to
12 this case are assault and battery from 1990 and
13 then a CDV involving Mrs. Hawes where they had the
14 mutual. Is there anything else? I think Mr.
15 Hodges is agreeing. So, does the lack of, you
16 know, any prior criminal history, significant
17 criminal history, let me rephrase that, prior to
18 this, would that affect his adaptability to
19 potential future dangers and those types of things?

20 A Yes.

21 Q How so?

22 A You can look at, I think what is interesting,
23 we're not experts but generally he has adapted to
24 the norms of the law, he is not a career criminal
25 that had a lifelong pattern of disobeying laws. I

1 mean, he behaves with structure, he has not been in
2 any trouble I know of in the detention center.

3 Q And in fact the assault and battery in 1990,
4 that would have been when he was roughly eighteen
5 years old, plus or minus?

6 A Correct.

7 Q So that could possibly be attributed to
8 youthful kind of things, so if you exclude that,
9 the only criminal history, including now, is what
10 has been involved with Mrs. Hawes?

11 A That's correct.

12 Q Okay. You mentioned the detention center.
13 I'm going to hand you Defendant's Exhibit Number 6
14 which is a letter from today from the Major at the
15 detention center. That confirms that he has not
16 been a disciplinary problem over there?

17 A That's correct.

18 Q And would that factor into his adaptability
19 and potential for rehabilitation and that sort of
20 thing?

21 A Yes.

22 Q How so?

23 A That he can follow rules and he has the
24 ability to do that.

25 Q All right.

1 MR. GROSE: I would move Number 6 into
2 evidence, Your Honor.

3 THE COURT: All right. Do you also move
4 Number 2 into evidence?

5 MR. GROSE: I do, Your Honor, I apologize.

6 THE COURT: Number 2 and Number 6, no
7 objection?

8 MR. HODGES: No objection.

9 THE COURT: No objection, those are in
10 evidence.

11 MR. GROSE: And just as a housekeeping
12 matter, 1 through 6 should all be in evidence at
13 this point.

14 THE COURT: I believe that's correct.

15 (Donna Schwartz-Watts report marked and
16 received in evidence as Defendant's
17 Exhibit Number 2).

18 (Phillip Anderson letter marked and received
19 in evidence as Defendant's Exhibit Number 6).

20 BY MR. GROSE:

21 Q With regard to some of Mr. Hawes' diagnoses,
22 is that going to, he is somebody who can be treated
23 and handle incarceration?

24 A Yes. That is probably, in psychiatry that is
25 probably the most important measure of adaptability

1 for him. When he is not on any type antidepressant
2 he cannot function, so it is very important he
3 receive his mental health treatment while he's
4 confined, whatever his sentence is.

5 Q And the medication, he's on Prozac, I
6 believe?

7 A Yes.

8 Q And you have observed that to be helping him?

9 A Yes.

10 Q And the more he's on that, I guess the longer
11 term, the more positive effects that's going to
12 have for him?

13 A Well, it does two things. It helps his
14 depression but is also indicated for the treatment
15 of the post traumatic stress disorder, so it
16 decreases anxiety and he functions better on it.
17 Cognitively, it improves his cognitive function, he
18 thinks quicker when is he on that medication, he is
19 able to use better judgment.

20 Q And so part of your recommendation, I believe
21 you just stated this, part of your recommendation
22 would be to ask the Court to note on the sentencing
23 sheet that he receive his medication and
24 appropriate mental health treatment while he's in
25 prison?

1 A Yes.

2 Q Okay. Now, you know, I have heard stories
3 about the Department of Corrections being sued over
4 how they treat the mentally ill and that sort of
5 thing. They are actually doing pretty good with
6 providing mental health treatment these days,
7 aren't they?

8 A It is my opinion they do a very good job with
9 the resources they have.

10 Q Okay. And so I guess what I'm getting at is
11 that given Mr. Hawes' situation, they are more than
12 capable of providing him adequate treatment while
13 he's incarcerated?

14 A Absolutely, and Prozac is on their formulary,
15 and the prison setup, they have area mental health
16 services, they have more intensive treatment in
17 Columbia and they also have an inpatient
18 psychiatric hospital, so they have similar services
19 in the community, they have inpatient treatment,
20 residential treatment and outpatient treatment.

21 Q Okay. Is there anything else that you can
22 think of that I have not asked, that we should
23 probably cover?

24 A No.

25 MR. GROSE: Okay. If Mr. Hodges has any

1 questions would you please answer those?

2 THE WITNESS: Sure.

3 THE COURT: Thank you, Mr. Grose.

4 Mr. Hodges?

5 MR. HODGES: Thank you, Your Honor.

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1 CROSS EXAMINATION

2 BY MR. HODGES:

3 Q Dr. Schwartz-Watts, you indicated you first
4 met the defendant on May 25th, 2009?

5 A Yes, sir.

6 Q And approximately how long was that after the
7 incident date?8 A I believe it was, I believe the incident
9 occurred 2007, so it was a good two years, over two
10 years.11 Q And were you aware that he had been
12 incarcerated in the county detention center for the
13 balance of that two years before you met with him?14 A I didn't know how long until I met with him
15 but I knew from having a conversation with Mr.
16 Geoly, I believe his trial, when I met with Mr.
17 Geoly in Abbeville, it was coming up very quickly
18 and after I evaluated him I said he was not
19 suitable for trial at that point.20 Q In fact at that time the trial of the case
21 was actually imminent?

22 A Yes, I believe it was.

23 Q And when you got involved in it obviously
24 things got put off so these mental health issues
25 could be investigated?

1 A Yes, because it was my opinion, I really
2 didn't think he was competent at that time, I would
3 have been concerned.

4 Q You mentioned when you first met with him he
5 was very depressed and I think you used the word
6 hopeless?

7 A Yes.

8 Q What effect would the fact that he had been
9 incarcerated for two years facing a murder charge,
10 with a trial imminent, have on his psychy when you
11 first met him?

12 A That had a very big effect. I remember him,
13 what he told me, Mr. Hodges, is he just wanted
14 somebody to know his story. He kept telling me he
15 had been waiting so long to tell his story, so I
16 think that his current situation has a lot to do
17 with how he presented.

18 Q So, his mental state at the time you met with
19 him in 2009 was certainly different or could have
20 been different than it was when this incident
21 occurred?

22 A Absolutely, sure. I think, to answer your
23 question, I don't think he had a depression, I
24 don't think he had the level of depression I saw in
25 May of 2009, I don't think that was there, I didn't

1 feel the depression was contributing to this act.

2 Q You also mentioned in your opinion he was not
3 mentally retarded?

4 A That's correct.

5 Q In fact he had held a job?

6 A Yes, he was productively employed, yes.

7 Q I think he worked at Grede Foundry?

8 A Yes.

9 Q He had run his own business doing power
10 washing?

11 A Yes.

12 Q Had a driver's license?

13 A Yes. There was some issues, I think he had
14 to take the test five times but, yes, he certainly
15 was adapting in the community.

16 Q He raised a family?

17 A Yes.

18 Q You also talked about the mutual battery
19 between the two?

20 A Yes.

21 Q And the tapes that you listened to -- would
22 you agree that words and argument are certainly
23 different from physical violence?

24 A Absolutely.

25 Q And what is contained on those tapes is

1 essentially arguments over the kids?

2 A That's correct.

3 Q Arguments over his relationship with another
4 woman and her feelings about that?

5 A Yes.

6 Q You mentioned at some point talking about the
7 fact he had a gun, that he felt like he needed to
8 protect himself because of the robbery and you
9 mentioned in passing an incident where there was a
10 shot fired in the house?

11 A Yes.

12 Q What information did you have in forming your
13 opinion about this mutal situation about that?

14 A I had the incident report and his story was
15 very different from the incident report.

16 Q Okay.

17 A In his story it sounds as if it was an
18 accident but in reading the reports, especially I
19 think his stepdaughter, you will have to correct me
20 if I'm wrong, but I remember it seemed much more
21 different than how he portrayed it.

22 Q Can you share us with us the two versions?

23 A I would probably have to refer to my notes.

24 I remember his was very self protective, it was an
25 accident, he didn't mean for it to go off, it had

1 something to do with the couch. If you want, I
2 will be glad to give you the exact details but I
3 remember the incident report was that he was angry
4 and the family felt a danger. In his view no one
5 felt a danger, everybody kind of laughed it off,
6 but in the incident report the family was fearful.

7 Q Okay. Did you speak with any family member
8 about their respective relationships with each
9 other?

10 A The only person that I spoke with, I spoke
11 with his brother to confirm the sexual, the abuse,
12 because he had not disclosed that before and so I
13 wanted to verify that the train wreck had happened.
14 And I wanted to verify, he stated that he had told
15 his brother before these charges about the sexual
16 abuse so I just, what I did mainly was ask the
17 brother to confirm those things happened.

18 Q But with regard to, if one of the other were
19 violent, or if one or the other were the instigator
20 in these mutual situations you didn't talk to the
21 family about that?

22 A No, I didn't.

23 Q You diagnosed Mr. Hawes with severe partner
24 relationship problems. That is not a mental
25 illness, is it?

1 A No. That is called a V code. What a V code
2 is, that is a condition anybody would have problems
3 with it. For example, if your spouse died we would
4 expect you would have a difficulty, we would expect
5 that in this circumstance, so that is not a major
6 mental illness but diagnosable. If it deserves
7 treatment or deserves recognition you code it.

8 Q On the topic of future dangers Mr. Grose
9 raised, you talked early on about in relationships
10 like this there may be conduct that goes
11 unreported?

12 A Yes.

13 Q That can go both ways. Correct?

14 A Absolutely.

15 Q So, Mr. Grose raised an incident where Mr.
16 Hawes alleges that she stabbed him. Obviously
17 there is no police report or anything to back that
18 up?

19 A Correct.

20 Q There could very well be incidents where he
21 is the aggressor, that were also not reported?

22 A Absolutely.

23 Q You mentioned that in terms of the future
24 dangers, that you felt like he would not be a
25 danger, that he would be able to conform?

1 A Yes. Actually the word I think Mr. Grose
2 asked me, was he adaptive and then I probably
3 interchanged future danger, and we're pretty good
4 within about 24 or 48 hours of predicting when
5 something like that happens, not the issue of
6 danger, but he has done well with structure, he can
7 follow the rules if he chooses to, he has shown
8 that ability, so if he were confined, certainly he
9 could get in trouble in prison, nobody can say he
10 wouldn't and no one can say he wouldn't become
11 violent if he were attacked or under certain
12 circumstances, but overall he's, over the past few
13 years he has shown the ability to follow rules and
14 obey laws and obey authority.

15 Q Your ultimate opinion was he was not able to
16 conform his conduct to the requirements of the law,
17 and I'm wondering how do you reconcile that with
18 saying that he can conform his conduct?

19 MR. GROSE: I didn't hear the last part of
20 the question.

21 THE COURT: How does she reconcile the
22 assertion he could not at one time conform his
23 conduct to the requirements of the law with the
24 fact that she's now testifying at times he can?

25 Q It seems to be kind of polar opposite

1 opinions.

2 A Yes, you can say that. You have to look at
3 the acts of violence. What we do in forensic
4 psychiatry, we go back to the crime, you have to
5 look at what was going on with him at that time.
6 You know, I may be wrong but when he's confined in
7 the Department of Corrections I don't think he's
8 going to have that level of attachment with anyone
9 that he did with his wife. As much as they fought
10 over that period of time, they loved each other for
11 a long period of time and they raised a family
12 together, they had the ability in the past to work
13 together and their relationship has been for a long
14 period of time. I don't foresee him having that
15 level of attachment to anybody in the Department of
16 Corrections, number one.

17 Number two, he wasn't on medicine at the time
18 of this crime and he is on medication now that
19 helps post traumatic stress disorder, that can
20 dampen some of the activity, the effect, the
21 outward expression of emotion he had.

22 And thirdly, he's supervised. You know, if
23 there was a policeman in the house that day would
24 he have done it? I don't know. But, you know, he
25 will be in a structure where there is law

1 enforcement, there is parameters in place. But he
2 has certainly, you know, he may be exposed to
3 violent, dangerous situations and he may react.

4 Q So I guess if I understand what you're
5 saying, he is much more able to conform his conduct
6 to the requirements of the law when he's
7 incarcerated in a structured environment,
8 supervised and medicated?

9 A That's right, and not attached to somebody as
10 closely as his wife in a very intense emotional
11 relationship, yes.

12 MR. HODGES: That's all the questions I have.

13 MR. GROSE: I have some follow-up, Your
14 Honor.

15 THE COURT: Yes, sir.
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REDIRECT EXAMINATION

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BY MR. GROSE:

Q Mr. Hodges asked you some questions about the depression at the time you saw him versus the time of the incident?

A Yes.

Q And to be clear, in your report, I guess in the last paragraph, the depression is not something that you listed as contributing to the incident?

A That's correct.

Q Okay. So that is something separate that is going on with him that has to be addressed but not the three things that we talked about at the time of the incident?

A That's correct. And as Mr. Hodges said, some of that was certainly related to the situation. It is also a complication, you can have that problem at times with post traumatic stress disorder, you can have that condition, people do develop depression periodically throughout their life, just depending on the circumstances.

Q Okay. And Mr. Hodges was asking you about the structured environment in prison and the ability to, the inability to conform his conduct at the time, versus being able to do it in the

1 structured setting?

2 A Yes.

3 Q Now, you have, I believe, run the DMH program
4 for people found not guilty by reason of insanity,
5 I'm sorry, you worked there?

6 A Yes.

7 Q You worked there?

8 A I think they kind of changed the title over
9 the years. I was a psychiatrist back in I guess
10 1996 or so, so I ran -- basically the structure was
11 at the time, Don Morgan ran it, he was the director
12 of that program and I ran a treatment team and
13 handled half the patients there.

14 Q Okay. Now, obviously we're not saying that,
15 that is not in your report or anything of that
16 nature, but people who are found not guilty by
17 reason of insanity are treated and some of them are
18 released in the community?

19 A Oh, many of them are, yes. We have new
20 medicines now in mental health, so people before
21 wouldn't get better. There is much improvement in
22 mental health treatment.

23 Q Have you also had some experiences with
24 people who are found guilty but mentally ill that
25 go to the Department of Corrections?

- 1 A Absolutely.
- 2 Q And what are those?
- 3 A I have, over the last four years where I was
4 a contract doctor out at the South Carolina
5 Department of Corrections and actually worked in
6 the psychiatric hospital, which is where when
7 people are found guilty but mentally ill they go
8 there for their classification.
- 9 Q Some don't go there, some go straight to
10 probation sometimes?
- 11 A Sure.
- 12 Q And then some go to the Department of
13 Corrections?
- 14 A Correct.
- 15 Q And those people are regularly treated and do
16 their time and are released in the community?
- 17 A Yes.
- 18 Q Okay. And Mr. Hodges was asking you some
19 questions about documentation. I don't know that I
20 had given you this or not, I can't remember, but
21 this is Defendant's Exhibit Number 7 and it's an
22 incident report. Does that reflect that Mr. Hawes
23 complained to the police about being stabbed and
24 they didn't interview him?
- 25 A Yes, and I recall that, yes.

1 MR. GROSE: I would move that into evidence.

2 MR. HODGES: Without objection.

3 THE COURT: All right, without objection.
4 Which number is that again?

5 MR. GROSE: That would be Number 7, Your
6 Honor.

7 THE COURT: Defendant's 7 is in evidence
8 without objection.

9 (Incident report marked and received in
10 evidence as Defendant's Exhibit Number 7).

11 BY MR. GROSE:

12 Q I don't believe that I have any more
13 questions unless there is something, Dr.
14 Schwartz-Watts, that you want to add, that I left
15 out?

16 A No, except I certainly didn't mean to offend
17 any family members, and I apologize.

18 Q It is kind of hard to come in and talk about
19 these issues in these settings but it's something
20 we just have to do.

21 A Sure, and many families, many people argue in
22 front of their children, that is not a judgment on
23 someone, it is just an impression in the case.

24 Q And you can do that, as we talked about
25 before, you can do that and everybody still love

1 and support and want what is best for those
2 children?

3 A Absolutely.

4 Q And of course you never met Mrs. Hawes but
5 you have met Mr. Hawes and there is no reason to
6 think that either one of them wanted anything less
7 than the best for those children?

8 A I think both, it is clear that they both
9 cared about their children.

10 MR. GROSE: Thank you.

11 THE COURT: Anything?

12 MR. HODGES: No further questions.

13 THE COURT: Thank you, ma'am. You can step
14 down.

15 THE WITNESS: Thank you, Your Honor. May I
16 be excused?

17 THE COURT: Any objection to releasing Dr.
18 Schwartz-Watts from her subpoena?

19 MR. HODGES: No objection from the State.

20 MR. GROSE: I would like for her to stick
21 around so if there is anything I may have to
22 respond to.

23 THE COURT: So far as the Court is concerned
24 you're excused but Mr. Grose would like you to
25 stick around, so we would ask you do that, Doctor.

1 (Witness excused).

2 MR. GROSE: That's all I propose to submit on
3 this issue. We may have some family members speak
4 to the burden of proof on the domestic violence and
5 mental health and that sort of things. I have to
6 check with some of them but it would be more than
7 typical, the same type things you would hear from
8 victims.

9 THE COURT: All right, very good.

10 Mr. Hodges?

11 MR. HODGES: Your Honor, I actually have a
12 witness or two on these issues that I would like to
13 call.

14 THE COURT: Very good, call your witness.

15 MR. HODGES: Your Honor, the State would call
16 Dr. Frierson.

17 MR. GROSE: Your Honor, I would move pursuant
18 to your court order that his testimony be limited
19 to competency and criminal responsibility because
20 the Court order limited the evaluation for other
21 purposes. Mr. Hawes was assured by the Court and
22 by the people who did the evaluation that nothing
23 that was in that evaluation would be used for any
24 purpose other than criminal responsibility and
25 competency. If we could have the file I can show

1 you that.

2 THE COURT: I understand. How did you not
3 open the door by offering the same exact evidence
4 by Dr. Schwartz-Watts?

5 MR. GROSE: If he wants to talk about
6 competency and criminal responsibility I'm not
7 objecting to that, we're not contesting either of
8 those. I don't know it's relevant but I want to
9 limit it to those.

10 THE COURT: Mr. Hodges, what testimony do you
11 anticipate eliciting from the doctor?

12 MR. HODGES: I intended to go into the report
13 that he presented, some differences between what
14 was reported to him and what was reported to Dr.
15 Schwartz-Watts, whether he holds the same opinions
16 regarding post traumatic stress disorder, whether
17 he holds the same opinion with regard to the severe
18 partner relation problems, essentially addressing
19 Dr. Schwartz-Watts' opinions, what his opinion is
20 in those regards.

21 THE COURT: All right. His testimony, in my
22 opinion, Mr. Grose, would be competent.

23 MR. GROSE: Can I have just a second, Your
24 Honor?

25 THE COURT: Certainly. Do you need a minute

1 to review his report, Mr. Grose?

2 MR. GROSE: What?

3 THE COURT: Do you need a moment?

4 MR. GROSE: I just need a moment to review --

5 MR. HODGES: Your Honor, I really don't think
6 what I'm going to be eliciting is going to go
7 outside what Dr. Frierson has done with regard to
8 his report on criminal responsibility.

9 THE COURT: All right.

10 Madam Clerk, swear the doctor.

11 MR. GROSE: I will object if I feel like it
12 goes beyond that, Your Honor.

13 THE COURT: Please.

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1 DR. RICHARD LEVINE FRIERSON,
2 after being first duly sworn, testified as follows:

3 THE COURT: Doctor, if you would, please
4 state your name for the record, sir.

5 THE WITNESS: My name is Richard Levine
6 Frierson.

7 THE COURT: Mr. Hodges.

8 DIRECT EXAMINATION

9 BY MR. HODGES:

10 Q Dr. Frierson, how are you employed?

11 A I am a professor of psychiatry at the
12 University of South Carolina School of Medicine.

13 Q What is your background and education?

14 A I received a Bachelor's Degree in music from
15 the University of South Carolina in 1984, I
16 completed medical school at the University of South
17 Carolina School of Medicine in 1988, completed four
18 years of residency training in general psychiatry
19 at William S. Hall Psychiatric Institute in 1992,
20 and then completed a one year fellowship in
21 forensic psychiatry at William S. Hall Psychiatric
22 Institute in 1993.

23 Q Have you been previously qualified in Circuit
24 Court as an expert in forensic psychiatry?

25 A Yes, sir.

1 MR. HODGES: I would offer Dr. Frierson as an
2 expert in forensic psychiatry.

3 THE COURT: Any objection?

4 MR. GROSE: No objection.

5 THE COURT: Without objection Dr. Frierson is
6 qualified as an expert in the field of forensic
7 psychiatry.

8 BY MR. HODGES:

9 Q Dr. Frierson, did you have an opportunity to
10 conduct an evaluation on the defendant in this
11 case, Alonzo Hawes?

12 A Yes, I did.

13 Q How did you come to be involved in conducting
14 that evaluation?

15 A As part of my work at the university we have
16 a contract with the Department of Mental Health and
17 I am assigned pretty much full time to conduct
18 court ordered evaluations for competency to stand
19 trial, criminal responsibility, capacity to conform
20 at the Department of Mental Health, so I saw Mr.
21 Hawes pursuant to a court order from this Court at
22 the Department of Mental Health.

23 Q All right. When did you see Mr. Hawes?

24 A I saw Mr. Hawes on October 2nd, 2008.

25 Q And was that the one and only time you met

1 with Mr. Hawes?

2 A Yes.

3 Q All right. What was his demeanor at the time
4 that you met with him?

5 A He was cooperative, he was pleasant, he had
6 good grooming and hygiene, his speech was normal,
7 he made good eye contact. Basically he appeared
8 fairly normal. He did have some symptoms of
9 depression which he referred to as stress that
10 began after his incarceration, they were not
11 present before the alleged incident. He had been
12 placed on an antidepressant medication Paxil in the
13 jail and reported that it seemed to be helping him
14 a lot.

15 Q All right. Did he indicate what it was that
16 had him, quote, unquote, stressed?

17 A Yes. His legal situation, being in jail,
18 worried about his children on the outside, worried
19 about his legal situation, what was going to happen
20 with his charge, et cetera.

21 Q Is that an unusual, is it unusual to be
22 depressed about being in that sort of situation?

23 A It's not all that unusual to be depressed
24 about being in jail and facing criminal charges. I
25 thought that perhaps his reaction to it was more

1 than the average person would experience and for
2 that reason we assigned a diagnosis of adjustment
3 disorder with depression.

4 Q Were you provided with considerable
5 information from the criminal investigation and
6 other documents that you were able to review and
7 rely on in conducting this evaluation?

8 A Yes. We were supplied with the arrest
9 warrants, the police reports, witness statements,
10 audio recorded statements, school records, SLED
11 records, .

12 Q In the documentation you were provided did
13 you find any history of mental illness with Mr.
14 Hawes?

15 A No. Prior to his incarceration Mr. Hawes had
16 never seen a psychiatrist, never seen a counselor,
17 reported no history of prior mental health
18 treatment.

19 Q With regard to his background did you find it
20 significant he had worked and managed a business
21 and obtained a driver's license and raised a
22 family? Were those things significant to you for
23 any reason?

24 A Well, first of all before we spoke to him he
25 had been evaluated by the Department of

1 Disabilities and Special Needs to determine whether
2 he had mental retardation, whether he was competent
3 to stand trial.

4 MR. GROSE: Actually I'm going to object to
5 that. That is factually inaccurate. It may not be
6 the appropriate objection but the sequence was that
7 Mr. Geoly sent him to the Department of Mental
8 Health and he did not go DDSN until after I was
9 involved in the case much, much later and, you
10 know, that's a matter that the Court could take
11 judicial notice of from the orders that are in the
12 file.

13 THE COURT: You can bring that up on cross,
14 Mr. Grose.

15 You've got something, Mr. Hodges?

16 MR. HODGES: I was going to say I don't know
17 if this is in the file or not but I can mark the
18 DDSN report as State's 2 just so it is part of the
19 record.

20 THE COURT: All right.

21 MR. HODGES: If there is no objection.

22 MR. GROSE: No objection.

23 THE COURT: Without objection Number 2 is in
24 evidence.

25 (Department of Disabilities and Special Needs

1 evaluation marked and received in evidence as
2 State's Exhibit Number 2).

3 THE COURT: Do you want to restate the
4 question?

5 MR. HODGES: Yes. I'm trying to remember
6 what it was.

7 THE WITNESS: I stand corrected, Mr. Grose is
8 correct.

9 BY MR. HODGES:

10 Q I think what I was asking, what do you see
11 significant about his work history and family
12 history in terms of his mental capacity?

13 A Well, it goes to his adaptive functioning.
14 There was evidence that he had been in learning
15 disability classes when he was in school, which is
16 a form of special education. When we have that
17 history the question becomes is this person perhaps
18 mentally retarded. For our purposes when we see
19 someone for a court ordered evaluation, if we
20 believe that there is evidence of mental
21 retardation we refer them to DDSN for an evaluation
22 before we render an opinion.

23 At that moment in time, Mr. Grose is correct,
24 we were looking to be see if there is any evidence
25 of mental retardation. The fact that he ran his

1 own business, managed his own money, had worked in
2 several very high paying jobs would indicate that
3 he was able to function adaptively at a level that
4 would be much higher than would be expected of
5 someone with mental retardation. I mean, one job
6 he was making \$15 an hour, Bruner Industries, or
7 Manufacturing, and that is pretty good functioning,
8 to be able to maintain a job for a fair amount of
9 time at that level. Someone with mental
10 retardation would not be able to do that.

11 So we felt based on his adaptive functioning
12 and also based on his performance on our test
13 examination he abstracted very well, he uses
14 abstraction spontaneously, and that is something
15 that someone with mental retardation could not do,
16 so we felt that we had sufficient reason, despite
17 his history of being in special education classes,
18 to not refer him to DDSN.

19 Q Okay. Dr. Schwartz-Watts indicated that Mr.
20 Hawes had reported abuse to her prior to this
21 particular incident. What did the defendant reveal
22 to you, if anything, on that particular topic?

23 A We specifically asked him, "Do you have any
24 history of physical or sexual abuse as a child or
25 during your upbringing," and he specifically denied

1 that. In fact, in reviewing my notes, I described
2 that he had a good, loving childhood, had adequate
3 food, clothing. He did not go lacking for what he
4 would need, there was no abuse, he had no trouble
5 as a child.

6 Q Can you explain to us what is PTSD?

7 A Post traumatic stress disorder is an anxiety
8 disorder that can occur after someone has
9 experienced or been confronted with a traumatic
10 event in which their physical integrity or
11 physical, or the physical integrity or life of
12 another person was placed in danger. Sub to that
13 you have three categories of symptoms that develop.
14 The first category would be re-experiencing
15 symptoms. These are like the nightmares people
16 have of trauma, flashbacks all the time. Veterans
17 coming back from the war will have nightmares about
18 being back in war, they will all of a sudden be
19 thinking about it.

20 You also have avoiding symptoms. People
21 avoid things that remind them of the traumatic
22 events, so let's say a Vietnam vet who has PTSD,
23 the movie Platoon comes on, they can't watch that,
24 they can't deal with things that remind them of the
25 trauma.

1 Finally you have what is called hyper
2 arousal, and the symptoms, these are irritability,
3 feeling on edge all the time, easily startled,
4 scanning the environment, just in a sense of
5 increased arousal.

6 And finally and importantly, in order to make
7 a diagnosis of PTSD you have to find that these
8 symptoms cause significant impairment in social or
9 occupational functioning.

10 Q Okay. Did you find any evidence of that?

11 A No, we did not. Mr. Hawes has not reported
12 nightmares of traumatic events, he was sleeping
13 eight hours a day at the jail, he appeared to be
14 functioning occupationally quite well. Prior to
15 his arrest he was running his pressure washing
16 business. The day before, he states he had been
17 distributing flyers to try to get more business.
18 So, he did not report, like I said, he did not
19 report any physical or sexual abuse to us, so we
20 had no reason to believe that those events had
21 occurred.

22 Q What relationship, for someone who is
23 diagnosed with PTSD, what relationship is there
24 between that and being able to conform conduct to
25 requirements of the law?

1 A Well, PTSD could potentially impair capacity
2 to conform if there is a specific symptom that
3 relates to criminal acts for which he is charged,
4 so if he had flashbacks at the time of the event,
5 if there was some specific symptom that impaired
6 his ability to conform, then we would offer an
7 opinion.

8 I read a case where someone that had PTSD had
9 a flashback and he committed an act for which he
10 was charged during the middle of the flashback.
11 But that was not what we found here. There had
12 been, he reported that actually she had gone out to
13 the truck and grabbed the gun and that he had
14 gotten the gun from her when it fell on the seat of
15 his truck, and then when you look at the actual
16 shooting itself, the way, the witness statements
17 were that he pointed the gun and waited for a child
18 to get out of the way, and that would not be
19 consistent with some sort of compulsive flashback
20 related event.

21 Q In that regard I'm going to hand you what has
22 been marked as State's Exhibit Number 3. You
23 mentioned you had gotten a video recording of a
24 witness statement, a transcript of the audio. Does
25 that particular statement outline what you're

1 talking about, about the child moving out of the
2 way before he fired the fatal shot?

3 A Yes, it does.

4 MR. HODGES: Your Honor, I would offer
5 State's 3 into evidence.

6 MR. GROSE: No objection.

7 THE COURT: No objection, State's 3 is in
8 evidence.

9 (Brittany Roundtree statement marked and
10 received in evidence as State's Exhibit 3).

11 BY MR. HODGES:

12 Q If you would, read us the excerpt from that
13 that is related to what you're explaining.

14 A Well, let me say first of all, let me get the
15 names right, Mitchell McAllister is the detective,
16 Brittany Roundtree is the person being interviewed.
17 Mr. McAllister says, "Did he say anything before he
18 started shooting?" Brittany Roundtree states, "He
19 just pulled it out." Mr. McAllister said, "Did he
20 wait on your sister to move? He actually waited,
21 pulled it out and then waited on your sister to
22 move?" Miss Roundtree, "Yes, sir." "And then
23 shot, shot your mother? What did you do after
24 that?" Brittany Roundtree, "Well, me and my sister
25 and my two brothers, we ran out of the house, that

1 is when I see him come out of the house, got in his
2 car and left."

3 Q All right. Why is it significant that he,
4 according to this witness statement, waited for the
5 child to move out of the way?

6 A I believe that's evidence of capacity to
7 conform behavior, in my opinion.

8 Q If he had been suffering some sort of
9 flashback or had been completely out of his senses,
10 then he would probably have just been shooting
11 indiscriminately, is that fair to stay?

12 A The fact that he was aware that there was a
13 child nearby who might be hurt and was able to
14 delay shooting until that person moved out of the
15 way, to me indicates he would have had capacity to
16 conform.

17 Q And what was your, with regard to competency,
18 I don't think there has been any disagreement among
19 yourself or Dr. Schwartz-Watts with regard to
20 competency, is that your understanding?

21 A Well, I don't think we have a difference of
22 opinion now regarding competency. Apparently when
23 I saw him in 2008 he was on medicine for depression
24 and he wasn't severely depressed. I did not see
25 him after that. I read Dr. Schwartz-Watts'

1 reports. He was not, he was taken off that
2 medication, she describes him as being more
3 significantly depressed in her report of May of
4 '09, but then by the time she saw him in April of
5 2010 he had been placed back on the antidepressant
6 medication and was doing quite well.

7 Q What was your ultimate opinion with regard to
8 criminal responsibility?

9 A It is my opinion he would have been able to
10 distinguish what is legal and moral right and wrong
11 and to recognize the particular act charged would
12 be morally wrong.

13 MR. HODGES: I don't have any further, Your
14 Honor.

15 Please answer any questions Mr. Grose may
16 have.

17 THE COURT: Mr. Grose.

18 MR. HODGES: Your Honor, I would offer
19 State's 1 in evidence.

20 THE COURT: Any objection to State's 1?

21 MR. GROSE: No objection.

22 MR. HODGES: Dr. Frierson's report.

23 THE COURT: That is in evidence without
24 objection.

25 (Dr. Richard Frierson report marked and

received in evidence as State's Exhibit 1).

MR. HODGES: All right.

1 CROSS EXAMINATION

2 BY MR. GROSE:

3 Q I'm going to hand you State's Exhibit Number
4 1, which is a copy of your report. Now, you only
5 saw Mr. Hawes one time, right?

6 A Correct.

7 Q October 2nd, 2008?

8 A Yes.

9 Q Actually Dr. Buckland was the presiding
10 psychiatrist in the evaluation?

11 A Yet.

12 Q And you were the second examiner. Is that
13 right?

14 A Yes. I was his supervisor.

15 Q Okay. Now, one of the things that you talked
16 about was the fact that Mr. Hawes was on medication
17 when you saw him. Right?

18 A That's correct. He was on Paxil.

19 Q And medication is supposed to treat the
20 symptoms that it's given for, right?

21 A Yes.

22 Q Okay. And you said he was on Paxil, right?

23 A That's correct.

24 Q And one of the things that Paxil can treat is
25 PTSD?

1 A Right. He was placed on it because of
2 symptoms of depression. They did not mention PTSD
3 but it is used sometimes to treat or try to help
4 some of the symptoms of PTSD.

5 Q All right. So if he also had PTSD the Paxil
6 would be treating that in addition to any
7 depression?

8 A It could be helpful.

9 Q Which is what it is supposed to do, is help
10 that?

11 A It is why people prescribe it.

12 Q Okay. Now, you talked about the history and
13 not everybody is always forthcoming with their
14 complete history when you talk to them, are they?

15 A Some people are not forthcoming, some people
16 are forthcoming with things that aren't true.

17 Q And some people have to meet with doctors
18 more than once before they can feel comfortable and
19 tell them everything?

20 A Sometimes, yes.

21 Q Okay. And in a perfect world it would be
22 better to see somebody more than once to do an
23 evaluation?

24 A It depends on what you're evaluating them
25 for.

1 Q Right.

2 A If you're evaluating for competency, criminal
3 responsibility, not necessarily. I mean, if I have
4 somebody who is perfectly competent, that robs a
5 bank, threw the gun, disposed of evidence, denied
6 doing it, I don't need to see them five or six
7 times to determine they knew it was wrong, so it
8 just depends on the clinical situation, as to how
9 many times you might need to see somebody. I
10 believe you have had a defendant I have seen
11 probably six or seven times in the course of doing
12 one of these evaluations.

13 Q And that is what I'm getting at. In the
14 course of seeing somebody six or seven times you're
15 able to get more information over time?

16 A Sure. Sometimes that is necessary, sometimes
17 it is not.

18 Q Okay. And sometimes, oftentimes you look for
19 collateral sources of information, right?

20 A That's correct.

21 Q And in fact I think that a standard procedure
22 is to have a social worker or somebody try to
23 contact a family member and get a history?

24 A Which we did in this case as well.

25 Q But you didn't, you contacted them but you

1 were unable to obtain collateral information?

2 A Right, we made an effort to try to collect
3 collateral information. We left messages for his
4 brother. I believe the name of his brother --

5 Q He has several brothers.

6 A The one that we contacted is Larry.

7 Q Okay.

8 A Larry Hawes.

9 Q So --

10 A In fact we contacted him --

11 Q The point --

12 A -- twice.

13 Q The point I'm getting at is that unlike Dr.
14 Schwartz-Watts, you didn't talk to Mr. Hawes'
15 brother?

16 A We made attempts to but he never returned our
17 call, correct.

18 Q All right. And part of it, I'm looking on
19 page two of your report, or actually Dr. Buckland's
20 report, the last sentence here, where Mr. Hawes
21 indicated to you that he had tried to talk to his
22 family about counseling in the past but he didn't
23 get any. Is that right?

24 A That was marital, to deal with the problems
25 he was having with his wife.

1 Q Well, what the report actually says is that
2 Mr. Hawes reported that he desired counseling for
3 his family in the past, however he did not proceed
4 with getting it. So, anyway, you didn't have a
5 chance to ask any family members if there was any
6 trauma in his history or anything?

7 A We knew from him that there had been, he
8 reported to us, we knew about the accident with the
9 train involving his father.

10 Q So you did have that history even though that
11 is not in your report?

12 A Yes. He denied any sexual or physical abuse
13 as a child.

14 Q All right. And sexual and physical abuse is
15 something that families don't talk about,
16 oftentimes they are less forthcoming with that?

17 A It depends on who the informant is.
18 Certainly if the informant is the abuser they will
19 deny it. If it is someone who has suffered abuse
20 they are usually very forthcoming.

21 Q We deal with it in court all the time as
22 something that is concealed with delayed
23 disclosures and things like that. You're not
24 discounting all of that kind of evidence, are you?

25 A I'm not sure what you're referring to.

1 Q Well, people don't always come forward with
2 that, sometimes people are reluctant to come
3 forward with that?

4 A Yes.

5 Q Okay. Now, you did not have, you did not do
6 any neuropsychological testing, did you?

7 A No.

8 Q And nobody at DMH did that?

9 A No.

10 Q And you have Dr. Brawley's report?

11 A I have seen it, yes.

12 Q I believe I sent it to you and I imagine Mr.
13 Hodges also sent it to you.

14 A I don't believe I received it from you. Mr.
15 Hodges did send it to me.

16 Q Okay. But you have it?

17 A Yes.

18 Q And you know Dr. Brawley?

19 A Yes.

20 Q In fact Dr. Brawley works at DMH?

21 A Did.

22 Q Doesn't now but has in the past?

23 A She works at USC now so I see her frequently
24 on Tuesdays.

25 Q So you have probably relied on testing that

1 she's done before?

2 A Sure.

3 Q And so you're not disputing her report or
4 anything in it?

5 A I'm not disputing her findings. I would
6 point out that I don't believe that the IQ that she
7 measured was reflective of his abilities. I think
8 that I questioned that what she mentioned in her
9 report was likely not a reflection of his true
10 abilities because he was depressed at the time. He
11 was not on the medication, he was severely
12 depressed. The reason I say that is because his
13 abilities, from our examination, his ability to
14 calculate, to abstract, to answer fund of knowledge
15 questions was higher than we would expect from
16 someone with that measured IQ.

17 Q But you're not disputing that he has
18 borderline intellectual functioning? We're not
19 saying he's mentiall retarded.

20 A No, I'm saying I think he has a learning
21 disability and had a learning disability that
22 caused him particular problems with written
23 expression and reading. His ability to do
24 mathematical equations is much better than his,
25 than you would expect of someone who has trouble

1 reading. I mean, he demonstrated to us some of the
2 questions he has with big words. He could have an
3 IQ in the borderline, it's possible.

4 Q That is what I'm getting at, you don't have
5 any evidence to dispute Dr. Brawley's findings, do
6 you?

7 A Dispute which particular finding, the IQ?
8 I want to point out she says in her report that it
9 is not a true reflection of his ability.

10 Q But what she reports about IQ, including
11 that, it is a two page report, right?

12 A Yes.

13 Q You don't have, you don't have any testing
14 that you ordered, yourself, or Dr. Bufkin ordered,
15 that disputes that, do you?

16 A No.

17 Q Okay.

18 A We were able to arrive at the competency and
19 responsibility opinions without that.

20 Q That was your involvement in the case, to do
21 a competency exam?

22 A Right, and criminal responsibility.

23 Q You understand we're not disputing his
24 competency here today?

25 A Right, that is my understanding, you are just

1 disputing the opinion on --

2 Q He pled guilty.

3 A You're only disputing his capacity to
4 conform.

5 Q We're not really disputing that. We're
6 asking evidence about what happened, what was going
7 on with him at the time of the crime, and you have
8 not been asked to do a mitigation evaluation, have
9 you?

10 A No, I have not.

11 Q That was not your role, there is no court
12 order for that?

13 A No.

14 Q Okay.

15 MR. GROSE: Beg the Court's indulgence for a
16 moment.

17 THE COURT: Yes, sir.

18 Q Let's go back to schooling for a second.
19 Would you agree that Mr. Hawes failed three grades?

20 A Yes.

21 Q And you would agree that he had a low GPA?

22 A Define low.

23 Q Well, do you have his GPA?

24 A He was a 2.35 in ninth grade, which would be
25 a little bit better than a D. He was 1.95 by the

1 tenth grade. So, I mean, he had some
2 deterioration.

3 Q Deterioration while he was in school?

4 A Yes.

5 Q Okay. And so he was not a good student?

6 A He wasn't an A/B student.

7 Q And certainly he failed some grades?

8 A Yes.

9 Q All right. And do you know whether or not
10 Mr. Hawes witnessed his mother dying or not?

11 A Historically I understand that he did.

12 Q Okay. So you wouldn't dispute that?

13 A No.

14 MR. GROSE: That's all I have, Your Honor.

15 MR. HODGES: I have no further questions,
16 Your Honor.

17 THE COURT: Thank you, Doctor. You can step
18 down.

19 (Witness excused)..

20 MR. HODGES: Your Honor, we ask that Dr.
21 Frierson be excused.

22 MR. GROSE: No objection.

23 THE COURT: Without objection, Dr. Frierson,
24 you're released from your subpoena. Thank you very
25 much for coming, sir.

1 Mr. Hodges?

2 MR. HODGES: May we have just a brief break
3 so I can talk to one other witness?

4 THE COURT: Very good. We'll be at ease
5 about five minutes. Let me go ahead and say this.
6 I realize that we do have family members obviously
7 on behalf of the defendant and family members on
8 behalf of the victim in this case. I have been
9 quite impressed throughout the proceedings this
10 morning on how well everyone has conducted
11 themselves. I understand while we're on break it
12 may be necessary for various individuals to use the
13 bathroom or to perhaps step outside for a moment.
14 Please don't do anything to jeopardize the civility
15 that has been demonstrated by both families today.
16 By that, I mean please make sure that we all behave
17 ourselves and there is no reason to get into any
18 argument or dispute because the ultimate decision
19 that has to be made in the case is mine, not you
20 all's, and certainly you don't want to allow your
21 respective side or your respective positions to be
22 compromised or tarnished by any disagreements or
23 outbursts that take place in this courthouse nor
24 would such outbursts be tolerated very well by this
25 Court, so with that we'll be at ease five minutes

1 while Mr. Hodges speaks to his next witness.

2 (Recessed at 12:05 p.m.).

3 (Reconvened at 12:13 p.m.).

4 THE COURT: All right, Mr. Hodges, you're
5 ready to proceed?

6 MR. HODGES: The State's ready, Your Honor.

7 THE COURT: All right, call your next
8 witness.

9 MR. HODGES: The State calls Brittany
10 Roundtree.

11 THE COURT: Miss Roundtree, come around and
12 be sworn.

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1 BRITTANY ROUNDTREE,
2 after being first duly sworn, testified as follows:

3 THE COURT: All right, ma'am, if you will
4 please state your name for the record.

5 THE WITNESS: My name is Brittany Roundtree.

6 THE COURT: If you would, scoot forward just
7 a little bit, Miss Roundtree, so you can speak
8 directly into the microphone. The acoustics in
9 here are a little bit lacking.

10 Mr. Hodges?

11 MR. HODGES: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. HODGES:

14 Q Brittany, the victim in the case, Terry
15 Hawes, is your mother, is that correct?

16 A Yes, sir.

17 Q And the defendant, Mr. Hawes, is he your
18 biological father?

19 A My stepfather.

20 Q Your stepfather?

21 A Yes, sir.

22 Q Did you live in the home with the defendant
23 Mr. Hawes and your mother Terry Hawes?

24 A Yes, sir.

25 Q All right. And for what time period did you

1 live in the home with the two of them?

2 A Let me see. All the way up until I got in
3 the ninth grade at Emerald, then I went back to
4 stay with my great grandmother.

5 Q What year were you in the ninth grade?

6 A It was 2007.

7 Q Okay. And how early in your life, when did
8 the three of you all share a household, how old
9 were you?

10 A It was -- well, we all lived there before I
11 moved with my great grandmother.

12 Q You stopped living with them in 2007?

13 A Uh-huh (Affirmative).

14 Q When did you start living with them, what
15 age?

16 A I was, I was about fifteen or sixteen.

17 Q Okay. So what year would that have been?

18 A It was about the same. I think I had stopped
19 living with them by the beginning of 2007.

20 Q Okay. What I'm asking, that is when you
21 moved out, when did you move in?

22 A When did I move in where, with my
23 grandmother?

24 Q No, with your mother. What I'm trying to
25 figure out is how many years did you live in the

1 same household with your mother and Mr. Hawes?

2 A We all stayed together up until 2007.

3 Q Right. Is that for your whole life up until
4 2007?

5 A Uh-huh (Affirmative).

6 Q So, from the time you were a baby, until
7 2007?

8 A Uh-huh (Affirmative).

9 Q All right. How many years would that be?

10 A For about sixteen years.

11 Q About sixteen years?

12 A Yes.

13 Q Okay. So, during the sixteen years that you
14 lived with your mother and Mr. Hawes were you able
15 to be around and see their interaction with each
16 other?

17 A Yes.

18 Q Okay. Did they argue a lot?

19 A Yes.

20 Q Okay. What sort of things did they argue
21 about?

22 A Well, it was really about the same thing,
23 with him messing with a lady behind her.

24 Q Did that upset your mother he was running
25 around with another woman?

1 A Uh-huh (Affirmative).

2 Q Would you characterize your mother as a
3 violent person?

4 A No, sir, but you know, when the situation
5 happened, you know, she kind of flipped.

6 Q In that sixteen years did you see a lot of
7 incidences where she was violent against Mr. Hawes?

8 A No, because during going on like the sixteen
9 years we didn't really have any problems or
10 anything until she found out about him and the
11 other woman.

12 Q Let me flip it the other way.. During that
13 sixteen years did you see incidences where Mr.
14 Hawes was violent against her?

15 A No, because like I say, everything happened
16 when she found out about, you know, him and the
17 other woman.

18 Q All right. What about after this discovery
19 about him seeing this other woman, was he violent
20 toward her?

21 A On occasion.

22 Q Okay. Tell me some of the facts that you
23 witnessed, tell me some of the things you witnessed
24 him do to her. Would he put his hand on her?

25 A Sometimes. Sometimes.

1 Q And did you know him to carry a gun?

2 A Like the only time I really ever knew, right

3 when I first knew about the gun was when we got

4 robbed.

5 Q During that, during that time period after

6 she discovered that he was running around with this

7 other woman who would you say was, in terms of

8 violence, the primary instigator in this

9 relationship?

10 A Do I have to say?

11 A Yes, ma'am. It's an important question.

12 A He was.

13 Q He was?

14 A Uh-huh (Affirmative).

15 MR. HODGES: That's all the questions I have.

16 THE COURT: Mr. Grose.

17 MR. GROSE: No questions.

18 THE COURT: Thank you, ma'am. You can step

19 down.

20 (Witness excused).

21 THE COURT: Mr. Hodges?

22 MR. HODGES: Your Honor, that's all the

23 testimony that the State has in regard to that

24 particular issue.

25 THE COURT: All right.

1 MR. GROSE: I'm going to recall Dr.
2 Schwartz-Watts. It should be very brief, Your
3 Honor.

4 THE COURT: Doctor, if you will come forward,
5 please, ma'am, just have a seat, you're still under
6 oath.

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1 DR. DONNA SCHWARTZ-WATTS,
2 being previously sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GROSE:

5 Q Dr. Frierson offered some opinions about
6 essentially not guilty by reason of insanity. Is
7 that right?

8 A Yes.

9 Q You were here while he testified about that?

10 A He testified about the level of criminal
11 responsibility.

12 Q Okay. And is it fair to say our purpose
13 today for calling you was to offer mitigation as
14 opposed to try to prove not guilty by reason of
15 insanity?

16 A Absolutely.

17 Q Okay. In response to Dr. Frierson, is there
18 any evidence that you were aware of that supports
19 your belief that we should have gone in that
20 direction, that Mr. Hawes was guilty but mentally
21 ill?

22 A Yes.

23 Q What is that?

24 A Yes. Your Honor, there were a number of
25 things I didn't get into detail because I didn't

1 think that was the purpose of my testimony today
2 but he did absolutely have symptoms of PTSD at the
3 time of this shooting. He described a period where
4 he blacked out and couldn't remember, which is why
5 I had them run the psychological testing.

6 Q He had blacked out before in other settings?

7 A Yes. That was part of his history, when he
8 was in high school, that he described an incident
9 in the boys' bathroom when he was assaulted, so he
10 had had periods when he felt his physical integrity
11 was threatened where his brain, it is called
12 association, it is a symptom that goes with post
13 traumatic stress disorder.

14 Q That is what Dr. Frierson was talking about?

15 A Yes. He had had a deterioration of
16 functioning. This is a man had not been in trouble
17 with the law, had a family, that was working and
18 now he is facing very serious legal consequences,
19 so in my opinion this absolutely caused
20 deterioration in functioning.

21 Q And what we have actually pled guilty to is
22 voluntary manslaughter which requires evidence of
23 heat of passion and provocation, and was there
24 evidence of provocation in Dr. Frierson's report?

25 A That's a legal term but certainly clinically,

1 yes.

2 Q Okay. And what would that be?

3 A Well, there was, at the time of the offense
4 she had gone to the car, to the truck and retrieved
5 the gun.

6 Q Okay. There was also some reference about
7 her pushing him, in Dr. Frierson's report?

8 A Yes, before the shooting he had been pushed.

9 Q All right. And in psychiatry you have some
10 interaction with cooling off periods and that sort
11 of things?

12 A Yes.

13 Q And given Mr. Hawes' PTSD and lower
14 functioning, how would that affect his cooling off
15 period?

16 A Well, I think the more correct term is, Your
17 Honor, what is happening whenever you're startled
18 or you're scared you have a period of arousal, we
19 all do, your heart rate goes up. The example I
20 would normally give a jury, when you get in a car
21 wreck how long your heart rate will stay up, it
22 lasts for a period, for some period, it can be
23 thirty seconds, a minute, for some people it is
24 more than that. So, when you have an anxiety
25 disorder that arousal comes more easily and may

1 persist longer. The best way I can describe it,
2 when you're in a car wreck it takes more than a few
3 seconds before you're able to calm down and
4 refocus.

5 Q All right. With Mr. Hawes having an anxiety
6 disorder, it would take him longer to calm down?

7 A Not only because of that, but also because of
8 his low intellectual functioning. He doesn't have,
9 he doesn't have the same, he has choices for his
10 behaviors but he doesn't have as many as he would
11 if his IQ were higher.

12 Q Okay. With regard to the sexual abuse, how
13 many times did you have to meet with Mr. Hawes
14 before he reported that to you?

15 A He did not tell me on the first meeting in
16 May of 2007. He told me the following time, May,
17 2009, he told me April, 2010.

18 Q Was there anything about the nature of the
19 first evaluation or Dr. Frierson's evaluation that
20 might make somebody, particularly a man, more
21 reluctant to disclose that?

22 A Absolutely. When a male, it is not a gender
23 issue but sometimes it is easier to talk to a
24 female and when Mr. Hawes went to DMH he had two
25 male examiners, Dr. Buckland, who is a very fine

1 doctor, and Dr. Frierson is also very fine, but
2 sometimes it is hard for a male to disclose sexual
3 abuse amongst other males.

4 Q And just very briefly, when Miss Roundtree
5 was testifying a minute ago she made a comment
6 about them arguing over some of the same things
7 over and over again, and does that tie into the
8 opinion that you gave a little while ago?

9 A It certainly was consistent and absolutely
10 that matched what I heard on the tapes, that her
11 mother would try, she was very upset with him
12 having an affair and many times she would try to
13 discuss his affair and he would always go back to
14 the same things, he would say, "Why did you tell
15 your friend I was going to hurt you?". I think
16 there was a phone call she had made, so it seemed
17 like the same arguments, at least what I was able
18 to hear, the same content.

19 Q They were both having it and there was the
20 mutual threats involved?

21 A Yes, very much so.

22 MR. GROSE: I don't have anything else.
23 Thank you for waiting around.

24 MR. HODGES: No further questions.

25 THE COURT: All right, thank you, Doctor, you

1 can step down.

2 (Witness excused).

3 THE COURT: All right, Mr. Grose, anything
4 else in reply?

5 MR. GROSE: No, sir. I'm going to go ahead
6 and excuse her now.

7 THE COURT: Doctor, you're free to go. Thank
8 you very much for coming, for your assistance.

9 Mr. Hodges, anything before we move forward?

10 MR. HODGES: Your Honor, I do have the 911
11 call that was placed by the victim to law
12 enforcement. It is very brief. I would ask the
13 Court to listen to this. I think it is relevant
14 when the Court is trying to weigh its decision
15 about violence between these two parties, just the
16 tone of her voice in making this call, I think it
17 is significant, I would ask the Court to listen to
18 that. State's Exhibit 4.

19 THE COURT: All right. Do you have the
20 capacity to do it?

21 MR. HODGES: I do.

22 (911 taped marked and received in evidence
23 as State's Exhibit Number 4).

24 (State's exhibit 4 played to the Court).

25 THE COURT: Mr. Hodges, I'm going to just

1 come down there and try and listen to it a little
2 bit closer to the computer. If you will, start
3 over at the beginning.

4 (State's Exhibit 4 replayed to the Court).

5 MR. HODGES: Your Honor, just for the Court's
6 perspective, this phone call was placed right
7 before the shooting. The law enforcement officers
8 actually were arriving in response to this call,
9 not a call about the shooting, so this happened
10 within minutes before the shooting.

11 THE COURT: All right. Thank you, Mr.
12 Hodges.

13 MR. HODGES: That would be all the State has,
14 Your Honor, other than hearing from the victims.

15 THE COURT: All right. Gentlemen, as I
16 understand it, obviously there is an issue of the
17 alleged mental illness that Mr. Hawes suffers, has
18 been suffering from, as well as his diminished
19 capacity. I believe, Mr. Grose, you would agree
20 that that relates primarily to the issue of
21 sentencing and the amount of time Mr. Hawes should
22 receive?

23 MR. GROSE: Yes, sir. We're not, I think the
24 language I used at the plea proceeding was the
25 guilty but mentally ill would have some legal

1 significance but no practical significance and it
2 is not our intention to seek the guilty but
3 mentally ill verdict, and I think we addressed
4 that. That was being offered more for mitigation
5 in sentencing. I only see one legal issue that
6 requires a ruling.

7 THE COURT: That is what I was wanting to
8 move to next, the prior CDV.

9 Mr. Hodges, what is your reading of that
10 statute? How do you feel it may or may not apply,
11 in light of the two cases, Grooms is one of them,
12 and the other case is one that I looked at a moment
13 ago but the name escapes me, it was a Court of
14 Appeals decision.

15 MR. HODGES: Yes. That is Blackwell-Selim,
16 the cite on that is 684 Southeast 2d 208. Those
17 are the two cases that I found as well, Your Honor.
18 The statute talks about a history of domestic
19 violence and it doesn't seem to be an isolated
20 incident in the span of this relationship, quote,
21 unquote, history. I don't think that is the end
22 all, be all. The case talks about, talks about the
23 Court heard from family members, I think that is in
24 the Grooms case.

25 I think the testimony from Brittany Roundtree

1 is quite significant because she was there for the
2 duration of this relationship and from her, it was
3 obviously difficult for her to come out and tell
4 the Court but her perspective was the violence came
5 from the defendant and, you know, my presumption of
6 the legislative intent of this statute is a
7 situation kind of like the Farrah Faucette burning
8 bed type situation where someone is for a long
9 period of time abused, has a history of abuse and
10 then at the end of that does something that may not
11 be on its face legally defensible but is
12 understandable, given the pattern of abuse they
13 have suffered.

14 THE COURT: So the statute is aimed at more
15 of a mitigation of the actual sentence imposed,
16 particularly an involuntary manslaughter situation
17 where there might be sufficient legal provocation
18 but not sufficient, or there might be heat of
19 passion but not enough to excuse the homicide. Is
20 that what you're asserting?

21 MR. HODGES: Right. I mean, I can think of a
22 situation where a woman is abused for a number of
23 years and then finally has had it and, you know,
24 shoots the man in his sleep. Obviously, I mean,
25 there is no, there is no self defense issue, no

1 provocation issue, you know, I mean, just kills
2 somebody in cold blood but it is understandable,
3 given the history of abuse and, you know, there is
4 an opportunity there for the Court to mitigate it
5 in some way.

6 THE COURT: I understand that that is
7 certainly one way to read the statute. If that
8 were correct, however, Mr. Hodges, would this
9 statute be superfluous in light of 17-23-170, which
10 is the battered spouse syndrome defense? The
11 statute, as I read it, gentlemen, I want to get
12 right to the point, obviously the statute applies
13 to a homicide, we've got the Grooms case and the
14 Blackwell-Selim case that would indicate it would
15 apply to this type of a situation. The statute
16 does address a history of criminal domestic
17 violence. Where the statute is silent is on any
18 issue of causation. Additionally, it doesn't
19 appear to be any sort of temporal restriction in
20 the statute if one is applying the statute's plain
21 meaning, which I'm constrained to do, theoretically
22 if you were to have a series of criminal domestic
23 violence convictions which theoretically predate
24 the homicide by ten years and subsequent to the
25 conviction there was a reconciliation of the

1 parties and then there was a homicide,
2 theoretically the statute could apply to that
3 situation. Am I incorrect? I agree that may not
4 be the intent but that appears to be the plain
5 language of the statute. Once the defendant is
6 proven by a preponderance of the evidence there is
7 a history of criminal domestic violence.

8 MR. GROSE: If I could speak to that, I think
9 what Mr. Hodges is getting at and what you're
10 getting at is you could shoot somebody in their
11 sleep and that still be self defense under battered
12 woman syndrome.

13 THE COURT: Correct.

14 MR. GROSE: That is not what we're talking
15 about.

16 THE COURT: I know.

17 MR. GROSE: I want to be clear about that.
18 This statute does not, number one, does not exclude
19 mutual violence. I have done this before, it's
20 been a number of years, Chip Howe has done it
21 before, both our cases involved the mutual domestic
22 violence going back back and forth. This statute
23 applies to the situation just like Mr. Hawes, where
24 somebody has been convicted of an offense and the
25 elements are proven, and not that other situation.

1 I think you're right, there is no time limitation,
2 it just has to be a pattern, which would be two or
3 more, we have proven two or more by a preponderance
4 of the evidence, and it just has to prove by
5 preponderance of the evidence that it happened and
6 the Legislature intended that to apply. I would
7 say they intended it to apply to somebody like Mr.
8 Hawes, because the other, the battered woman
9 defense which is I guess sort of a combination of
10 common law and self defense and statutory right, It
11 would be a complete defense, you know, not guilty,
12 walk out of the courtroom. The Legislature clearly
13 wanted this to apply to somebody who was guilty
14 beyond a reasonable doubt of murder.

15 THE COURT: I would agree, Mr. Grose. The
16 two cases which have addressed this particular
17 statute, however, they never reached any further
18 than the question of did the defendant meet the
19 requirements by a preponderance of the evidence.
20 Both the Grooms case and the Blackwell-Selim case
21 basically stated, stated the judge found that the
22 defendant had not met their burden of proving it by
23 a preponderance of the evidence, so there is no
24 detailed discussion as far as the legislative
25 intent or whether there is a causation factor or

1 whether there is a temporal restriction. From a
2 plain reading of the statute I cannot find one
3 myself. The question I have for you is certainly
4 we have testimony of ongoing difficulties, some of
5 which perhaps could be characterized as normal for
6 any marriage. Obviously I believe it would be
7 abnormal that you would have convictions but you
8 have proven, you have demonstrated there were at
9 least, there was at least one incident that
10 resulted in a conviction, a second incident which
11 was indicted but subsequently nol-prossed after the
12 death of the victim in this case. Explain to me
13 how you demonstrated a history of criminal domestic
14 violence sufficient to warrant application of
15 16-25-90.

16 MR. GROSE: You know, I think it gets back to
17 that is a penal statute, it has to be construed in
18 favor of the defendant. I think in addition to the
19 conviction in municipal court, I forget the exhibit
20 number, you know, Dr. Schwartz-Watts' testimony on
21 that is also substantive evidence. I think there
22 was a recent case that kind of pointed that out.
23 You know, she had a history of, you know, other
24 instances, incidences she was able to confirm he
25 did seek medical treatment for, the State had

1 indicted him, had indicted Mrs. Hawes under a
2 second offense, General Sessions.

3 You know, you have, you know, not everything,
4 not every argument, I agree, is going to meet the
5 definition of domestic violence but you certainly
6 have that and mutual threats that were going back
7 and forth. Threats can be domestic violence, I
8 don't think anybody has really disputed that, and
9 you are welcome, there are hours of tapes if you
10 would like to listen to them, I have them on CD, I
11 can give them to you.

12 THE COURT: What do the tapes reflect?

13 MR. GROSE: The tapes reflect they would
14 argue and go back and forth.

15 THE COURT: These are actual recordings of
16 the arguments?

17 MR. GROSE: Well, some are recordings and I
18 have transcripts, too, if you would rather have
19 transcripts. They are recordings of the arguments
20 and some of them are phone messages and Mrs. Hawes
21 actually called and threatened to kill Mr. Hawes on
22 one of them, so these were not just the normal, you
23 know, husband and wife being upset at each other.
24 I mean, her threats actually raised to the level of
25 a threat to kill, plus you have Dr. Frierson's

1 report that, you know, she pushed him or something
2 of this situation. You know, arguably history
3 could be one incident of one conviction. CDV is
4 something that the Legislature is, I assure you
5 they are keenly aware of that, the CDV committee is
6 still in existence, and we have proven, you know,
7 more than that.

8 THE COURT: Certainly if it had been the
9 legislature's intention to allow one incident to
10 warrant invoking this section they would have used
11 the word, they would have used the language present
12 credible evidence of an incident of criminal
13 domestic violence, as opposed to a history.
14 Wouldn't history used in the context of this
15 section denote more of a pattern?

16 MR. GROSE: Well, if they meant pattern they
17 would have used pattern.

18 THE COURT: Agreed, but history obviously has
19 a different meaning than a single incident.

20 MR. GROSE: And I think that the single
21 incident, even under the most limited view of the
22 evidence we have proven more than that. I think
23 one prior conviction would probably be enough, a
24 conviction is proof beyond a reasonable doubt.
25 Convictions are not required under the statute.

1 THE COURT: Correct.

2 MR. GROSE: And so, you know, I think that we
3 could, we could debate scenerios, what if this,
4 what if that, what if this all day long, and I
5 think it is just very simple, you prove there is a
6 history of the domestic violence, you get this. We
7 proved there was a history of domestic violence, he
8 gets parole eligibility.

9 THE COURT: All right. Mr. Hodges, what is
10 your reply to that, sir?

11 MR. HODGES: I agree with what Mr. Grose is
12 saying but I think it hinges on the definition of
13 what is a history, and from what the Court has
14 heard, you know, the primary aggressor in this
15 relationship was the defendant and it just seems,
16 it doesn't seem right that he would be the
17 beneficiary of this statute if he's the primary
18 aggressor. You have an incident from eleven years
19 before the homicide where I think, if I remember
20 correctly, he was convicted of domestic violence
21 out of the same incident himself. It was a
22 cross-warrant situation. So, I just don't think
23 the defense has shown a history or, as the Court
24 said, a pattern of domestic violence that would
25 justify a finding pursuant to that statute.

1 I would also point out, Your Honor, Mr. Grose
2 has mentioned that the defendant's version of the
3 event that she pushed him or there was some sort of
4 physical altercation, that would not be the State's
5 position. I know at the plea proceeding the
6 defense had an issue with the State's factual
7 presentation and indicated they kind of had their
8 own version of how this occurred but I would point
9 out the witness statement that I presented through
10 Dr. Frierson, I presented that as a State's
11 exhibit, transcript of her recorded statement, she
12 indicates he just pulls a gun out of his waistband
13 and shoots her, waits for the child to get out of
14 the way before he does that, and I think the 911
15 call you heard where she is obviously not yelling
16 or upset or excited and in fact saying, "I can't
17 really talk, he's standing right here," you know, I
18 think that is certainly evidence to this Court of
19 who the aggressor was in this situation and it was
20 not her.

21 MR. GROSE: In this situation, it is not
22 limited to this situation, and primary aggressor is
23 a legal term and has significance which has been
24 satisfied by the conviction and indictment on those
25 incidences, but if the statute meant that you had

1 to prove a primary, who was the primary aggressor
2 they would have put that in the statute.

3 THE COURT: And obviously that is something
4 that the phrase, primary aggressor is a term of art
5 that appears obviously in another portion of Title
6 16 relating to CDV, so your point is well taken on
7 that.

8 Mr. Hodges, would the State have any
9 objection if I were to review the tapes that Mr.
10 Grose has? You realize, gentlemen, that I would
11 prefer to review those privately just because I see
12 no reason for those to be played in open court.
13 What I'm inclined to do, gentlemen, is proceed with
14 sentencing at this point in time because I feel
15 like I have enough evidence of mitigation and
16 obviously I will be hearing from the victim's
17 family and certainly from the defendant's family,
18 if we can proceed with that I could impose a
19 sentence and then review the tapes and make a
20 determination as to whether Mr. Grose has, or
21 whether Mr. Hawes, rather, has met that burden of
22 preponderance of the evidence. Would the State or
23 defense have any objection to that?

24 MR. GROSE: I think it would be appropriate
25 to review them and arrive at that. I have no

1 objection to that.

2 MR. HODGES: I think the Court has authority
3 to consider whatever it wants to at sentencing. I
4 don't have any objection to that.

5 THE COURT: Because the statute does relate
6 to the eligibility for parole, I think it would be
7 appropriate the Court have as much information as
8 possible with regard to the issue of whether the
9 statute applies or whether Mr. Grose has met that
10 burden, so we will proceed at this point in time
11 with sentencing and I will issue a written order
12 Monday relating to the question of whether 16-25-90
13 applies in this particular case. I do want to note
14 this is somewhat unusual from at least the two
15 cases reported on that section, where the courts
16 have had an opportunity to review that section, in
17 neither of those cases was there any conviction or
18 any documented evidence demonstrating that in fact
19 the defendant in those cases was a victim. The
20 defense rested on merely assertions on the part of
21 the defendant or perhaps other evidence that, yes,
22 the domestic violence did take place.

23 So, with, that, Mr. Grose, if you can provide
24 me with a copy of those tapes at your leisure and
25 at this point we will proceed with sentencing.

1 MR. GROSE: Okay. How do you want to
2 proceed?

3 THE COURT: I would rather, the way I
4 typically do it, I would rather hear first from
5 anyone that the State would care to have speak on
6 behalf of the victim or of the victim's family and
7 then certainly anything, Mr. Grose, that Mr. Hawes
8 may wish to say or that any member of his family
9 may wish to say. I feel that would be the best way
10 to do it, is the way we have traditionally done it.

11 So at this point, Mr. Hodges, I will be happy
12 to hear from any member of the victim's family.

13 Just state your name before you speak for the
14 record so my court reporter knows who is talking.

15 DOROTHY ROUNDTREE: My name is Dorothy
16 Roundtree.

17 THE COURT: Miss Roundtree.

18 DOROTHY ROUNDTREE: The victim's mother.

19 THE COURT: I will be happy to hear from you,
20 Miss Roundtree.

21 DOROTHY ROUNDTREE: I would just like to say
22 my daughter, she was a good person and as you can
23 see from her photo, she was a good mother also.
24 But we're not here today to determine whether she
25 was a good mother or whether he was a good father.

1 We're here for justice. Since this whole incident
2 happened I have a hole in my heart. I mean, it's
3 pain, I wouldn't put this on nobody, that they have
4 to go through this. I live it every day, have been
5 living it for three years and it is still there.
6 It's a revolving door, it's going to be there, the
7 hurt, the pain that me and my husband have
8 suffered, the nights, the lonely nights, the
9 birthdays, the graduations, the birth of her
10 grandchild, it's going to constantly be with us
11 through the rest of our life. We didn't ask to be
12 put in this situation and I wouldn't want nobody,
13 no other parent or no other family to be put in
14 this situation. It's hard and it's a struggle and
15 it's going to continue to be a struggle but I'm
16 here to speak for justice for Terry. She can't
17 talk for herself anymore. I can't see her anymore.
18 Excuse me.

19 THE COURT: That's all right, ma'am, take
20 your time.

21 DOROTHY ROUNDTREE: When I get ready to put
22 her children to bed at night and I look in their
23 faces, the kids, they doing fine, they are all A
24 students, I'm so proud, they continue their
25 education, they are constantly good kids, but when

1 you look at them they walk with their heads down,
2 they go to school they walk with their heads down,
3 they come home they have their heads down. Why?
4 They hurt. I'm hurting but I'm trying to be strong
5 for the sake of my family, for them. I love those
6 children with all my heart, I love them with all my
7 heart and it is always going to be this empty spot
8 in my heart, it ain't going to never go away.
9 That's going to be there from now on. My husband,
10 he lay in bed and cry at night because he don't
11 want to cry in front of the kids, he don't want
12 them to see the hurting that's going on within our
13 family and I, Your Honor, like I say, I would never
14 wish this on anybody, I never would have thought in
15 a million years that I would have to put my baby in
16 a body bag because she was shot so many times that
17 they couldn't determine how many times she was
18 shot. That's not, that's not right. Justice
19 failed her once, please don't let justice fail her
20 again. She deserves better than that.

21 Thank you.

22 THE COURT: All right. Thank you, Miss
23 Roundtree.

24 Yes, ma'am?

25 CRYSTAL BRYANT: Your Honor, my name is

1 Crystal Bryant and I'm a friend of Terry's, she and
2 I worked together as well as I was her spiritual
3 guidance from time to time, a pastor, and Terry
4 would confide in me a lot about a lot of things
5 with the children, with the marriage, and she loved
6 her family as we all knew that. Terry loved her
7 family, she loved her children. Terry had a humble
8 heart and she always went with what was best.

9 A few memories I have of Terry is when our
10 children were in school at Springfield, I was over
11 the PTO, she was a great parent and always eager to
12 do whatever she could to help and be there for the
13 children. I remember her daughter had a reading at
14 District 50, at the school board meeting one night
15 and she and her husband both were there and they
16 were just so proud to be there and have their
17 children succeeding the way they were.

18 And I'm here because I want justice as well
19 for Terry, because regardless of what happened or
20 what was going on, there is no need for this to
21 happen but we understand all things happen for a
22 reason. Her children will have to go to bed
23 without their mother and never be able to see her
24 face again, I won't be able to see my friend Terry
25 again. Terry was an inspirational person to me

1 because sometimes I would come to work with my head
2 down and she would always have a kind and a
3 friendly word to say. Terry was a hard worker and
4 I miss her.

5 THE COURT: Thank you, Miss Bryant.

6 JEMETRI HARRIS: My name is Jemetri Harris.

7 THE COURT: Miss Harris.

8 JEMETRI HARRIS: I worked with Terry. When I
9 started working with Terry she met me in the locker
10 room, she told me, "My name is Terry and I'm
11 married and I have a husband and I love my kids,"
12 and I said, "Wait a minute, ain't nobody said
13 nothing about your husband and your kids." But we
14 became friends, she made me laugh and we talked
15 about our kids and she really, really loved her
16 family. I remember her talking about things that
17 they used to do, how smart they were, and I have a
18 son, he's around their age, too, so I, me and her
19 just related on being mothers and how wonderful it
20 was and she was just, she made me laugh, she made
21 me smile, I looked forward to seeing her when I got
22 to work.

23 THE COURT: Thank you, Miss Harris.

24 THE COURT: Yes, ma'am.

25 CYNTHIA WADE: My name is Cynthia Wade, I

1 also was a friend of Terry's and a co-worker of
2 hers and I can honestly say from the bottom of my
3 heart that she loved her family, her husband and
4 her children, and I think this is just a tragedy
5 and I hate this has happened but I pray that some
6 justice will be served and I pray for both
7 families, that everything can come together one day
8 to resolve this issue.

9 THE COURT: Thank you, Miss Wade.

10 Yes, ma'am.

11 CAROL HEINRICH: My name is Carol Heinrich,
12 I'm administrator at the surgery center where Terry
13 worked. Terry came to the center about I think May
14 of 2004 and she came as a temporary employee,
15 full-time temporary employee to us, and I have to
16 say Terry had energy, she was a hard worker, a team
17 player and never complained about anything, was
18 willing to, was eager to grow, talked about going
19 to nursing school at some point in time, you know,
20 which she and I sat and talked one day about, you
21 know, the importance of, what was important in
22 life, and she said, "I've got to be here, I've got
23 to have a job for my kids, they are the most
24 important thing in my life," and you know, she has
25 touched many of the hearts of the people in the

1 surgery center and to this day she is missed.
2 Occasionally her name will come up and everybody
3 has got something very positive, good to say about
4 her.

5 So, thank you for the opportunity.

6 THE COURT: You wanted to offer something
7 from the victims?

8 ANGELA CASTILLO: Yes, Your Honor. This is a
9 letter that was received from the student support
10 facilitator at a school where Terry Hawes' children
11 attended. It's Mary C. Anderson and she states
12 that she had known, she says, "I had known Mrs.
13 Hawes for about two years when she passed away.
14 Mrs. Hawes was a very caring and dedicated person.
15 She loved her family, she always put her children
16 before herself. Mrs. Hawes not only attended
17 school conferences, she would come in every day on
18 her lunch break and check on her children. She
19 came in with a smile and left with a smile. She
20 always assured the teachers and staff that she was
21 never too busy when it came to her children. Mrs.
22 Hawes wanted all her children to be successful and
23 do their best. Mrs. Hawes was very loyal, honest
24 and sincere and was an outstanding parent. She was
25 a pleasure to work with."

1 THE COURT: Thank you very much.

2 Mr. Hodges, you alluded to Mr. Hawes' prior
3 criminal history when we first began this morning.
4 Will you refresh the Court's recollection as to
5 what his prior record is, sir?

6 MR. HODGES: Yes, Your Honor. He's got an
7 assault and battery conviction from 1990 and then a
8 criminal domestic violence conviction from June
9 7th, '96. I think, if I remember correctly, that
10 is out of the same incident as the conviction for
11 Mrs. Hawes.

12 MR. GROSE: It is indeed, Your Honor.

13 THE COURT: Very good. Anything further from
14 the State at this point?

15 MR. HODGES: That's all from the State, Your
16 Honor.

17 THE COURT: Mr. Grose.

18 MR. GROSE: It may be a little unusual but as
19 background I was appointed after Mr. Geoly was
20 relieved at Mr. Hawes' request. Despite that, Mr.
21 Geoly wants to address the Court not so much as a
22 lawyer but somebody who knew him even though
23 through his representation.

24 THE COURT: All right, Mr. Geoly, I will be
25 happy to hear anything you want to say.

1 STEPHEN GEOLY: Judge, I don't know if Your
2 Honor handled any of it but a complaint was
3 actually filed against me by Mr. Hawes which
4 motivated me getting off the case, and part of
5 that, Your Honor, I think is some of what has been
6 addressed today, that he was having serious
7 problems, I think, with depression, mental illness
8 and wouldn't accept that I was actually working on
9 his behalf when in fact I was at the time getting
10 Donna Schwartz-Watts to see him, and I think she
11 actually did see him before he filed something
12 saying I wasn't doing anything on his behalf. But
13 we had had multiple hearings. I was in the process
14 of, I think, getting another analysis at that time
15 but, Your Honor, I think I was in a unique
16 position. As you may or may not be aware, I think
17 it has come in, I wasn't in here for part of what
18 was going on, but not only was this CDV where they
19 were both convicted but at the time this death
20 occurred they both had pending charges at that time
21 as well in their history. She was charged, I
22 think, with assault and battery high and aggravated
23 nature against him, he was charged with assault and
24 battery with intent to kill where Miss Terry
25 herself had said the gun had gone off accidentally.

1 That was a situation where during that time, Your
2 Honor, if you will listen to these tapes,
3 apparently there is a host of things, I get drug
4 through the mud a little bit in the tapes, Mr.
5 Jones, I think comes up in the tapes, he was
6 representing her, but part of what struck me as
7 odd, you could tell at that time prior to that
8 Craig was going through a lot. Atypical of other
9 defendants, he had been up to the municipal court
10 because these charges were initiated through the
11 city and talked to Miss Shanika Brown, a judge over
12 there, on at least four occasions about what was
13 going on, how he was having trouble dealing with it
14 and how, you know, you have heard from the victim's
15 family how she was a dedicated mother, and let me
16 say, Your Honor, obviously a terrible situation
17 here, I mean, but part of what I truly do believe,
18 when I was representing Craig initially and they
19 kind of had this tit for tat, she had the ABHAN
20 against him, he had the ABHAN against her, they
21 were both pending, they were trying to work through
22 being a family and raising these kids together. He
23 saw his kids not like an estranged husband, he saw
24 his kids every single day. He would still run into
25 Terry every single day, I think, and he would see

1 the children beyond what you would think of as
2 regularly in an estranged marriage situation. He
3 would see them all the time.

4 These tapes, when you listen to them, Judge,
5 one of the things that struck me, it's a far
6 different voice on the 911 call, very calm, very
7 calculated, it seems like, as opposed to the tapes,
8 the hours of tapes you can listen to where they are
9 fighting and bickering with one another. He always
10 put the impression that, in looking back, that she
11 was trying to press his button, and I know that
12 seems a little far fetched but she was very calm on
13 the 911 tape as opposed to the tapes they have of
14 each other. I don't know what button pressing was
15 going on but he snapped. I firmly believe the
16 Craig I have dealt with, versus the Craig that did
17 this, that this occurred with, what they were
18 fighting about apparently, Judge, he had had the
19 kids pretty much all day as I recall, had brought
20 them back to her and she was in the process of
21 telling him no, he wasn't coming back to get them,
22 I think it was to take them to church that night,
23 to take them somewhere that night, he said, "I'm
24 coming back to get them to take them," "No, you're
25 not, you're not going to see them anymore," or

1 something to that effect occurred and he snapped.
2 Not to excuse his behavior, it is certainly
3 intolerable what happened.

4 And I talked to him about that at the time,
5 Judge, I've got four kids and I thought enough to
6 be here, I'm missing my Anna Grace's first spelling
7 bee she's ever done, it is a big thing for her
8 right now but I felt this was important to let you
9 know when I was representing Craig Hawes and they
10 had that tit for tat going on before this occurred,
11 all I heard about Craig Hawes in the community was
12 what a good daddy he was, what a good man he was.
13 Now, he and his wife had the situation, but prior
14 to this occurring his reputation in the Greenwood
15 community as a whole, and I think with his inlaws
16 as well and certainly his family, everybody else
17 who is going to talk about Craig Hawes, until this
18 incident occurred he was thought of as a good man,
19 he was thought of as a great daddy and he was
20 thought of as a provider for his children. You
21 have heard testimony about how he worked and did
22 and that is who the man was.

23 But I do think that if Your Honor tempers
24 justice with mercy there is nobody else ever in his
25 life that will be able to press those buttons like

1 got pressed, nobody else could ever take his kids
2 away like has already been done. That, I think, is
3 the mindset he found himself in that day. I don't
4 even pretend to start to understand the PTSD
5 ramifications and the other mental illness factors
6 that can come into play but just the fact of being
7 a normal man who has cared that much for your kids,
8 going to all school events, taking care of them and
9 saying you're not going to have anything to do with
10 them, that inflames you enough. So, with the
11 additional baggage of whatever else he had going on
12 in his mind, I think that pushed him over the
13 cliff.

14 I stand here today and what I wanted you to
15 understand was I think he probably had an inkling
16 better than me, maybe this is a failure which I
17 could have addressed and somehow comforted him
18 better or gotten him to a psychiatrist at that
19 point in time, I think he was reaching out, which
20 is shown by why has he gone to see Judge Brown at
21 the municipal office three or four times? He could
22 maybe speak to you to that when he speaks, but I
23 really think that he was a good man and this is a
24 good man who did a horrible thing, not a criminal
25 who engages in his normal conduct because he's an

1 aggressive wife beater. They were tit for tat,
2 always at each other and he has reached the point
3 in his life, and I feel it encumbent upon me,
4 regardless of anything that had developed between
5 us, I felt it important for the Court to know,
6 typically I wouldn't be here for most people,
7 Judge, I have other things to do today, but I do
8 feel like I wanted somebody to stand up for Craig
9 Hawes that had gone kind of through it with him and
10 understood this was a good man who did a horrible,
11 horrible thing but at the end of the day, Your
12 Honor, he had to that point lived his life as a
13 good man and I don't think the Court would have any
14 concern that any tragedy like this would ever
15 happen again if you let Craig Hawes out of jail
16 today. I know that is not going to happen but if
17 you did I think that the chance of him committing
18 another crime is infinitesimal. I don't think he
19 would ever do it. Once he serves his time and does
20 whatever, Your Honor, whether it is thirty days or
21 thirty years, you're not going to see him again.
22 He is not going to be somebody that runs into
23 trouble with the law again.

24 So, I wanted the Court to know that for what
25 it's worth and I have no hard feelings with Craig,

1 I hate I wasn't able to continue representing him
2 but we had a conflict came that made it impossible,
3 I felt like, for us, to have the complaint against
4 me and me represent his interest, with us having
5 the conflict we had at the time.. Since then, I
6 will tell you, you know, he has apologized to me
7 for that and I feel, you know --

8 MR. GROSE: They have had some meetings both,
9 I guess, around court things, you know, and gotten
10 along well and everything.

11 STEPHEN GEOLY: But that's it.

12 THE COURT: Thank you, Mr. Geoly.

13 MR. GROSE: There are several family members
14 want to speak. I'm going to ask them to go to the
15 microphone and state your name and tell the judge
16 what you want him to know.

17 SHAMIKA HALL: I want everybody to know that
18 he was a good person, he is not a murderer,
19 everybody makes mistakes, I love Terry just like
20 she was my own aunt, ever since I was a small child
21 I remember her being in my life, so I don't have
22 anything against their family. I know they hurt
23 also and I know the kids would love to have their
24 father in their life again. They don't hate Craig.
25 I know that for a fact, which I think things didn't

1 never have to happen, but he was a great person, he
2 is not a bad person and, I mean, I used to go and
3 spend the night at their house and when I was there
4 I used to tell everybody they looked like a loving
5 couple but you never know what goes on behind
6 closed doors. Everybody have their problems and I
7 guess it was just the time in his life where he
8 just, they both had a turning point. I remember
9 her coming over after the other incident, after
10 that had took place, she was still around and he
11 still come around. He used to be in his kids' life
12 every day and I just don't understand, you know,
13 why it had to happen. I wish I could take it back
14 but I can't and I just don't want to see him
15 spending the rest of his life in jail, because I
16 know he is sorry, he didn't mean to do what he did,
17 people make mistakes, you know, in the blink of an
18 eye and I know he wishes he could take it back and
19 I know they can't have their mother back but I know
20 they have forgiven their father for this, they
21 don't hold a grudge and I know it for a fact and I
22 just wish, you know, I know he has to be punished,
23 Your Honor, for what he has done but I don't think
24 he deserve to spend the rest of his life in prison,
25 they may disagree with me but that is my uncle, I

1 love him, I loved her, and it was just a terrible
2 tragedy, I wish I could take it back, you know, but
3 I can't and I just, he is not a terrible person
4 that everybody is trying to make him out to be. He
5 has feelings and is sorry for what he has done, I
6 go see him, and I know he loves his sons, if you
7 all could just please don't look at him as a
8 horrible person. Look at him as human, everybody
9 does things that we can't take back, this was a
10 terrible tragedy and I know it happened but
11 hopefully --

12 THE COURT: Thank you, ma'am. What was your
13 name, please?

14 SHAMIKA HALL: Shamika Hall.

15 THE COURT: Yes, ma'am.

16 CASANDRA HAWES: I'm Casandra Hawes.

17 THE COURT: Miss Hawes.

18 WITNESS: I'm Craig's niece, I grew up in the
19 house with Craig and also lived in the same
20 household with him as Terry. She was loving as one
21 of the family members just as well as he was.
22 Everybody hate that this had to happen this way.
23 We loved Terry, we love Craig. Everyone go through
24 difficulties in relationships and we just hate that
25 it ended the way it did. We see the hurt in both

1 families and wish the best for everyone and it
2 comes to closure.

3 THE COURT: Thank you, Mrs. Hawes.

4 FELICIA HUGHES: My name is Felicia Hughes,
5 I'm Craig's niece. I was a dear friend of Terry's,
6 I mean, we was friends before her and Craig even
7 came about. But, you know, Terry wasn't close with
8 her family, my family were her family. I loved
9 Terry, I talked to Terry nearly every day. You
10 know, I'm not trying to justify the situation but,
11 you know, justice should be served but it was an
12 occasion they both were violent. I mean, I think
13 it was many times she pushed his button. I recall
14 Brittany calling me one night at 1:00 o'clock in
15 the morning when he had come home and she did start
16 with him, you know and, you know, I'm not trying to
17 justify what happened but Craig was a good person
18 and also Terry, they both loved their children
19 dearly and, you know, it was a time she would say
20 she was going to do things to harm him, you know,
21 and I have said things, too, I would talk to both
22 of them, you know, but it comes a time in life
23 where you, you know, trying to do right by your
24 kids, you have to make yourself, divorced or
25 wherever, have control, but she kept going back and

1 I would tell her, you know, and she would laugh
2 about things, you know, she was a good person, she
3 loved her husband dearly, as well as her children,
4 but on several occasions I would tell Terry just
5 leave, you know, let him go, be wherever, and do
6 what you do because it was time, she had met
7 someone else, too, but I mean, I just hope that it
8 is in their hearts to forgive him because he have a
9 soul, too, because God is a forgiving God, I just
10 pray that they really forgive him and, you know,
11 and justice should be served because it didn't have
12 to get to this point, they should have just went
13 ahead and parted, you know, but my heart just go
14 out to the children and to Craig because he does
15 have a soul, you know, and I late it got to this
16 point but like I say, you know, I feel like
17 standing up and speaking now, I never would, I
18 never dealt with her family, and I been knowing her
19 nearly half of my life, you know.

20 Thank you.

21 THE COURT: Thank you, Miss Hughes. .

22 THE COURT: Yes, ma'am?

23 WITNESS: My name is Evelyn Wright, I'm a
24 cousin of Craig.

25 THE COURT: Miss Wright?

1 EVELYN WRIGHT: I have been in a situation
2 like this myself, my husband has been killed by my
3 kids' father, by the father, it is hard on the kids
4 because we already done lost our mother, you
5 understand, and going through losing our father, it
6 is living another life, you know, and I know Craig
7 and Terry was family people just like my parents
8 were, and for things to happen like that, but it
9 just did, you know, and I just asking you to have
10 mercy because God is a forgiving God and, you know,
11 if they didn't intend for that to happen, but most
12 of all it affect the kids, they the ones got to go
13 through it, you know, and just like I know how
14 their family was, they can relate to how mine was,
15 I was with with my father and mother every day just
16 like she was and they heard even more because of
17 the fact that mom already told me we got to go
18 through this, thinking our father is going to be
19 taken away from us, is going to be killed. It is
20 nothing like your mother and father. We can say,
21 you know, our grandparents love us and, you know,
22 got family members that love us, but it is nothing
23 like the love of having for your mother and father,
24 especially as I was, just like their kids were,
25 their mother and father, they never stayed anywhere

1 else with anybody and stuff, they need their father
2 because their mother is already gone, you know, the
3 situation, I just ask that you have mercy on the
4 family and I'm sorry about whatever, the family,
5 Miss Roundtree going through, it's a healing
6 process, we hurt just like she do, we are hurting
7 just like they hurt.

8 Thank you.

9 THE COURT: Thank you, ma'am.

10 LAQUITA WATSON: My name is Laquita Watson.

11 THE COURT: All right.

12 LAQUITA WATSON: I would like to say I'm
13 sorry to Terry's family and I hate that they are
14 going through what they're going through and I
15 would like to say she was a wonderful mother and
16 Craig was a wonderful father. I remember times I
17 used to stay and there was things that the kids
18 wanted and Terry would be like no, they don't need
19 it, Craig would go behind her back and get it for
20 them just to see them smile. I think he is a
21 wonderful father and he didn't mean to do what he
22 did and if he could take it back he would and have
23 a family and have, I think he would, if he could
24 take that back, it would be one thing he would do,
25 is to have his family back again.

1 THE COURT: Thank you, Miss Watson.

2 Yes, sir? What is your name, sir?

3 ISSIAH AIKEN: Issiah Aiken. I just ask you
4 please have mercy upon my uncle. He is a good man.
5 he stood through me during hard times when I lost
6 my mother, he gave me whatever I needed, he came,
7 helped me. I hope you all show mercy. He loved
8 his kids, he made sure they stayed on point in
9 school, he made sure they had everything they
10 wanted and he also looked out for me as well when I
11 had tragedy for my mother. I just hope you all
12 forgive my uncle for what he done and I know he is
13 sorry for what he done. I just hope you all have
14 mercy upon him.

15 THE COURT: Thank you, Mr. Aiken.

16 KIMBERLY DEAN: My name is Kimberly Dean. I
17 came to know Nita and Craig through the church.
18 They are part of my family, but I am a victim and I
19 was going through the same thing that Nita may have
20 been going through. Of course I was a victim for
21 25 years of domestic abuse, my life was almost
22 taken that year, my husband approached my house
23 with a gun. When I went to the door he actually
24 shot his self and not me. So, what I want to say
25 is I didn't see that with Craig and Nita. What I

1 saw was a loving family. I knew that they had some
2 problems because of a relationship but all I heard
3 from Nita was how much she loved her husband and
4 wherever he went she went. If he tried to leave
5 and go stay somewhere else she followed him. That
6 is how much she loved her husband. I don't have
7 anything to say about either one of them that's
8 bad. I can't say anything bad about Craig, I saw
9 him at the church, they came to choir practice, as
10 a matter of fact I'm thinking they was supposed to
11 meet us that night at church. He made sure, even
12 though they were going through the problems they
13 had, that she had a way to church, and those
14 children. That's all I have to say.

15 THE COURT: Thank you, Miss Dean.

16 MR. GROSE: Judge, I think Mr. Hawes, and a
17 lot of them call him Craig, which is his middle
18 name, he wants to say something and then I will
19 kind of sum it up.

20 THE COURT: By all means. Mr. Hawes, I will
21 be happy to hear from you, sir.

22 THE DEFENDANT: Thank you, Your Honor. I'm
23 glad to be here today, I'm ready to get this behind
24 me.

25 I would like to apologize, I apologize to the

1 Roundtrees, the Roundtree family. I'm sorry what
2 happened. I loved Terry with all my heart. I pray
3 that you all forgive me, I pray for you all the
4 time. I didn't intend for this to happen. I asked
5 the family, the family even, part of the family
6 even come to visit me, my wife's mother right
7 there, a son, they come visit me all the time. I
8 mean, they're not bitter toward me, they have told
9 me they have forgiven me. And I also have spoke to
10 my sister-in-law, my wife's sister. She have, she
11 told me she forgive me, but they won't step up and
12 tell the truth because they're afraid of what my
13 wife's father, you know, I still love him but they
14 are afraid of the way he will feel about them
15 afterwards but I know some things he said was wrong
16 but I loved his daughter. I mean, I still love
17 him, you know. My daughter, she didn't get up here
18 and speak the truth but I love her as well.

19 I pray you show me mercy here today. I have,
20 I have my nieces and nephews and cousins, I need to
21 share a word with them. I don't I don't want them
22 to be in the situation I'm in or end up in prison.
23 I have come to get to know the Lord, I want to
24 plant that seed with them, I know people in the
25 family who say they would not share a word with

1 other people. I hate it have to come to the point
2 of me getting to know the Lord but I got him now.
3 Some say it's jailhouse religion, I don't worry
4 about what they say, I got it. The Lord have
5 opened up my eyes and I need to share a word, I
6 have have done bad things in my life and I have
7 done a lot of good things in my life, I need to go
8 back to the same street corner and plant seed and I
9 pray you show me mercy here today.

10 THE COURT: Thank you, Mr. Hawes.

11 THE DEFENDANT: Thank you.

12 THE COURT: Mr. Grose?

13 MR. GROSE: Your Honor, I will be brief. I'm
14 struck by the number of people that are here for
15 Craig and he mentioned the Adams branch of the
16 family. Some of the people on Terry's side of the
17 family had been to visit Craig while he has been in
18 jail. I think it speaks well there are so many
19 people here to support him today. I think it
20 speaks well that everyone that came up here talked
21 about Terry and knowing that her family has a
22 healing process to go through.

23 Doing this work, you find that when a tragedy
24 like this happens, that there is two families that
25 are suffering a loss and they are very different

1 losses and very real losses, though, and the court
2 process often does not do much to help the healing
3 process. I realize there are some aspects of this
4 hearing today probably don't help with that process
5 but I have gotten to know Craig over the last year
6 and a half or so when I have been involved in the
7 case and I have sat in the jail and I have seen his
8 remorse, I have seen the fact that he has, you
9 know, concern for, you know, everybody to be able
10 to heal from all this. I have talked with him
11 about the children, and the pressure washing
12 business that he had, I don't think it was a very
13 sophisticated business but I talked with him about
14 how he would sometimes take the kids with him when
15 he would go and, you know, clean different places,
16 and so I think that his children were a big part of
17 his life and I realizes how big a tragedy it is for
18 them.

19 Nobody is the sum of the worst thing that
20 they have done in their life and I certainly think
21 that applies to Craig. He has, to be in his late
22 thirties, he has very little criminal history and I
23 think, like Mr. Geoly said, that this was out of
24 the ordinary for him and, you know, he has got to
25 be punished, and people talked about justice and I

1 know that that's a very difficult job for the Court
2 in situations like this, and I think this is the
3 case, the type of case that, you know, calls for
4 mercy.

5 And then the final thing that I want to say
6 is, and I often get into, you know, there is a real
7 disconnect sometimes between the legal definitions
8 of things and what people think. I'm absolutely
9 morally convinced there was no plan when he got up
10 this date to go out and do this, that whatever
11 happened, happened in a moment of passion, and I
12 think he was wanting to make certain that his story
13 was told, that that was part of what he felt needed
14 to come out and that people needed to know this was
15 more of a spontaneous thing and not something that
16 had a lot of premeditation involved in it.

17 And I do want to remind you, this came up at
18 the, this came up at the plea in Abbeville and I
19 had intended to ask, bring it up earlier, I do want
20 to remind you that, you know, he did turn himself
21 in. While he did leave the scene and while Dr.
22 Schwartz-Watts talked about how it might take
23 longer for him to cool down and regain his
24 composure, he did do the right thing to accept
25 responsibility and to be here today to face this,

1 and we just ask you be as merciful as possible,
2 Your Honor..

3 THE COURT: Thank you, Mr. Grose.
4 Anything further, Solicitor?

5 MR. HODGES: Not from the State, Your Honor.

6 THE COURT: Mr. Grose, anything?

7 MR. GROSE: No, sir, thank you.

8 THE COURT: The possession of a weapon during
9 commission of a violent crime, it is my
10 understanding that carries five years. Is that
11 correct, Solicitor?

12 MR. HODGES: That's my understanding.

13 THE COURT: It can run concurrently with the
14 other charge?

15 MR. HODGES: Right.

16 THE COURT: And the voluntary manslaughter
17 carries a maximum of thirty. Is that your
18 understanding?

19 MR. HODGES: That's correct.

20 THE COURT: No issue with any of that?

21 MR. GROSE: No issue with any of that, Your
22 Honor.

23 THE COURT: Mr. Grose, Mr. Hawes has been in
24 jail since the date of this offense?

25 MR. GROSE: Yes, sir. And I do not have that

1 in front of me.

2 THE COURT: My intention was to simply give
3 him credit, South Carolina law allows him credit
4 for time served, so I'm just going to note on the
5 sentencing sheet that he is entitled to credit from
6 April 4th, 2007.

7 MR. GROSE: Thank you, Your Honor.

8 THE COURT: All right, anything else before
9 sentence is pronounced, from the State?

10 MR. HODGES: Not from the State.

11 THE COURT: From the defense?

12 MR. GROSE: Nothing further, Your Honor.

13 THE COURT: Ladies and gentlemen, those
14 individuals who came forward a few moments ago and
15 stated this was a tragedy, you are all absolutely
16 correct. This is an absolute tragic loss of a
17 beautiful woman, beautiful in more ways certainly
18 than physical beauty and certainly nothing this
19 Court does today can take that and reverse what
20 horrible thing has happened. I'm firmly convinced
21 that if Mr. Hawes had it within his power to bring
22 Terry back he would do it. I wish it were within
23 the Court's power. Everyone here has been asking
24 for justice and it is going to be this Court's
25 obligation to hand down a sentence which both

1 couples mercy for the defendant but also speaks
2 justice for the tragic loss of life which was
3 clearly unnecessary.

4 I believe that Mr. Hawes is very remorseful
5 for what happened. I do take into account his lack
6 of a substantial prior criminal history. I believe
7 that it is relatively unusual for a gentleman to
8 reach Mr. Hawes' age and commit such a horrible
9 crime and have as little contact, prior contact
10 with this court as Mr. Hawes has had. And I agree
11 with Mr. Grose's assertion, Mr. Hawes, that no one
12 is the sum of the worst thing they have done in
13 their lives, so I don't believe that this crime
14 necessarily defines you but at the same time, sir,
15 you took the life of a mother, somebody's mother,
16 somebody's daughter, and that has to be punished.
17 There is no way around it.

18 I do take into account the limitations which
19 the testimony I feel demonstrate you have suffered
20 from, I do take that into account in imposing this
21 sentence, and this sentence is this Court's best
22 effort to do justice under the facts as I see them
23 to be. It is tragic when so many people are killed
24 by the ones they love in this state, it is almost
25 epidemic. I will save that lecture for another

1 day.

2 All right, Mr. Hawes, it's the sentence of
3 this Court on the charge of voluntary manslaughter,
4 indictment 07-GS-24-1129, that you be committed to
5 the South Carolina Department of Corrections for a
6 term of 22 years. You are to receive credit for
7 the time you have served since April 4th of 2007.
8 This sentence to run concurrently with the sentence
9 on the possession of a weapon during the violent
10 crime charge. The sentence of the Court on that
11 charge is you be committed to the Department of
12 Corrections for five years. It runs concurrently
13 with the voluntary manslaughter charge. You are
14 given credit for pretrial incarceration since April
15 4th of 2007 on that charge as well as on the
16 voluntary manslaughter charge.

17 This matter is concluded. I will take the
18 matter under advisement as far as the application
19 of the Code Section Mr. Grose believes applies.
20 Mr. Grose, if you could furnish me with a copy of
21 the recordings for me to review in a couple days.

22 We are adjourned. If I may, I'm going to
23 allow, just to make sure that there are no issues,
24 I'm going to ask that the family of Terry exit out
25 this way and try not to mingle about the

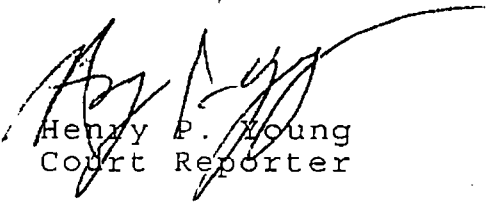
1 courthouse, and if the immediate family of Mr.
2 Hawes would just relax for a few more moments,
3 we'll allow you to leave in a few minutes.

4 (Hearing Concluded).
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3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Greenwood County,
11 South Carolina, on the 20th day of January, 2011.

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

14 April 28, 2011
15
16

17
18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

**DEFENDANT'S
EXHIBIT**

Curriculum Vitae
DONNA MARIE SCHWARTZ-WATTS, M.D.

DATE OF BIRTH: May 29, 1963
PLACE OF BIRTH: Camp LeJeune, North Carolina

PRESENT POSITIONS:

Senior Psychiatrist (certified)
Bryan Psychiatric Hospital

DMH Clinical Professor of Psychiatry
University of South Carolina School of Medicine
Department of Neuropsychiatry and Behavioral Science

PROFESSIONAL LICENSURE:

Diplomate, Psychiatry, (Board Certification #40726), January 1995, recertified 7/05
Added Qualifications in Forensic Psychiatry, July 1996 #471, recertified 7/06
South Carolina Medical License # 16574

EDUCATION:

1981 - 1985	B.A. Psychology Furman University Greenville, South Carolina
1985 - 1989	Doctor of Medicine University of South Carolina School of Medicine Columbia, South Carolina

Donna Schwartz-Watts, MD
Curriculum Vitae

POSTGRADUATE FELLOWSHIPS AND RESIDENCY POSITIONS:

- 1989 - 1993 Resident in General Psychiatry
William S. Hall Psychiatric Institute
Columbia, South Carolina
- 1993 - 1994 Fellowship in Forensic Psychiatry
William S. Hall Psychiatric Institute
Columbia, South Carolina

ACADEMIC POSITIONS/EMPLOYMENT/UNIVERSITY APPOINTMENTS: 7/2006-7/2010

Professor of Clinical Psychiatry
Director, Forensic Psychiatry Services
University of South Carolina School of Medicine
Department of Neuropsychiatry and Behavioral Science
3555 Harden Street Extension, Suite 102
Columbia, South Carolina 29203
(803) 434-4698 (803) 434-2367 (fax)
E-mail: donnasw@gw.mp.sc.edu

Consulting and Treating Forensic Psychiatrist
South Carolina Department of Juvenile Justice

Consulting and Treating Forensic Psychiatrist
South Carolina Department of Corrections

- 11/98-6/2009 Consulting and Treating Forensic Psychiatrist
Behavioral Disorders Treatment Program
(Sexually Violent Predator Program: SC 44-48-110)
South Carolina Department of Mental Health

- 6/1997- 7/2006 Associate Professor
Director, Forensic Services
Department of Neuropsychiatry
University of South Carolina School of Medicine

- 1/2004-7/2004 Acting Assistant Director, Psychiatry Residency Program
University of South Carolina School of Medicine
Department of Neuropsychiatry and Behavioral Science

- 7/1996 - 6/1997 Psychiatrist C William S. Hall Psychiatric Institute

Donna Schwartz-Watts, MD
Curriculum Vitae

Residential Treatment Director of NGRI Unit

- 1/1995 – 6/1996 Teaching Psychiatrist II William S. Hall Psychiatric Institute
Out-patient Forensic Psychiatrist
- 1/1995 – 12/1997 Assistant Professor University of South Carolina School of Medicine
Department of Neuropsychiatry
- 7/1994 – 6/1995 Instructor University of South Carolina School of Medicine
Department of Neuropsychiatry
- 7/1994 – 12/1994 Teaching Psychiatrist I William S. Hall Psychiatric Institute
In-patient and Out-patient Forensic Psychiatrist

MEDICAL STAFF APPOINTMENTS

Bryan Psychiatric Hospital (current)
South Carolina Department of Corrections (courtesy)
South Carolina Department of Juvenile Justice (inactive 7/2010)
William S. Hall Psychiatric Institute
Palmetto Health Richland Memorial Hospital (courtesy)
Palmetto Health Baptist Medical Center (courtesy)

UNIVERSITY/ MEDICAL STAFF COMMITTEES:

- 2007-2010 Member, Appointments and Promotions Committee
- 2002- 2009 Member, Alumni Committee, USC School of Medicine
- 1996- Present Member, Residency Selection Committee
- 1995- Present Member, Residency Training Committee
- 2002- 2003 Member, Search Committee, Chairman of Neuropsychiatry
- 2000-2001 Member, Committee on Women USC
- 1997 Member, Traditions Committee USCSM
- 1997 Member, Search Committee, Director Rehabilitation Counseling
- 1997 Physician Advisor, Environment of Care
- 1996 Member, Search Committee Chair of Department of Neuropsychiatry and
Director of Hall Institute
- 1996 Member, Finance Committee, University Specialty Clinics
- 1994-1996 Member, Infection Control Committee
- 1993-1994 Member, Research Committee

HONORS AND AWARDS:

- 2007 Outstanding Female Physician Mentor Award
- 2004-2005 Outstanding Forensic Teaching Award
Presented by the USC SOM Forensic Fellowship Training Program

Donna Schwartz-Watts, MD
Curriculum Vitae

- 1992 Rapoport Scholarship in Forensic Psychiatry
Presented by the American Academy of Psychiatry and the Law
- 1989 Neurology Award, School of Medicine
- 1985 Cum Laude Graduate, Furman University
Phi Beta Kappa, Furman University
Alpha Epsilon Delta, Furman University

MEMBERSHIPS AND OFFICES IN PROFESSIONAL ORGANIZATIONS:

- 2002-2009 American Board of Psychiatry and Neurology
Forensic Certification Committee
- 1999-Present American Board of Psychiatry and Neurology
1999-Present Board Examiner
- 1997-2003 Group for the Advancement of Psychiatry (GAP), General Member
1999 Chair
- 1992- Present American Academy of Psychiatry and the Law (AAPL)
1995-2000 Rapoport Committee (President appointed)
1995-2000 Education Committee (President appointed)
1998-2000 Program Committee (President appointed)
1999 Program Chair
1995-97 Mentor to Rapoport Fellow
- 1989-1998 American Psychiatric Association, General Member
- 1989-1998 South Carolina Psychiatric Association
1995-1998 Federal Legislative Representative (President appointed)
1995-1999 Executive Council
1996-1998 Secretary-Treasurer
- 1997 NAMI Advisory Board Physician Representative

PUBLICATIONS:

- Schwartz-Watts DM: "Commentary: Stalking Risk Profile." The Journal of the American Academy of Psychiatry and the Law, 34:455-457, 2006.
- Schwartz-Watts DM, Frierson RL: "20: Crisis Stabilization in Correctional Settings." in Clinical Practice in Correctional Medicine, Second Edition, edited by Michael Puisis, D.O., S.C. Mosby, Inc affiliate of Elsevier, Inc 2005.
- Schwartz-Watts DM. "Asperger's Disorder and Murder." Analysis & Commentary The Journal of the American Academy of Psychiatry and the Law 33:390-3, 2005.

Donna Schwartz-Watts, MD
Curriculum Vitae

Schwartz-Watts DM, Rowell CN. "Commentary: Update on Assessing Risk for Violence Among Stalkers." The Journal of the American Academy of Psychiatry and the Law 31:440-3, 2003.

Giorgi-Guarnieri D, Zonana HV, Schwartz-Watts DM. "Practice Guideline: Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense." Supplement to The Journal of the American Academy of Psychiatry and the Law 30:2, 2002.

Frierson R, Schwartz-Watts D, Malone T, Morgan D. "Capital Versus Noncapital Murderers" in revision The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D. "Violent Versus Nonviolent Stalkers," accepted, The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D, Barnes C. "Stalkers: The South Carolina Experience," The Journal of the American Academy of Psychiatry and the Law, 1997, 24:541-545.

Schwartz-Watts D, Montgomery L, Morgan D. "Seroprevalence of Human Immunodeficiency Virus Among Pre-Trial Detainees," The Bulletin of the American Academy of Psychiatry and the Law, 1995, 23:285-289.

POSTERS:

Internet Chat Rooms: Who Solicits Children? R. Gregg Dwyer, MD, EdD, Donna Schwartz-Watts MD, William Burke, PhD, American Academy of Psychiatry and the Law 39th Annual Meeting, Seattle, WA October, 2008

PRESENTATIONS:

"Stalking in the New Millennium": Department of Mental Health Day Long CME, Columbia SC, October 2009

"Internet Predators": South Carolina Psychiatric Association Annual Meeting, Myrtle Beach, South Carolina, 1/2009

"Internet Predators": Panel Speaker, South Carolina Bar Association Annual Meeting, Myrtle Beach South Carolina, 1/2009

Internet Predators: ICAC Quarterly Meeting, Columbia, South Carolina 11/21/2008

Project Safe Childhood, Advanced Online Child Exploitation Seminar, National Advocacy Center Columbia, SC, July 29, 2008

"Violent Crimes and the Commitment of Sexually Violent Predators, MUSC Judges and Attorneys Substance Abuse and Ethics Seminar, Charleston, South Carolina, December 7, 2007

Donna Schwartz-Watts, MD
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"Autistic Spectrum Disorders and Corrections" South Carolina Department of Corrections Mental Health Seminar, Columbia, South Carolina, December, 2007

"Pitfalls in Sex offender Commitment Hearings" Panel Speaker, American Academy of Psychiatry and the Law 38th Annual meeting, Miami, Florida, October 22, 2007

"Treating the Untreatable" Panel Speaker, American Academy of Psychiatry and the Law 38th Annual Meeting, Miami, Florida, October 19, 2007

"Risk Assessment in General Psychiatry: Department of Mental Health Annual Day Long CME, Columbia, SC September 21, 2007

"Mitigation in Noncapital Cases" SC Public Defender's Conference, Myrtle Beach, SC October 2007.

"Nuts and Bolts of Sexually Violent Predator Proceedings" SC Bar CLE, Columbia, South Carolina July 27, 2007

University of South Carolina School of Medicine Founder's Day Speaker for Woman in Medicine, Columbia, South Carolina, April 2007.

"Autistic Spectrum Disorders and Mitigation," Washington DC March 2007

"Sex Crimes and their Aftermath II" Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC, January 25, 2007

"Psychiatry for the Brilliant Fact Finders" Invited Speaker, South Carolina Judges Conference, Greenville, SC, May 12, 2006.

"Sex Crimes and their Aftermath" Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC January 27, 2006.

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, Atlanta Georgia, June 4-5, 2005

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, Atlanta Georgia, June 5-6, 2004

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, New York, New York, June 20-21, 2003

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York. June 20-22, 2002.

South Carolina Probation, Paroles and Pardons Annual Conference. "A State of Mind". Myrtle

Donna Schwartz-Watts, MD
Curriculum Vitae

Beach, SC. November 11, 2002.

American Academy of Psychiatry and the Law, "Difficult Case? Consult your Colleagues."
Newport Beach, California. October 26, 2002

South Carolina Public Defender's Conference, "Issues and Concerns Regarding the Sexually Violent
Predator Statue" Litchfield Beach, South Carolina, September 30, 2002

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New
York, New York, June 28-30-2002.

American Academy of Psychiatry and the Law, "Death Penalty" Boston, MA, October 28, 2001

American Academy of Psychiatry and the Law, "Ask the Expert" and "The Difficult Case" Panel
Discussions. Boston, MA, October 28, 2001

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New
York, New York, June 14-17-2001.

Annual Capital Defense Training Seminar, "The Importance of Timing in the Presentation of Your
Client's Story: Frontloading Mitigation" with John Blume, Attorney, Jekyll Island, Georgia,
February 9, 2001

University of Texas, Department of Psychiatry Grand Rounds "Profile of a Stalker" San Antonio,
Texas, December 19, 2000

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Death Penalty Evaluations,"
December 18, 2000.

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Texas Sexually Violent Predator
Statute," December 18, 2000

American Academy of Psychiatry and the Law, "Juveniles Who Carry Weapons on School Grounds"
Baltimore, Maryland, October 15, 1999

American Academy of Forensic Science, Workshop Presenter, San Francisco, 1998 "Classification
and Typology of Stalkers."

Kansas City, Western Missouri Forensic Department, 1997 "Evaluation of Stalking."

University of South Carolina School of Medicine Women's Month Featured Presenter, 1997
"Stalkers: The South Carolina Experience."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Psychotic versus Nonpsychotic
Stalkers."

Donna Schwartz-Watts, MD
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American Academy of Psychiatry and the Law, Denver, CO, 1997 "Harassing Telephone Callers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 Panel on Maintaining Competence sponsored by Education Committee

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Violent Versus Nonviolent Stalkers",

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Capital Versus Noncapital Murderers"

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Treatment of Insanity Acquittees Across the United States."

William S. Hall Psychiatric Institute Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

Georgia Regional Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

American Academy of Psychiatry and the Law, Seattle, Washington, 1995 "Stalkers: The South Carolina Experience"

South Carolina Psychiatric Association, Hilton Head Symposium, 1995 "What General Psychiatrists Need to Know About Forensic Psychiatry."

American Academy of Psychiatry and the Law Annual Conference, San Antonio, Texas 1993 "Seroprevalence of HIV Among Inpatient Pre-trial Detainees"

American Medical Association, North Carolina 1990 "Tertiary Metastases Presenting As Panhypopituitarism"

Present Research:

Schwartz-Watts D. "Death Penalty"

Schwartz-Watts D, Barth E, Morgan D. "Harassing Telephone Callers"

Schwartz-Watts D, Morgan D. "Psychotic Versus Nonpsychotic Stalkers"

Schwartz-Watts D, Morgan D. "Comparing Stalkers to the Criminally Domestic Violent."

Schwartz-Watts D, Bloom J, Sloan C. "Psychiatric and Legal Perspectives of Stalking."

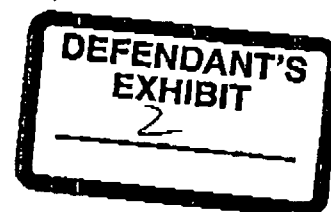
Present Grants:

Donna Schwartz-Watts, MD
Curriculum Vitae

Co-author w R. Gregg Dwyer et al Internet Predators

Co-author w Alicia Hall, PhD, Harry Wright, MD Autistic Spectrum Disorders and Corrections

(Revised 1/19/11)



Donna Schwartz-Watts, M.D.
Consulting Forensic Psychiatrist

June 29, 2010

Dear Mr. Grose,

Thank you for referring Alonzo Craig Hawes for psychiatric evaluation. I originally evaluated him on 5/25/09 pursuant to a request by Steve Geoly. At that time, I did not have any discovery. Mr. Hawes was severely depressed at that time, but protective. I had him sign medical releases for Uptown Family Practice in Greenwood, Self Memorial Hospital and Beckman Mental Health Center. During my evaluation, it was apparent he suffered cognitive deficits, so I referred him for neuropsychological evaluation. I have included the affidavit I prepared for Mr. Geoly on 6/1/09. Also on June 1, 2009, I sent a letter to Mr. Geoly requesting further information about Mr. Hawes. I received Mr. Hawes' medical records from Self Memorial on 5/25/2009. I received letter from Mr. Hawes on June 27, 2009 which I have also enclosed.

After your office became involved, I did receive the discovery, the audiotaped conversations between Mr. Hawes and his victim and his neuropsychological testing was completed. I also reviewed the DMH evaluation completed by Jason Buckland, D.O., the DDSN evaluation completed by Monica Wright, Psy. D., Mr. Hawes' school records and additional medical records.

I evaluated Mr. Hawes again on 4/12/2010.

Developmentally, Mr. Hawes described his father as "a violent man." He states his father was an alcoholic and he saw him "cut another man for crazy reasons." He saw his mother "breathe her last breath" when he was 12. He reports she died from cancer and called the entire family in to say goodbye. Also as a child, he was a passenger in a car, which was stalled on a train track and struck by a train. The accident permanently disabled his father. He states his father had a metal plate in his brain, and afterwards would beat he and brothers with crutches, "hose pipes", clothes hangers, and cords. Mr. Hawes also disclosed that he was the victim of sexual abuse by three adult women before he was in first grade. He states "I loved them and they loved me but they took my penis and put it in them. The one put my mouth down on her." He states he told his brother Larry 5 or 6 years ago.

Mr. Hawes school records confirm that he was in EH and LD classes. His records indicate he repeated second, fourth and fifth grades. The DDSN report indicated he had not

repeated any grades, and the DMH report indicates he repeated three grades (1st, 4th and another year). He was described as unduly shy and easily tiring under the section marked teacher's comments. His GPA in 9th grade was 2.375 and in 10th grade was .95. His achievement test scores were below average. Despite his history of disability and poor achievement, he was never tested in the school system. In the ninth grade, he tested at a first and second grade level for most areas, except for math. In tenth grade, he moved to Anderson to be with sister who taught him to read. He reports he tried to get his GED but couldn't.

Mr. Hawes reports "blacking out" when he was picked on in a bathroom in high school. He also states he blanked out for a period of time during the offense.

Mr. Hawes reports he purchased a gun and kept it on his person after his home was burglarized. An incident report from 11/30/05 indicates the defendant's alarm system was activated. When he and the police went to his residence, the front door was open and jewelry had been removed from his property. He said a few months after that, "the house was broken into." He didn't sleep well and would stay up at night to watch the house. He says he put up surveillance.

The defendant and the victim had a documented history of mutual physical abuse. On 7/14/06, the defendant reported to police that the victim had pulled his arm and kicked him. She denied assaulting him. A witness confirmed that she had thrown a basket at the defendant and told the child to lie. She was arrested for CDV 2nd. On 7/30/06, the defendant entered the victim's house and fired a shot. On 11/3/2006, Mr. Hawes notified the police that the victim had pulled a knife on him. When the police investigated, the defendant was not home and his wife denied the allegation. Mr. Hawes reports that on 1/29/07, the victim stabbed him. Records from Self Memorial Hospital indicate he was treated for a puncture wound to the left hand with a knife. He states he told hospital personal it was a dirt bike accident but that victim had cut him with a butcher knife.

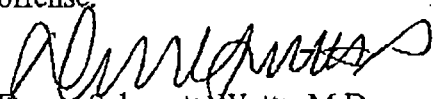
Compared to his evaluation by Dr. Buckland in April 2008, when I evaluated Mr. Hawes in May 2009, he was no longer being prescribed antidepressant medication. He was severely depressed, had psychomotor retardation, was tearful, but cooperative. He was not psychotic.

On 4/12/2010, he was much better. He was taking the antidepressant medication, Prozac®.

Neuropsychological testing confirmed borderline intelligence and other cognitive deficits.

It is my opinion to a reasonable degree of medical certainty that Mr. Hawes is presently competent to stand trial. It is also my opinion to a reasonable degree of medical certainty that Mr. Hawes suffered from Post Traumatic Stress Disorder, borderline intellectual

functioning and severe partner relational problems at the time of his offense which made him unable to conform his conduct to the requirements of the law at the time of the offense.



Donna Schwartz-Watts, M.D.
Consulting Forensic Psychiatrist

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FORENSIC SERVICE USC

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Fax to Charles Gorse

UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE

864-227-1104

UNIVERSITY SPECIALTY CLINICS.

DEFENDANT'S
EXHIBIT

July 6, 2009

Dr. Donna Schwartz-Watts
3555 Harden Street Ext., Suite 102
Columbia, SC 29201

RE: Alonzo Craig Hawes

Dear Dr. Schwartz-Watts,

Per your request, I performed an extended clinical interview and neuropsychological evaluation on the above captioned patient on June 16, 2009. I would like to provide you with a brief summary of findings from this evaluation.

As you know, Mr. Hawes has a reported history of episodes of memory loss dating back to childhood. He states that these episodes are usually associated with increased emotional upset. During the clinical interview, he also endorsed poor recall of recent conversations, word finding problems, decreased attention span, becoming easily distracted, and reading difficulties.

Additionally, he reports to have been in special education classes throughout his school career. He reports to have completed the 10th grade. Mr. Hawes reports that he did obtain a driver's license but that he had to make 4-5 attempts before passing the written portion of the examination.

Currently, Mr. Hawes is reporting multiple vegetative symptoms to include difficulties sleeping, weight loss, decreased energy level, feelings of depression and anxiety as well as crying spells. He is also reporting some symptoms of PTSD.

NEUROPSYCHIATRY
AND BEHAVIORAL SCIENCE
15 Medical Park, Suite 141, Columbia, SC 29203
803-434-4300, FAX 803-434-4351

Formal neuropsychological testing revealed Mr. Hawes to have a Full Scale IQ of 66 (Verbal IQ 65, Performance IQ 75), placing him overall in the Extremely Low/Mentally Retarded range of intellectual functioning.

Deficits revealed by this evaluation included severely impaired verbal learning ability (1st percentile), severely impaired verbal memory (1st percentile), severely impaired naming ability (1st percentile), severely impaired verbal fluency (1st percentile), severely impaired speed and accuracy of mental tracking (1st percentile), poor simple manual speed (1st and 5th percentiles), poor manual dexterity (10th and 8th percentiles), and borderline trail making ability for shifting between two sets (3rd percentile).

Assessment of effort on a forced choice test revealed no evidence of an attempt to exaggerate or feign cognitive difficulties.

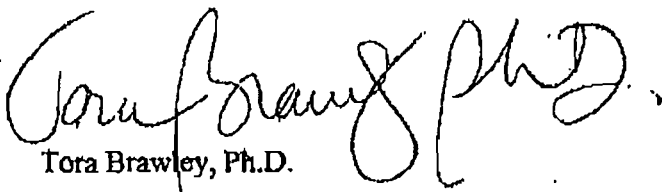
In summary, Mr. Hawes is exhibiting Extremely Low/Mentally Retarded levels of intellectual functioning as well as severely impaired cognitive functioning in multiple other areas. Additionally, he is reporting multiple vegetative symptoms of depression as well as symptoms of PTSD which may be contributing to some of the above noted deficits. Evaluation of school records, if available, would be beneficial and he also reports to have had some testing performed at the Greenwood Learning Center which may be helpful to review as well.

Given his current vegetative symptoms, he may benefit from a trial of antidepressant medication.

Due to his current cognitive slowing, memory and learning deficits as well as very low IQ, Mr. Hawes should be given additional time and explanation for more complex matters in order to assure comprehension. His reading ability is very poor so matters may require multiple verbal repetitions. He also has difficulty shifting from one thing to another, so matters should be simplified as much as possible.

Please do not hesitate to contact me should you have further questions.

Sincerely,



Tora Brawley, Ph.D.

**DEFENDANT'S
EXHIBIT**4

History Docket Inquiry

Docket #: C0014147 Entry Date: 05/24/1996 CRN #: 96-0009183
SSN: 000-00-0000
Name: TERRY A. ROUNDTREE DL St & #: SC 000000000000
Address: 1415 COOPER ST Birthdate: 11/06/1976
City & St: GREENWOOD, SC Race/Sex: B / Female
Zip Code: 29646 Judge #: 001
Repeat: No

Ticket Information

1

of 1

Warrant #: 052626AC Check Date: N/A
Date Issued: 05/23/1996
Description: CRIMINAL DOMESTIC VIOLENCE Disp Date: 06/07/1996
{244} 1ST OFFENSE
Fee Code: 13 Pled Guilty
Trial Type: Bench
Amount Bond: 304.00
Amount Fine: 114.00

History Docket Inquiry

Docket #: C0014147 Entry Date: 05/24/1996 CRN #: 96-0009183
SSN: 000-00-0000
Name: TERRY A. ROUNDTREE DL St & #: SC 000000000000
Address: 1415 COOPER ST Birthdate: 11/06/1976
City & St: GREENWOOD, SC Race/Sex: B / Female
Zip Code: 29646 Judge #: 001
Repeat: No

Ticket Information

1

of 1

Warrant #: 052626AC Check Date: N/A
Date Issued: 05/23/1996
Description: CRIMINAL DO

Disposition Information

{244} 1ST OFFENSE
Fee Code: 13 060796 PLED GUILTY 114.00 OR 30 DAYS
Trial Type: Bench
Amount Bond: 304.00
Amount Fine: 114.00

**CERTIFIED COPY
GREENWOOD
MUNICIPAL COURT**
[Signature] (L.S.)

WITNESSES

Travis Clark

WARRANT NUMBERS

K-118605

Foreman of the Grand Jury

Date:

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

September Term, 2006

Indictment # 06GS24-

1354

THE STATE

VS.

TERRY ANITA HAWES

NOW PROSECUT. DEFENDANT
IS DECEASED.

ASST. SOL.

4/5/2007

INDICTMENT FOR

CRIMINAL DOMESTIC VIOLENCE

**DEFENDANT'S
EXHIBIT**

ATTEST A TRUE COPY

Ingram Moon

INGRAM MOON
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

INDICTMENT FOR
CRIMINAL DOMESTIC VIOLENCE

At a Court of General Sessions, convened on the 29th day of September, 2006, the Grand Jurors of
Greenwood County present upon their oath:

COUNT ONE.

That TERRY ANITA HAWES, did in Greenwood County, state aforesaid, on or about the 14th day of
July, 2006, wilfully and unlawfully cause or offer or attempt to cause physical harm or injury to his family or
household member, to wit: Alonzo Craig Hawes, with apparent present ability under circumstances reasonably
creating fear of imminent peril, in violation of the provisions of section 16-25-20 of the South Carolina Code of
Laws, 1976, as amended

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

ATTEST A TRUE COPY
Ingram Moore
INGRAM MOON
CCOP AND GS
GREENWOOD COUNTY
S. C.

Joseph H. Pierce
Solicitor

196



Greenwood County Sheriff's Office

Tony Davis, Sheriff

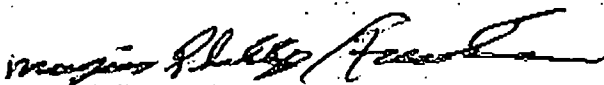
528 Edgefield Street
Greenwood, South Carolina 29646
Telephone 864-943-8057 Fax 864-942-8589

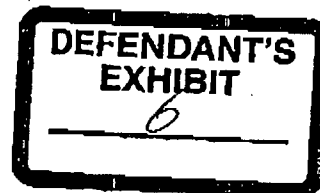
January 20, 2011

TO WHOM IT MAY CONCERN:

Inmate Alonzo Hawes has not given any problems to the staff of the Greenwood County Detention Center since his intake on April 5, 2007 into the facility.

Respectfully,


Maj. Phillip Anderson
Jail Administrator



Sheriff Tony Davis
864-943-8037

Major Lonnie Smith
Commander, Operations
864-943-8087

Major Phillip Anderson
Commander, Detention Center
864-943-8058

Major John Murray
Commander, Investigations
864-943-8052

Major William Kinney
Commander, Uniformed Patrol

Captain Sonny Cox
Commander, Community Services

Captain Marc Cromer
Commander, Internal Affairs

Sandi McAllister-Owens
Administrator

Greenwood Police Department

SC0240100

INFORMATION
ONLYCASE NUMBER
08022388

INCIDENT REPORT

UNQ. No
ENTD. No

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. Criminal Domestic Violence (Unfounded)				YES ☐ NO ☒	YES ☐ NO ☒	RESIDENCE/HOME		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
2.				YES ☐ NO ☒	YES ☐ NO ☒				
3.				YES ☐ NO ☒	YES ☐ NO ☒				
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 241 Epling Ave., Greenwood, SC						ZIP CODE 29848	WEAPON TYPE		
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
11/02/2008	17:41		11/02/2008	17:41	11/02/2008	17:41	17:48	17:53	Z-3
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) Hawes, Alonzo			RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH
			#1 #2 #3		J	B	M	34	N
ADDRESS 3135 Rockhouse Road			CITY Greenwood		STATE SC		ZIP CODE 29849	LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH
			#1 #2 #3						
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
ADDRESS				CITY		STATE		ZIP CODE	LOCATION NO.
VIOLENCE (MCT) YES ☐ NO ☒ EXPLAIN:				COMPLAINANT OF ANY NON-VIOLENCE YES ☐ NO ☒					
VICTIM NO. 1 USING ALCOHOL YES ☐ NO ☒ UNK. ☐ DRUGS YES ☐ NO ☒ UNK. ☐ TYPE:									
TWO MAN VEH. ONE MAN VEH. DETECTIVE PLASMT. OTHER: ALONE: ASSISTED:				*J-This Jurisdiction. S-State. O-Out of State. U-Unknown.					
SUSPECT	NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH	DATE OF BIRTH
RUNAWAY									
WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				DAYTIME PHONE		EVENING PHONE		
WARRANT									
ARREST	ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.
JAIL	SUBJECT NO. 1 USING ALCOHOL YES ☐ NO ☒ UNK. ☐				ARRESTED NEAR OFFENSE SCENE YES ☐ NO ☒		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
SUMMONS	DRUGS YES ☐ NO ☒ UNK. ☐ TYPE:				TOTAL # ARRESTED				
DAY OF THE WEEK		HOW REPORTED		A- OFFICER DISPATCHED ON CALL		D- COMPLAINT WRITTEN IN		DIFF. FACTOR	
S M T W T F S UNK				B- REPORT TAKEN BY PHONE		E- OFFICER INITIATED		A- RESISTANCE/HOSTILITY	
				C- COMPLAINANT WALKED IN		F- OTHER		B- WEAPONS	
								C- UNFOUNDED CALLS	
								D- MENTAL SUBJECT	
								E- COMPLAINANT FRE- QUENTLY INTOXICATED	
								F- DOMESTIC	
								N- NORMAL	
CDV (Unfounded)									
Complaint Type: 10-82 - DOMESTIC PROBLEM									
Caller Name: ALONZA HAWES									
Officer ID: MMURDOCK, Officer Name: MICHAEL MURDOCK									
[11/02/2008 17:41:07 : SBELCHER]									
Cross streets: COOPER ST/TAYLOR ST									
Geo Comment: State road									
1082 WITH WIFE OVER MONEY, TERRI HAWES									
				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY			JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)									TOTAL VALUE
STOLEN									0
DAMAGED									0
BURNED									0
RECOVERED									0
SEIZED									0
SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		S. F.	☐ ACTIVE ☒ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18
					☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE NO CUSTODY									
REPORTING OFFICER(S)			DATE	UNIT NUMBER	APPROVING OFFICER			DATE	UNIT NUMBER
Murdock, Mike			11/02/2008 5:41:00	0909					
Gurley, David				1274	FOLLOW UP INVESTIGATION ☐ YES ☒ NO				

DEFENDANT'S
EXHIBIT

7

ADDITIONAL NARRATIVE

Agency Name:	Greenwood Police Department	ORI #:	SC0240100	Report Date/Time:		OCA #:	06022368
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R/O's responded to the incident location in reference to a domestic dispute and one of the parties supposedly had a knife. Upon arrival we met with Mrs. Hawes who advised that the complainant had left. She denied anything took place other than a verbal altercation.

We checked the residence, but located noone injured and no signs of an assault having taken place.

We rode the area, but did not locate Mr. Hawes.

AGENCY : Greenwood Police Department

ORI #2
Report Date/Time : 11/02/2006 17:41

Incident # : 08022368

INCIDENT REPORT
ADDITIONAL OTHERS

PERSON TYPE Witness	NAME (LAST, FIRST, MIDDLE) HAWES, TERRY, ANITA					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT J	RACE B	SEX F	AGE 29 /	D.O.B. 11/08/1978	ETH N
	HEIGHT 505	WEIGHT 130	HAIR Black	EYES Brown	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS 3135 ROCKHOUSE RD/241 EPTING AVE.					CITY GREENWOOD		STATE SC	ZIP CODE 29648	LOCATION NO.	DAYTIME PHONE 864-229-5164		EVENING PHONE 864-992-1478	
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS					CITY		STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE	
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS					CITY		STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE	
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS					CITY		STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE	
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS					CITY		STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE	
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE /	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS					CITY		STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE	
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:														

CRIMINAL RESPONSIBILITY EVALUATION**DATE OF EVALUATION:** October 2, 2008**PRESIDING:** J. Jason Buckland, D.O., Fellow in Forensic Psychiatry,
University of South Carolina School of Medicine**SECOND EXAMINER:** Richard L. Frlerson, M.D., Professor of Clinical Psychiatry,
University of South Carolina School of Medicine**OTHERS PRESENT:** Randi Plokers, LISW-CP,
South Carolina Department of Mental Health**DIAGNOSES:** **AXIS I:** Adjustment Disorder with Depressed Mood.
 Learning Disorder, Not Otherwise Specified.
 AXIS II: No Diagnosis.
 AXIS III: Hypertension.**CRIMINAL RESPONSIBILITY:** Yes.**CAPACITY TO CONFORM:** Yes.**DISPOSITION:** Mr. Hawes has been returned to the Greenwood County Detention Center where he is awaiting disposition of his charges.**REFERRAL INFORMATION:** Mr. Hawes is a 35-year-old African American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Greenwood County Court of General Sessions. This court order requests an evaluation of his criminal responsibility and his capacity to conform his conduct to the requirements of the law on or about July 30, 2006 and April 4, 2007 pursuant to S.C. Code Ann. §17-24-10 (1976). He is currently charged with Murder, Possession of a Firearm During the Commission of a Violent Crime, and Assault and Battery with Intent to Kill.**STATEMENT OF NONCONFIDENTIALITY:** Prior to the evaluation, Mr. Hawes was informed about the limitations of confidentiality. He was informed that what he told us during the interview could go into a report that would be sent to his attorney. He was also informed that this report may then be sent to the solicitor and the judge at the request of his attorney. He was also informed that we could be called to testify about our report. Mr. Hawes expressed understanding and agreed to proceed with the evaluation.**HAWES, ALONZO**
1016-8433**OUTPATIENT EVALUATION**

SOURCES OF INFORMATION:

1. The court order requesting the evaluation.
2. The Postmortem Report from the Greenwood County Coroner dated April 6, 2007 on the victim, Terry Hawes.
3. A document titled SLED Toxicology Report dated May 21, 2007.
4. Arrest warrant #K-239316 for Murder dated April 4, 2007.
5. Arrest warrant #K-239317 for Possession of a Firearm During Commission of a Violent Crime dated April 4, 2007.
6. An incident report for the above offenses dated April 4, 2007.
7. Arrest warrant #K-118665 for Assault with Intent to Kill dated July 30, 2006.
8. Incident report for Assault with Intent to Kill dated July 30, 2006.
9. The defendant's NCIC criminal record.
10. A document titled Waiver of Rights dated April 4, 2007, which is unsigned.
11. A document titled Booking Report dated April 4, 2007.
12. A document titled Supplemental Report dated April 4, 2007.
13. A document titled Consent to Search for the address 241 Epting Avenue dated April 4, 2007.
14. A photocopied receipt from Dill's Locksmith dated April 4, 2007.
15. A document titled Greenwood Police Department Evidence Report dated April 4, 2007.
16. An incident report for Simple Assault dated February 23, 2002.
17. An incident report for Criminal Domestic Violence, Second Degree dated February 2002.
18. A search warrant for the defendant's 1999 GMC Yukon dated April 4, 2007.
19. A document titled SLED Forensic Service Laboratory Report dated April 25, 2007.
20. An audio recording of a voluntary statement given by Kathy Curry on April 4, 2007.
21. An audio recording of two 911 calls, one by the victim, Terry Hawes, and the other by an unidentified woman. The calls were in relation to the April 4, 2007 offense.
22. An audio recording of a statement by Alonzo Hawes, Jr.
23. An audio recording of a statement by Kalisha Hawes and Craig Hawes.
24. An audio recording of a statement by Brittany Roundtree.
25. Records from Greenwood High School.
25. A two hour and twenty minute clinical forensic interview on October 2, 2008.

CLINICAL HISTORY: Mr. Hawes does not have a history of mental illness. He does not have a record of treatment with the Department of Mental Health and he denied a history of treatment with a private psychiatrist. Mr. Hawes reported he had desired counseling for his family in the past; however, he did not proceed with obtaining it.

He reported having difficulties in school as a child and stated he was told that he "could have gotten a check". Mr. Hawes reported that he had difficulty with completing his school tasks. He reported being told he had a learning disorder at one period in his past. An attempt was made to obtain collateral information via a social history; however, we were unable to obtain collateral information about Mr. Hawes' background from his family.

Mr. Hawes reported that he is having a lot of "stress" and has felt this way since his incarceration. He

HAWES, ALONZO

1016-8433

OUTPATIENT EVALUATION

reported being stressed about his case, his children, and about his incarceration. He is mood is not the best and he has spent a lot of time worrying about his charges. He reported that he was on a medication for the "stress"; however, he did not remember the name of the medication. We contacted the detention center and they reported that Mr. Hawes is on the antidepressant medication, paroxetine (Paxil®). It was also reported that he was seen by Beckman Mental Health Center on August 27, 2008. After their evaluation, it was decided that he did not need follow-up services. Mr. Hawes has experienced an increase in sleep. He currently sleeps up to ten hours in a twenty-four hour period. He reported that this is in contrast to his prior sleeping habits. He has experienced approximately an eleven pound weight loss since his incarceration. He reported that he has an appetite but he dislikes the detention center food. Mr. Hawes has decreased energy and more difficulty than usual concentrating on things. He believes the medicine he is taking for the stress has helped him. Mr. Hawes is able to enjoy listening to gospel music, reading his Bible, and fellowshiping with the other inmates. He is not currently having thoughts of self-harm. When he was first incarcerated, he thought "a couple of times" about harming himself. He did not act on these thoughts and has not had these thoughts in several months. Mr. Hawes meets diagnostic criteria for Adjustment Disorder with Depressed Mood.

PERSONAL HISTORY: Mr. Hawes was born and raised in Greenwood, South Carolina. He was raised by his biological parents until the age of 12. His mother died from cancer when he was 12. He was the eighth of nine children. He described his childhood as having "love" and that he "didn't want for anything." His father was a very hard worker and made sure he was able to provide for the children. He denied a history of physical or sexual abuse as a child. He did not get in trouble as a child and described himself as "quiet and humble." Mr. Hawes denied a history of running away from home, using weapons in fights, cruelty to animals, or setting fires, behaviors that would be consistent with a diagnosis of Conduct Disorder.

Mr. Hawes attended school until the eleventh grade. He quit because he believed he needed to do "something for myself." He moved out of town to live with his sister and obtained employment. Mr. Hawes was in learning disorder classes at Greenwood High. He reported that math was his strongest subject and that he was able to attend "regular" classes for math. He had to repeat the first grade, fourth grade, and one other year in school. He had one school suspension for a fight. He described the fight as occurring in a "blank out" and that he "didn't have control" over his behavior. He was being "picked on" at school repeatedly by the peer he was involved in the altercation with. He denies a history of school expulsions.

Mr. Hawes has worked in manufacturing plants and at the Greenwood Mill. He worked for a company called Grady's Foundry for over three years and enjoyed this work. His "best job" was at Bruner's Manufacturing. He trained employees on how to work on the assembly line. Mr. Hawes was most recently self-employed and ran a business titled Hawes Brothers Pressure Washing out of Greenwood, South Carolina. He ran the business for approximately three years. He did both commercial and residential work. Mr. Hawes managed the finances of his business and did well with his work. Mr. Hawes does not have a history of military service. He was married for thirteen years.

HAWES, ALONZO

1016-8433

OUTPATIENT EVALUATION

and has four children. His children are between the ages of 8 and 16. They are currently with their maternal grandparents.

Mr. Hawes' past legal history is significant for Assault charges. He has not served time in prison in the past.

Mr. Hawes' medical history is significant hypertension. He reports a past surgery for a "vessel in his private parts." His description of the medical condition is consistent with a testicular torsion that was corrected with surgery. Mr. Hawes denied a history of head injury or loss of consciousness. He reported periods of "blacking out"; however, he was unable to provide a full description of these episodes. He stated that he did not pass out, but that things "go black."

Mr. Hawes' family history is significant for a sister with seizure disorder and cancer in his mother. He has a brother with an alcohol problem and a cousin with crack cocaine problems.

Mr. Hawes denied regular alcohol or illicit drug use. He drinks alcohol on occasion, but has not used regularly. He has a history of past marijuana use at age 19 until 23. He would use marijuana on a daily basis. He would smoke approximately one joint per day. He stopped using marijuana because "it made me paranoid." He started to "hear things" and it "messed me up." Mr. Hawes reported that he last used marijuana over fourteen years ago. He denied a history of cocaine or other illicit drug use. Mr. Hawes' report of symptoms of paranoia and "hearing things" while using marijuana would be consistent with a past diagnosis of Substance Induced Psychosis. Mr. Hawes has not experienced these perceptual disturbances since stopping his marijuana use. Mr. Hawes' past marijuana use would have met diagnostic criteria for Cannabis Abuse. We are not assigning that as a current diagnosis as he has not used in many years.

MENTAL STATUS EXAMINATION: Mr. Hawes was dressed in jail attire. His grooming and hygiene were appropriate. His speech was of normal rate and soft tone. He made good eye contact during the evaluation. There was no psychomotor agitation or retardation. He did not have abnormal involuntary movements. He was alert and oriented to the date, location, and situation. He was aware of current events. He was able to name President Bush and President Clinton as the most recent Presidents. On a test of memory, he was able to recall three of three objects immediately and two of three objects spontaneously at five minutes. He was able to recall the third object with a prompt. He was able to perform a test of concentration by spelling the word *house* both forwards and backwards. Mr. Hawes attempted subtracting serial sevens from 100 and was able to complete the task for three calculations and then incorrectly gave the number 62 [72]. He was able to complete two further digits after this miscalculation. His fund of knowledge appeared below average and incongruent with his reported functional ability. This discrepancy could be explained by his history of a learning disorder. He had difficulty with simple calculations and general knowledge questions. He reported that the first President of the United States was President Lincoln. He was unable to state important historical information about President Lincoln. He was unaware of the state that borders South Carolina to the south. He was unaware of the ocean that borders South Carolina and reported that he does not know the name of an ocean. He was able to give the Capital of the United States as Washington, DC.

HAWES, ALONZO

1016-8433

OUTPATIENT EVALUATION

and the largest city of the United States as New York. He showed ability for abstract thinking with his interpretation of proverbs and his ability to give similarities between sets of objects. He reported his mood as "alright" and his affect was congruent. He showed periods of brightening by smiling at times during the evaluation. He stated that he was doing okay as long as he "stayed in the Bible in the word." His thought process was logical and goal directed. His thought content was without delusional material. He denied paranoia, receiving special messages from the TV or radio, or having special powers or abilities. These symptoms are often present in patients with Schizophrenia or other psychotic disorders. He denied suicidal or homicidal ideation. He denied a history of past suicide attempts. His judgment was intact to a hypothetical situation. His insight was appropriate.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Hawes was able to give an account for the days of the offenses for which he is charged. Regarding July 30, 2006, the day he was charged with Assault and Battery with Intent to Kill, Mr. Hawes reported that he went to the residence of his wife in order to see his children. He denied symptoms of a mental illness on this day and he did not report experiencing psychotic symptoms. He reported having a gun on his person at the time of the visit. Mr. Hawes' account of the alleged offense is different from that of the police report. Mr. Hawes stated that he attempted to remove the gun from his waistline when the gun "accidentally" fired. Mr. Hawes denied pointing the weapon at his wife or intentionally firing the weapon. Mr. Hawes also reported that he did not know his wife was on the phone with 911 at the time of the incident. There is no evidence that Mr. Hawes was experiencing symptoms of a significant mental illness at the time of the alleged offense. Mr. Hawes was not experiencing symptoms of a mental illness on the date of the alleged offense that would have impaired his ability to distinguish legal or moral right from legal or moral wrong or to recognize the particular act charged as legally or morally wrong. Therefore, it is our opinion that he would have been criminally responsible pursuant to S.C. Code Ann. §17-24-10 (1976) on the date of July 30, 2006.

Regarding April 4, 2007 Mr. Hawes reported that he had spent the previous evening with his children and they had spent the night at his house. He stated everything went well and he took them back to their grandmother's house the next morning for school. He spent much of April 4, 2007 passing out business cards and flyers for his pressure washing business. He also visited his uncle on that day. He had plans to pick up his children and take them to church with him that evening. Mr. Hawes did not report experiencing symptoms of a mental illness on the day of the alleged offense. Mr. Hawes went to the home where his wife and children were staying later that evening in order to take the children to church. He stated that he became involved in an argument with his wife over this. He reported that she did not want the children to go with him that evening. He described having a verbal altercation with his wife. Mr. Hawes reported that the argument continued and led to a physical altercation, in which he reported being "pushed" by his wife. Mr. Hawes reported he next remembered hearing a gunshot. Mr. Hawes reported that he "blanked out" and that when he returned to consciousness the "gun was in my hand." He stated that his wife was on the floor. Mr. Hawes reported that he does not have a memory for the time period between hearing a gunshot and finding his wife in the floor. Mr. Hawes' account of the alleged offense differs from the police reports and is self protective in nature. Available police reports indicate that the children were in the home during the alleged offense. A statement from one of the witnesses indicated that Mr. Hawes pointed

HAWES, ALONZO

1016-8433

OUTPATIENT EVALUATION

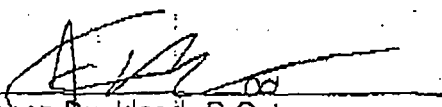
the firearm at his wife and waited for one of his children to move before firing the weapon. This would suggest that Mr. Hawes was in control of his behavior at the time of the offense and would be in contrast to a report of being out of control or "blanked out." Mr. Hawes' behavior at the time of the alleged offense also indicates that he knew the wrongfulness of his actions. According to available records, he disposed of the weapon before turning himself into law enforcement.

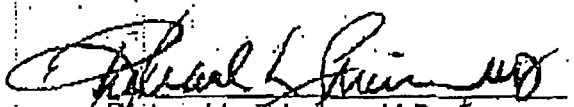
Mr. Hawes did not report significant symptoms of a mental illness on April 4, 2007. He did not have symptoms of a mental illness on the date of the alleged offense that would have impaired his ability to distinguish legal or moral right from legal or moral wrong or to recognize the particular act charged as legally or morally wrong. Therefore, it is our opinion that he would have been criminally responsible pursuant to S.C. Code Ann. §17-24-10 (1976) on April 4, 2007.

CONCLUSION REGARDING CAPACITY TO CONFORM: Mr. Hawes did not indicate having symptoms of a mental illness that would have impaired his ability to control his behaviors on July 30, 2006. He had been involved in an argument with his wife at the time of the alleged offense. Mr. Hawes reported that the incident was an accident. We find no evidence that he would have lacked the capacity to conform his conduct to the requirements of the law because of a mental illness on the day of his alleged offenses.

Mr. Hawes did not report experiencing significant symptoms of a mental illness on April 4, 2007. He described his behavior on and around that day as normal. He had spent time with his children and was functioning appropriately by attempting to advertise for his business. He did not report experiencing psychotic symptoms around the time of the alleged offense and he does not have a history of psychotic symptoms. We find no evidence that he would have lacked the capacity to conform his conduct to the requirements of the law because of a mental illness on the day of his alleged offense.

RECOMMENDATIONS: Mr. Hawes is currently reporting symptoms of a depressed mood. He has been seen and evaluated by mental health services and is currently receiving treatment from the detention center physician. It is our recommendation that Mr. Hawes continue to receive his treatment and that he be evaluated by mental health if his symptoms should increase.


J. Jason Buckland, D.O.
Fellow in Forensic Psychiatry
University of South Carolina School of Medicine


Richard L. Frierson, M.D.
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

JJB/cj

D: 10/07/08
RT/EM: 10/08/08
F/EM: (JJB, RLF 10/15/08)

HAWES, ALONZO

1016-8433

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH

1000

FAX NO. 803 935 5599

Greenwood Cnty Clerk

SRK/07/2011/WEB 03:57 AM

Beverly A. H. Buscemi, Ph.D.
State Director
 David A. Goodell
Assistant State Director
Operations
 Kathi K. Lacy, Ph.D.
Assistant State Director
Policy



3440 Harden Street Ext (29203)
 PO Box 4706, Columbia, South Carolina 29240
 V/TTY: 803/898-9600
 Toll Free: 888/DSN-INFO
 Website: www.ddsn.sc.gov

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Secretary
 W. Robert Harrell
 Nancy L. Banov, M.Ed.
 Deborah C. McPherson

FORENSIC EVALUATION

Name: Alonzo Hawes
Address: 1508 Rockhouse Road Greenwood, SC
Date of Evaluation: 05-05-10
Place of Evaluation: DDSN Midlands Center
 Columbia, SC
Gender: Male
Race: African American
Date of Birth: 12-06-1972
Age: 37 years

Examiners: Monica K. Wright, Psy. D. – DDSN Examiner
 Gordon Brown, Ph. D. – Secondary Examiner

Charge(s): Murder and Possession of a Knife during a Violent Crime

Purpose of Evaluation:

This evaluation was conducted pursuant to an order dated 03-18-2010 and signed by the Honorable R. Lawton McIntosh, Presiding Judge of the Greenwood County Court of General Sessions, Eighth Judicial Circuit. The order required that Mr. Hawes be evaluated by the Department of Disabilities and Special Needs to determine his capacity to stand trial pursuant to Section 44-23-410, Code of Laws of South Carolina.

Limits of Confidentiality:

Before the interview started, Mr. Hawes was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his defense counsel, the prosecution, and the court. In addition, he was informed of the possibility that the examiner(s) might be called to testify regarding the content and results of the evaluation.

Summary of Evaluation Results:

Mental Retardation:	No
Mental Illness:	No
Competency to Stand Trial:	Yes



* This opinion is offered as a courtesy to the court given the absence of evidence of mental retardation or mental illness.

P.O. Box 239
 Clinton, SC 29325-5128
 Phone: (864) 938-3497

DISTRICT I
 Midlands Center - Phone: 803/935-7500
 Whitten Center - Phone: 864/833-2733

9995 Miles Jamison Road
 Summerville, SC 29485
 Phone: 843/832-5576

DISTRICT II
 Coastal Center - Phone: 843/873-5750
 Pee Dee Center - Phone: 843/664-2600
 Salkeh Center - Phone: 843/332-4104

Hawes, Alonzo
Forensic Evaluation

05-05-2010
Pg. 2 of 5

Evaluation Procedures:

The evaluation was conducted on 05-05-2010. Mr. Hawes was interviewed for approximately 90 minutes by the undersigned. Dr. Brown, secondary examiner, was present and concurs with this report. Alicia Hall, Ph.D., a DDSN psychologist, was also present for the interview. The defendant's attorneys, Charles Grose and Tara Schultz were also present for the evaluation. In addition, the following records and documents were reviewed:

Court Order for Competency Evaluation dated 05-05-10
Motion for Discovery and Inspection 05-05-2010
Incident Report, 07-30-2006
Narrative 2 and 3, 07-30-2006
Arrest Warrant K-118665, 08-02-2006
South Carolina Victim Impact Statement 08-25-2006
Voluntary Statement of Calisha Hawes, 07-30-2006
Voluntary Statement of Brittany Roundtree, 07-30-2006
Voluntary Statement of Terry A. Hawes, 07-30-2006
Incident Report, 04-04-2007
Additional Narrative, 04-04-2007
Supplemental Report, 04-04-2007
Greenwood Police Department Consent to Search Premises, 04-04-2007
Affidavit, 04-04-2007
Incident Report, 02-25-2002
Incident Report, 06-28-2004
Incident Report, 07-14-2006
Narrative, 07-14-2006
"Rap" Sheet, Alonzo Hawes, 04-13-2007
Booking Report, 04-04-2007
Arrest Warrant K-239316, 04-04-2007
Arrest Warrant K-239317, 04-04-2007
Patient Care Form, 04-04-2007
Postmortem Report, 04-06-2007
Limited Records from Greenwood Secondary Schools, 10-02-2008
Department of Mental Health Competency to Stand Trial Evaluation, 10-02-2008
Letter from Dr. Tora Brawley to Dr. Donna Schwartz-Watts, 07-06-2009

Previous Evaluations:

Mr. Hawes was evaluated on October 22, 2008, by the Department of Mental Health pursuant to a court order for evaluation of his competency to stand trial. The report from that evaluation indicates charges of Murder and Assault and Battery with Intent to Kill. The DMH examiners did not diagnose major mental illness. They gave a diagnosis of Adjustment Disorder with Depressed Mood, and recommended that the defendant "continue to receive the antidepressant medication for his reported stress." They also gave a diagnosis of Learning Disability. They did not see indication of Mental Retardation and therefore did not defer the evaluation to the Department of Disabilities and Special Needs. The defendant was opined to be competent to stand trial.

Mr. Hawes was seen for "an extended clinical interview and neuropsychological evaluation" by Dr. Tora Brawley at the University of South Carolina School of Medicine Neuropsychiatry and Behavioral Science Clinic on June 16, 2009. Dr. Brawley's report noted that the defendant functions within the extremely low range of intellectual functioning and also noted "severely impaired cognitive functioning in multiple other areas."

Hawes, Alonzo
Forensic Evaluation

05-05-2010
Pg. 3 of 5

Relevant History:

Mr. Hawes is a 37-year-old African American male who was born December 6, 1972. He was born and raised in Greenwood, South Carolina where he lived with his mother and father until his mother's death when he was 12 years old. He lived with his father until his father was hit by a train. Mr. Hawes was 17 at this time and moved in with his brother. He has four brothers and three sisters. His eldest sister is deceased. He reported that most of his siblings live in Greenwood, although he has one sister who resides in Anderson, SC. Mr. Hawes was placed in the Greenwood Detention Center in April 2007. He has three children and one-stepdaughter. His children are 15, 13, and 10 years of age. His stepdaughter is 18. He has not seen his children since he was incarcerated. He receives visits from his older brother.

Mr. Hawes stated that he completed 10th grade at the Greenwood Learning Center. He stated that he stopped going to school because he wanted to get a job and begin earning money. He had been receiving social security compensation due to the death of his mother and he learned that his checks were going to be discontinued. According to Mr. Hawes report he was enrolled in Learning Disabled classes for the majority of his academic career. Mr. Hawes characterized his grades as "bad" and reported that he had difficulty learning to read. He reported earning better grades in math. He denied repeating any grades. Mr. Hawes stated that he had behavioral problems as well. There were no records to available to verify these statements.

Mr. Hawes was most recently self-employed as a pressure washer. He did this for two years prior to his incarceration. He reported that he bought the equipment, made business cards, and distributed them. He stated that he was able to support himself. Prior to this he was employed in several plants as a doffer and also working on a blast machine. He stated that he completed applications and interviews to get the jobs. He also drove himself to work every day and was able to perform the tasks related to the job. Mr. Hawes stated that he has quit several jobs, but has never been fired. He reported that he got along well with others on his jobs.

Mr. Hawes denies a history of mental health treatment as a child or adolescent. He is currently prescribed antidepressant medication, which he has been taking since September 2009. Mr. Hawes stated that he was prescribed medication because of "low spirits and problems remembering things." He denies psychological symptoms in the past, although he does state that he had problems "focusing" on his school work. He has never been hospitalized in a psychiatric facility. He reports sleeping for up to 20 hours per day and states that his sleep is non-restorative. His appetite is within normal limits, although he reports a loss of weight. He stated that none of these symptoms were present prior to him receiving charges and being incarcerated. He denied a history of alcohol or drug abuse. He also denied a history of physical or sexual abuse. He has also never been referred to the Department of Disabilities and Special Needs. Mr. Hawes stated that he is currently treated for hypertension. He has been hospitalized for surgery on one occasion to correct a testicular torsion. He stated that he has been knocked unconscious on one occasion when his brother-in-law threw a shoe and hit him. Mr. Hawes also stated that he has been hit in the head as a child, although he denied loss of consciousness or hospitalization. He denied seizure disorder and other chronic illnesses.

Behavioral Observations/Mental Status Examination:

Mr. Hawes was seen at the DDSN Midlands Center. He was transported to the appointment by law enforcement from the Detention Center. He was a thin African American male who was dressed in attire from the institution. Eye contact was good and facial expressions were appropriate. Sensory systems appeared intact. Articulation was good and speech volume was within normal limits. His speech was slow but adequate in content. Mr. Hawes was alert and oriented to place, time, and situation. He knew the name of the city he was in as well as the state and the reason for the evaluation. His concentration and attention skills were within normal limits. During the evaluation, there was no evidence of psychomotor agitation or slowing. His thought process was logical and coherent. Mr. Hawes denied auditory or visual hallucinations. His affect was mood congruent. He described his current mood as "myself, good" and his typical mood as "up and down." When asked how his mood would change if he were free, he stated "it would be good."

Hawes, Alonzo
Forensic Evaluation

05-05-2010
Pg. 5 of 5

"not guilty" as "you didn't commit a crime and you get to be free." Mr. Hawes was also able to provide the basic concepts of a plea bargain "you have to plead guilty, so you don't go to trial." When asked to discuss the benefits of a plea bargain to a defendant, he stated "you get the charge behind you." He was given information regarding the receipt of a lesser sentence. He was unfamiliar with how a guilty plea from a defendant could benefit the solicitor and was told that such a plea would result in a "win" for the solicitor without having to go through the trial. Mr. Hawes was then asked to determine how a defendant would plea if there was significant evidence against him. In this case, Mr. Hawes stated that it would be best for the defendant to "try to make a plea." If there is not significant evidence, Mr. Hawes correctly stated that it would be best for the defendant to go to trial.

When asked about appropriate courtroom behavior, Mr. Hawes stated that it is best to behave "respectful." He knew that he could speak with his lawyer during the trial and that it was important to do so if he did not understand the proceedings. When asked the reason he needed to understand, he stated "it's my life." When asked about the appropriate course of action if someone was lying on the witness stand, he stated "tell my lawyer." Mr. Hawes knew that he could not be forced to testify and that he could speak if he and his attorneys thought that would be beneficial. Mr. Hawes was also able to state the risks involved in speaking in court.

Conclusion:

According to his report, Mr. Alonzo Hawes has a history of receiving special education intervention for Learning Disability. There were no available records from the Greenwood County School System to verify his placement. There was also no intellectual testing available from the school system or prior to the age of 18. More recent neuropsychological evaluation indicates that Mr. Hawes currently functions within the extremely low range of intellectual functioning and also demonstrates other cognitive deficits. During the current evaluation, although he was not familiar with some of the information regarding the legal system, Mr. Hawes did demonstrate the ability to retain information provided to him and make judgments about the most beneficial course of action.

In addition, his adaptive functioning appears to be within normal limits. Mr. Hawes has held several job, developed his own business, been married, can drive a car, and manage money. A diagnosis of Mental Retardation requires concurrent deficits in both intellectual and adaptive functioning manifested prior to the age of 18. Mr. Hawes does not meet those criteria.

Mr. Hawes is currently prescribed an antidepressant medication. He does not have a history of treatment for mental illness and his current symptoms appear to be related to his current situation. There was no evidence of mental illness during this evaluation.

As a result we offer the following:

Mental Retardation:	No
Mental Illness:	No
Competency to Stand Trial:	Yes

* This opinion is offered as a courtesy to the court given the absence of evidence of mental retardation or mental illness.

Monica K. Wright, Psy. D.
Monica K. Wright, Psy. D.
State-Level Psychological Examiner
SC License # 871
SCDDSN Central Office

Date signed: 5/14/2010

**STATE'S
EXHIBIT****3**

State of South Carolina

County of Greenwood

Indictment Nos. 2007-GS-24-1129, 1130

STATE OF SOUTH CAROLINA

vs.

ALONZO CRAIG HAWES

COPY

Transcription of Recorded Interview***Interview of Brittany Roundtree***

The following transcript was produced using an audio CD provided by the Greenwood County Public Defender's Office, Greenwood, South Carolina. The interview has been transcribed in its entirety.

VICKIE J. STEWART, CVR (PMSVICKIE@BELLSOUTH.NET)
DEPOSITIONS AND..., INC.
101 BROADUS AVENUE
POST OFFICE BOX 10589
GREENVILLE, SOUTH CAROLINA 29603
(864) 235-3518

Interview of Brittany Roundtree

2

1 Transcriptionist's notation:

2 "MM" is Detective Mitchell McAlister, Interviewer

3 "BR" is Brittany Roundtree, Interviewee

4 "CC" is Cathy Curry, Attendee

5 "(Inaudible)" will appear whenever breaks, inaudible
6 words and/or disturbances in recording occur

7 ** ** ** **

8 MM: This is Deputy McAlister -- Mitchell McAlister with
9 the Greenwood City Police Department. I am in the
10 Greenwood City Warrant Office. Present with me is
11 Ms. Brittany Roundtree and Ms. Cathy Curry.

12 Ms. Brittany, just by way of stating --
13 verifying that you are in the room, could you say
14 your name and date of birth for me, please?

15 BR: Brittany Roundtree; 12/08/91.

16 MM: And Ms. Curry, the same for you as well. If you
17 would, state your name and date of birth.

18 CC: Cathy Curry; April 12th, 1961.

19 MM: All right. Ms. Roundtree, y'all -- do you live at
20 241 Epting Avenue; is ---

21 BR: Yes, sir.

22 MM: --- that your address? Who all lives at that
23 residence?

24 BR: Me, my sister, my two brothers, my mother and my
25 grandmother.

Interview of Brittany Roundtree

3

1 MM: Okay. Who is your mother? What's her name?

2 BR: Terry Hawes.

3 MM: Terry Hawes? And what's your father's name?

4 BR: Alonzo Hawes.

5 MM: Alonzo Hawes? All right. Could you explain to me in

6 your own words -- take as much time as you need --

7 what happened from the time Mr. Hawes got home till

8 now.

9 BR: Okay. When he first walked in my grandmother's

10 house, he told me, my sister and my two brothers to

11 come on and leave with him. And so I went back in

12 the room and told my mother that we was going to get

13 ready to go. So she -- she walked in the room where

14 my dad was at and told him that ---

15 MM: Who is "she"?

16 BR: My mother.

17 MM: Your mother walked in? Okay.

18 BR: My mother walked in the room where my dad was at and

19 told him that we was not going to go back down there

20 with him. And he got mad or whatever.. He kept

21 telling us to come on, and my mama was like, "No,"

22 because he's not going to come up here and take us

23 away from her. And so that's when my dad -- that's

24 when my dad told us to come on again. And my mother

25 picked up the phone and she went out -- she went

Interview of Brittany Roundtree

4

1 outside and she made two calls. Then that's when my
2 daddy walked up to the front door and told her to
3 come back in, because he said he wanted to talk to
4 her. So all of us except my grandmother walked back
5 in the back room and ---
6 MM: All of you being you and your brothers and sisters?
7 BR: And my mom and dad.
8 MM: And your mom and dad? Okay.
9 BR: Walked back in the back of the room. And my mother,
10 she was in front of the bathroom doing -- and my
11 sister's like right behind her. And when my dad
12 pulled a gun out, my sister moved, and he just shot
13 her more than one time.
14 MM: What kind of gun was it? Did you see it?
15 BR: It was like ---
16 MM: This is what mine looks like.
17 BR: Yeah. It was black ---
18 MM: Kind of like this?
19 BR: It was black and silver.
20 MM: It was black and silver? And where did he pull it
21 out; do you know where he pulled it out from?
22 BR: He had it tucked in his pants, because he done pulled
23 it out in front of us more than one ---
24 MM: Before?
25 BR: --- time. He done shot it ---

Interview of Brittany Roundtree

5

- 1 MM: Did he say anything before he started shooting?
- 2 BR: No. He just pulled it out.
- 3 MM: Did he wait on your sister to move? He actually
- 4 waited -- pulled it out and then waited on your
- 5 sister to move?
- 6 BR: Yes, sir.
- 7 MM: And then shot -- shot your mother? What did he do
- 8 after that?
- 9 BR: Well, me and my sister and my two brothers, we ran
- 10 out of the house. And then that's when I see him
- 11 come out of the house, got in his car and he left.
- 12 MM: And he left? He didn't say anything to y'all?
- 13 Didn't say a word to you? So he just pulled the gun
- 14 out, waited on your sister -- what is your sister's
- 15 name? Which one was it?
- 16 BR: Calisha Hawes.
- 17 MM: Calisha? He waited on her to -- actually waited on
- 18 her to move?
- 19 BR: Yes, sir.
- 20 MM: Did he say anything to her? Or he just pointed the
- 21 gun at your mother and then waited on her to move?
- 22 BR: Yes, sir.
- 23 MM: Okay. And then he started shooting? Do you remember
- 24 how many times, or just a lot?
- 25 BR: I think it was about five or six.

Interview of Brittany Roundtree

6

1 MM: Five or six? It was a lot, though, huh? Is there
2 anything else you want to tell me? Is there anything
3 else you feel like you might need to tell me?

4 BR: No, sir.

5 MM: No, sir? Okay. You got a watch on, Ms. Curry? I
6 left my watch ---

7 CC: (Inaudible)

8 MM: All right. This is going to conclude the statement
9 for Ms. Brittany Roundtree. We are still in the City
10 Detectives' Office. This is Detective Mitchell
11 McAlister.

12 [End of interview/recording]
13
14
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Interview of Brittany Roundtree

7

1 State of South Carolina

2 County of Greenville

3 Certificate

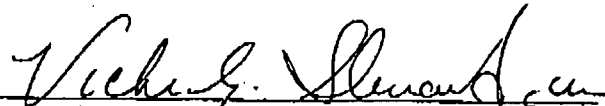
4 This is to certify that the foregoing transcription
5 of a recorded interview of Brittany Roundtree was completed
6 by the within certified court reporter, a notary public for
7 the State of South Carolina, duly commissioned and qualified
8 as such, using an audio CD provided by the Greenwood County
9 Public Defender's Office, Greenwood, South Carolina, South
10 Carolina.

11 That said court reporter is not a relative or
12 employee of any of the parties or the attorneys in any
13 matter concerned with this transcription, and is not in any
14 manner interested in any such matter, financial or
15 otherwise.

16 That the foregoing 6 pages is a true, complete,
17 accurate and correct transcript of the materials supplied,
18 and that any inaudible portions were so noted in the body of
19 the transcript.

20 In witness whereof, I have set my hand and official
21 seal.

22 DATE: March 5, 2010

23 
24 Vickie J. Stewart, CVR
25 Court Reporter and Notary Public
for South Carolina
My Commission Expires: 02/10/15

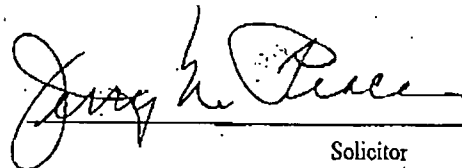
**THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD****INDICTMENT FOR****MURDER**

At a Court of General Sessions, convened on the 20th day of July, 2007, the Grand Jurors of Greenwood County present upon their oath:

COUNT ONE

That ALONZO CRAIG HAWES, did in Greenwood County, state aforesaid, on or about the 4th day of April, 2007, wilfully, feloniously, and with malice aforethought kill one Terry Hawes by means of shooting and that the said Terry Hawes did die in Greenwood County as a proximate result thereof on or about the 4th day of April, 2007, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

JAN/21/2007 12:58 AM
Greenwood County Clerk
FAX No. 8049428893

219

WITNESSES

Travis Clark

WARRANT NUMBERS

K-239316

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

July Term, 2007

Indictment # 07GS24-1129

THE STATE

VS.

ALONZO CRAIG HAWES

Foreman of the Grand Jury

Date:

VERDICT

Foreman

INDICTMENT FOR

MURDER

07-0002172

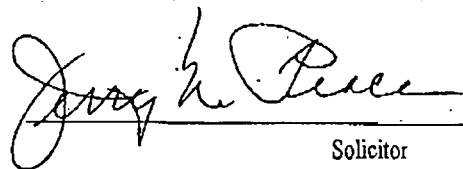
**THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD****INDICTMENT FOR****POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on the 20th day of July, 2007, the Grand Jurors of Greenwood County present upon their oath:

COUNT ONE

That ALONZO CRAIG HAWES, did in Greenwood County, state aforesaid, on or about the 4th day of April, 2007, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Murder or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended

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


Solicitor

221
WITNESSES

Travis Clark

WARRANT NUMBERS

K-239317

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

July Term, 2007

Indictment # 07GS24-1130

THE STATE

vs.

ALONZO CRAIG HAWES

Foreman of the Grand Jury

Date:

VERDICT

Foreman

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

07-0002174

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 

WILLIAM M. BLITCH, JR.

Assistant Attorney General

Office of Attorney General

Post Office Box 11549

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March 2, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenwood County
Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

Appellant,

vs.

ALONZO CRAIG HAWES,

Respondent.

PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Record on Appeal on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 2nd day of March, 2012.



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ORIGINAL

STATE OF SOUTH CAROLINA

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Frank R. Addy, Jr., Circuit Court Judge

The State,

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

The circuit court erred in finding section 16-25-90 of the South Carolina Code applicable under the facts and circumstances of this case.

STATEMENT OF THE CASE

The Greenwood County Grand Jury indicted Respondent on charges of murder and possession of a firearm during the commission of a violent crime. He pled guilty before the Honorable Frank R. Addy, Jr., on January 6, 2011, in Abbeville County to voluntary manslaughter and the possession of a firearm charge. A charge of assault with intent to kill was not pressed.

On January 20, 2011, Respondent appeared before Judge Addy in Greenwood County for sentencing on the two charges. The court sentenced him to twenty-two years on the voluntary manslaughter charge and five years, concurrent, on the possession of a firearm charge. The court also heard testimony and admitted evidence regarding the application of section 16-25-90 and whether Respondent should be eligible for parole after serving one-fourth of his prison term. On March 24, 2011, Judge Addy filed an Order finding section 16-25-90 was applicable. This appeal followed from the Order filed March 24, 2011.

ARGUMENT

I. The circuit court erred in finding section 16-25-90 of the South Carolina Code applicable under the facts and circumstances of this case.

The trial court erred in finding section 16-25-90 of the South Carolina Code is applicable under the facts of this case. Respondent failed to present “credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of [his estranged wife, Terry Hawes].” What Respondent presented was evidence of mutual domestic violence in which he was also an aggressor. The legislative intent behind section 16-25-90 certainly is not to mitigate the actions of someone who has perpetrated domestic violence as much or more than he received.

Facts

Respondent pled guilty to voluntary manslaughter in the shooting of his estranged wife, Terry Hawes. After an argument between the couple, Respondent shot Ms. Hawes multiple times because she would not allow him to take the children with him. According to witness statements, he waited for a child to move from in front of Ms. Hawes before shooting her. (T.64-65; R. 104-105). Respondent had assault with intent to kill charges dropped from a prior incident in which he shot at Ms. Hawes during an argument. (T.30; R. 70).

The circuit court held a hearing to allow Respondent to present evidence to support applying section 16-25-90. At the hearing, Respondent presented the testimony and report of Dr. Donna Schwartz-Watts, a consulting forensic psychologist. Dr. Schwartz-Watts

evaluated Respondent and reviewed numerous records. She reported: "The defendant and the victim has a documented history of mutual physical abuse." (Defendant's Exhibit 2, page 2; R. 189). She testified she listened to recordings of some of the couple's arguments in which the parties threatened each other. She testified it was a "mutually abusive relationship." (T.26; R. 66).

Additionally, the circuit court heard from the victim's daughter, Respondent's step-daughter. She testified the couple argued a lot in the house. (T.83; R. 123). She indicated that prior to the incidents for which Respondent was charged the arguments mostly related to Respondent's running around with another woman. (T.83-84; R. 123-124). She testified Respondent was the primary instigator in regards to the arguments and problems. (T.85; R. 125).

There are very few documented incidents of domestic violence involving the parties. The main one is a conviction of both parties for CDV in 1996, roughly 10 years before the incident for which Respondent was charged. The only other documentation was an indictment of the victim for CDV which was nol prossed on her death. Finally, the circuit court had tape recordings of communications between the parties in which both sides made threats, argued, and were responsible for instigating difficulties between them. As described by the court the recordings are "endemic of a deeply dysfunctional relationship." The court specifically noted the recordings were not evidence of domestic violence between the parties. (Court's Order dated March 23; R. 1).

Argument

In criminal cases, the appellate court reviews errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). In reviewing the trial court, the appellate court is bound by the factual findings of the trial court unless an abuse of discretion is shown. State v. Laney, 367 S.C. 639, 643-44, 627 S.E.2d 726, 729 (2006).

The statute at issue is section 16-25-90 of the South Carolina Code which provides:

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

S.C. Code Ann. § 16-25-90 (Supp. 2010).

Section 16-25-20 (Supp.2010) states: "It is unlawful to: (1) cause physical harm or injury to a person's own household member, (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril." "Household member" includes "(1) a spouse; (2) a former spouse; (3) persons who have a child in common; or (4) a male and female who are cohabiting or formerly have cohabited.." § 16-25-10 (Supp.2010).

There is very little case law in South Carolina interpreting this statute. In State v. Grooms, the South Carolina Supreme Court found: "Use of the term 'credible evidence' indicates the legislature intended the defendant's evidence to be, in fact, trustworthy, not simply plausible." State v. Grooms, 343 S.C. 248, 253, 540 S.E.2d 99, 101 (2000). Finally,

the Court found the burden of proof is on the defendant to prove the history of criminal domestic violence by a preponderance of the evidence. Id. at 253-253; 540 S.E.2d at 102.

The only other case to address the statute is State v. Blackwell-Selim, in which the Supreme Court found: "The circuit court must make specific findings in ruling on parole eligibility or ineligibility under § 16-25-90." State v. Blackwell-Selim, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011). Because the circuit court failed to make specific findings of fact, the Court refused to determine the applicability of section 16-25-90.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted).

The clear legislative intent of section 16-25-90 is to provide mitigation of the sentence of someone who committed an offense against their household member after suffering domestic violence at the hands of the victim. The statute is not intended to mitigate the sentence of an individual who was also an aggressor and was the primary instigator of the arguments that led to domestic violence.

The circuit court in this case acknowledged: “Finally, viewing the evidence as a whole, and having reviewed the tapes provided by the Defendant, I find that there were times when both parties were primarily responsible for instigating the arguments; based on this and other evidence, it is reasonable to conclude that no one party was solely at fault for many of the marital difficulties this coupled experienced.” (Order of circuit court page 6; R. 6). The circuit court concludes by finding:

This court is called upon to make a ruling based solely on the evidence and the applicable law. That the victim and defendant argued and fought is not, in and of itself, sufficient to warrant application of the section. Coupled, however, with the documented convictions for CDV and the other competent evidence of a mutually violent relationship, and despite (or perhaps because of) the statute’s peculiarities as explained . . . , this court is compelled to find that the Defendant has met this burden.

(Circuit court order p.7 (emphasis added); R. 7).

The court was not compelled to find Respondent met his burden. Quite the contrary, he could have considered the clear legislative intent and, when juxtaposed to the court’s clear finding it was a “mutually violent relationship,” he could have found Respondent failed to present credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member. In effect, the court refused to exercise his discretion and refused to consider the clear legislative intent in making his decision. “The failure to exercise discretion, however, is itself an abuse of discretion.” State v. Mansfield, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) (citing *inter alia* State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)) (“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the

discretion improperly.”)). The circuit court’s finding, especially in light of his feeling “compelled” by the statute, is an error of law and an abuse of his discretion that this Court can and should correct.

Allowing the application of the statute in this case would clearly frustrate the legislative intent and is a clear error of law. Respondent was the primary instigator. The last few instances of domestic violence included Respondent attempting to shoot and kill his estranged wife at her residence, and an argument which ended when he used a gun to shoot his estranged wife multiple times after waiting for a child to move out of the way. Prior to that the only evidence is one conviction of each party arising from the same domestic violence—again further evidence of mutual aggression and not Respondent being the victim. As a result, the clear legislative intent of mitigating a sentence of someone who has suffered as the clear victim of domestic violence is frustrated by applying the same statute to someone who was the primary aggressor and instigator much more often than he was the victim of domestic violence at the hands of the victim.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted the circuit court committed an error of law and abused his discretion in finding section 16-25-90 of the South Carolina Code applicable in the instant case, and this decision should be reversed.

Respectfully submitted,

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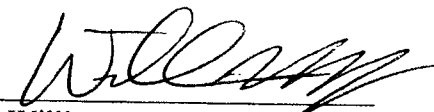
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March 12, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
Frank R. Addy, Jr., Circuit Court Judge

The State,

Appellant,

v.

Alonzo Hawes,

Respondent.

CERTIFICATE OF COUNSEL

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

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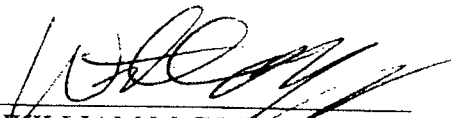
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
Frank R. Addy, Jr., Circuit Court Judge

The State,

Appellant,

v.

Alonzo Hawes,

Respondent.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

The State,

Appellant

v.

Alonzo Craig Hawes,

Respondent.

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Statement of Issue on Appeal

Does the record support the trial court judge finding a history of domestic violence inflicted by the deceased against Alonzo Craig Hawes, entitling him to one-fourth parole eligibility pursuant to S.C. Code §16-25-90?

Statement of the Case

The Greenwood County Grand Jury charged Alonzo Craig Hawes with murder and possession of a firearm during the commission of a violent crime. R. 218-22. Hawes waived venue and pled guilty in Abbeville County to voluntary manslaughter and possession of a weapon during the commission of a violent crime before the Honorable Frank R. Addy, Jr. on January 6, 2011. R. 39. Sentencing was deferred to January 20, 2011 in Greenwood County. Judge Addy sentenced Hawes to twenty-two (22) years imprisonment for voluntary manslaughter and five (5) years imprisonment for possession of a weapon during the commission of a violent crime. R. 176.

Also on January 20, 2011, Judge Addy heard testimony, pursuant to S.C. Code §16-25-90, to determine whether Hawes is entitled to parole eligibility after serving one-fourth of his sentence. The trial court judge took the matter under advisement. R. 176. By written order dated March 23, 2011, Judge Addy found §16-25-90 applicable and ordered one-fourth parole eligibility. R. 1-8. The State did not move to reconsider.

The State served a notice of appeal on March 30, 2011.

Statement of Facts

Mr. Hawes pled guilty to voluntary manslaughter regarding an incident on April 4, 2007 where his wife, Terry Hawes, was the decedent. R. 9-40. The trial court held a hearing to determine Mr. Hawes' eligibility pursuant to S.C. Code §16-25-90. At the hearing, Dr. Donna Schwartz-Watts, a forensic psychiatrist,¹ testified that Mr. and Mrs. Hawes had a mutually violent relationship. R. 55. The relationship included both documented and undocumented instances of violence where Mr. Hawes was the victim. R. 59, 62; Defendant's Ex. 4, 5, 7, R. 193-95, 197-99. Of the documented instances, Mr. and Mrs. Hawes were both convicted in 1996 of criminal domestic violence in a cross warrant situation. Defendant's Ex. 4, R. 193. During an incident on November 2, 2006, Mr. Hawes notified the police that the Mrs. Hawes pulled a knife on him. R. 89-90; Defendant's Ex. 7, R. 197-99. Ms. Hawes was indicted on a separate incident in 2006 of criminal domestic violence, second offense, where Mr. Hawes was the victim. Defendant's Ex. 5, R. 194-95. At the time of Ms. Hawes' death, her 2006 indictment was still pending. *Id.*

In an unreported incident, Mr. Hawes disclosed to Dr. Schwartz-Watts that he was stabbed by Mrs. Hawes in January 2007. This incident was corroborated by Mr. Hawes' medical records confirming that he received treatment for a puncture wound during that time. R. 60-61. Dr. Schwartz-Watts also testified regarding audio recordings of Mr. and Mrs. Hawes, where both parties directed threats at each other. R. 65-67; Court Ex. 1. Dr. Schwartz-Watts concluded "in her uncontradicted expert opinion" that Mr. Hawes suffered from "[post traumatic stress disorder], borderline intellectual functioning and

¹ The trial court qualified Dr. Schwartz Watts as an expert in forensic psychiatry without objection from the State. R. 48-51; Defendant's Ex. 1, R. 179-87.

severe partner relational problems” at the time of the April 4, 2007 incident. R. 69, Defendant’s Ex. 2, R. 189-90; Order, R. 7.

The State presented testimony from Dr. Richard Frierson regarding previous competency evaluations of Mr. Hawes. R. 95-118. The State also presented Ms. Brittany Roundtree, the daughter of Mrs. Hawes and stepdaughter of Mr. Hawes. Ms. Roundtree testified that after her mother discovered an affair “she kind of flipped.” Ms. Roundtree testified that Mr. Hawes was the primary instigator of conflict in the relationship after Mrs. Hawes learned of an extramarital affair. Tr. 120-25.

The trial court issued an order granting Mr. Hawes parole eligibility pursuant to S.C. Code §16-25-90. In granting parole eligibility, the trial court relied upon the couple’s history and testimony received at the sentencing hearing. The court noted the audio recordings “as endemic of a deeply dysfunctional relationship.” Order, R. 2. The court did not make a finding that Mr. Hawes was the primary instigator of conflict on April 4, 2007, but rather “both parties were primarily responsible for instigating arguments at different times.” Order, R. 6. The only witness to contend that Mr. Hawes was the primary instigator of conflict was Ms. Roundtree, where the trial court noted concern that her “presumably close relationship with the victim as opposed to [Mr. Hawes] had the potential to affect her testimony.”² *Id.* After considering “the competent evidence of a mutually violent relationship and documented evidence of criminal domestic violence between the parties” the court found that Mr. Hawes was eligible for parole pursuant to S.C. Code §16-25-90. Order, R. 7.

² This Court may not “usurp the authority of the trial court by attempting to judge the credibility of witnesses. The determination of credibility must be left to the trial judge who saw and heard the witnesses and is therefore in a better position to evaluate their veracity.” *State v. Cutro*, 332 S.C. 100, 117, 504 S.E.2d 324, 333 (1998).

Applicable Legal Principles

In criminal cases, the appellate court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown. The appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence.

State v. Blackwell-Selim, 392 S.C. 1, 3, 707 S.E.2d 426, 427-28 (2011) (internal citations omitted).

As part of larger criminal law reform in 1995, the General Assembly added S.C. Code §16-25-90 “so as to provide the time which must be served by an inmate who has presented evidence of criminal domestic violence in connection with their offense.” 1995 Act No. 7. The General Assembly thus determined that a person pleading guilty “to an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to . . . an offense against the household member . . . presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.” S.C. Code Ann. §16-25-90.

There are only two reported cases interpreting S.C. Code §16-25-90. The first case held the defendant has the burden of proving the history of domestic violence by preponderance of the evidence, which is “proof which leads the [trier of fact] to find that the existence of the contested fact is more probable than its nonexistence.” *State v. Grooms*, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000). The second case held, “The circuit court must make specific findings in ruling on parole eligibility or ineligibility under §16-25-90.” *Blackwell-Selim*, 92 S.C. at 4, 707 S.E.2d at 428.

Argument

The record supports the trial court judge finding a history of domestic violence inflicted by the deceased against Alonzo Craig Hawes and ordering one-fourth parole eligibility pursuant to S.C. Code §16-25-90.

This Court must affirm because the trial court judge made specific findings of fact, supported by the record, that Mr. Hawes was subjected to a history of domestic violence by the deceased. After discussing how the record supports the trial court's order, Mr. Hawes will respond to two arguments raised by the State by showing that: (1) Contrary to the State's argument on appeal, the General Assembly did not provide an exception for mutual domestic violence; and (2) The trial court's use of the term "compelled" does not establish the trial court failed to exercise its discretion as urged by the State.

1) The trial court made specific findings of fact supported by the record.

As required by *Blackwell-Selim, supra*, the trial court made specific findings of fact. The written order is eight pages long and thoroughly outlines the reasons for the court's decision. The trial court judge's findings of fact are supported by prior court records and additional testimony.

The trial court found that Mr. Hawes "and his wife had a tumultuous relationship at times. . . . In 1996 both [Mr. Hawes] and his wife were convicted of Criminal Domestic Violence in a cross warrant situation." When she died,³ Ms. Hawes "had a pending indictment against her from an incident where [Mr. Hawes] was allegedly struck

³ Additionally, the guilty plea itself was based on Ms. Hawes provoking Mr. Hawes. The Deputy Solicitor represented "an altercation ensued between the two of them." Defense counsel pointed out, "Mr. Hodges presented that there was an altercation that would be provocation" for voluntary manslaughter. Tr. (1/6/2011), p. 14, 23.

and kicked by” Ms. Hawes. Order, R. 2. *See also* Defendant’s Ex. 4, 5, R. ____.⁴ The trial court correctly attached legal significance to these court records. First, “[t]he 1996 incident did result in a conviction, so that incident was conclusively proven.” Order, R. 6. Second, the trial court correctly observed the indictment “demonstrates the grand jury’s finding of probable cause to believe she committed this offense.” Order, R. 2.

These two judicially documented incidents establish the necessary history of domestic violence. Section 16-25-90 requires “a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.” As spouses, Mr. and Ms. Hawes were household members. S.C. Code §16-25-10(1). The General Assembly considers one prior conviction of criminal domestic violence a sufficient history to enhance the penalty for subsequent convictions.⁵ S.C. Code §16-2520(B).

Although the indicted incident was not a conviction, the trial judge “noted that the standard for demonstrating probable cause [for grand jury indictment] is almost identical to that for proof by preponderance of the evidence.” Order, R. 6 (fn. 6). *Compare Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) (“The standard for arrest is probable cause, defined in terms of facts and circumstances ‘sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense.’”) *with Grooms*, 343 S.C. at 254, fn. 5, 540 S.E.2d at 102, fn. 5 (“The most acceptable meaning to be given to the expression, proof by a preponderance, seems to be proof which leads the

⁴ The trial court properly took judicial notice of these self-authenticating public records. Tr. 6-7. Rules 201 and 902, SCRE.

⁵ Additionally, in any sentencing proceeding, one prior conviction is sufficient to constitute a prior criminal history.

[trier of fact] to find that the existence of the contested fact is more probable than its nonexistence.”).

The State, furthermore, is judicially estopped from claiming probable cause did not exist to charge Ms. Hawes with CDV. *State v. Geer*, 391 S.C. 179, 195, 705 S.E.2d 441, 449 (Ct. App. 2010) (“[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”); *State v. Snowden*, 371 S.C. 331, 334, 638 S.E.2d 91, 3 (Ct. App. 2006) (“Collateral estoppel prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action.”); *Doe v. Doe*, 346 S.C. 145, 150, 551 S.E.2d 257, 259 (S.C., 2001) (“[A]ppellant, due to his conviction, is collaterally estopped from relitigating the issue of whether he abused his children in the civil proceeding against him.”). *See also* Rule 3.8(a), RPC, Rule 407, SCACR.

The trial judge’s order, therefore, is supported by other court proceedings where Ms. Hawes conduct was established by proof equal to or greater than the *Grooms* standard.

In addition to the court documents, the trial “court had the benefit of testimony, both from expert and lay witnesses, on the issue of the argumentative nature of the Defendant’s and victim’s relationship, and the role of violence in their relationship.” Order, R. 2. The trial court “considered the report and testimony of Dr. Donna Schwartz-Watts which references a ‘documented history of mutual physical abuse.’” Order, R. 3; Defendant’s Ex. 2, R. 189. “Dr. Schwartz-Watts’ report also outlined other incidents of violence involving the victim allegedly pulling a knife on one occasion and actually

stabbing the Defendant on another.” Dr. Schwartz-Watts’ “uncontradicted expert opinion” was that Mr. Hawes suffered from “PTSD, borderline intellectual functioning and severe partner relationship problems” at the time of the incident. Order, R. 6-7; *See also* Defendant’s Ex 2, R. 188-90.

This Court must affirm if there is “any evidence” to support the trial judge’s ruling. Because the trial court judge’s specific findings of fact are supported by evidence in the record, this Court must affirm. *Blackwell-Selim, supra*.

2) Contrary to the State’s argument on appeal, the General Assembly did not provide an exception for mutual domestic violence.

A court must abide by the plain meaning of the words of a statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* 341 S.C. at 85, 533 S.E.2d at 581. When a statute is penal in nature, the rule of lenity requires that any ambiguity must be construed strictly against the State and in favor of the defendant. *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

The State urges this Court to create an exception for mutual domestic violence that does not appear in the plain language of S.C. Code §16-25-90. *See* Respondent’s Brief, 6-8. The statute has no language to support that such an exception exists. Further, no case law or legislative history indicates that the legislature intended such an exception. *See* 1995 Act No. 7, *Grooms*, and *Blackwell-Selim, supra*. If the legislature intended for a mutually violent relationship exception, then such language would exist within S.C. Code §16-25-90. To interpret that an exception exists absent any language or history to support it would be forcing a construction and expanding the statute’s operation beyond

its clear language. *State v. Locklair*, 341 S.C. 352, 366, 535 S.E.2d 420, 27 (2000) (“In construing statutes, words must be given their plain and ordinary meaning without resort to subtle or forced construction in attempt to expand the statute.”). Therefore, where S.C. Code §16-25-90 language is clear and does not contain a mutually violent relationship exception, this Court should affirm the trial court’s ruling.

Further, if this Court found that an ambiguity did exist regarding a mutually violent relationship exception, the Court would still be bound to construe the statute in favor of Mr. Hawes. *See Hair v. State*, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991) (construing in favor of the defendant the ambiguity between parole statutes regarding parole eligibility). Therefore, this Court should still affirm the trial court’s holding that Mr. Hawes is eligible for parole pursuant to S.C. Code §16-25-90.

3) The trial court’s use of the term “compelled” does not establish the trial court failed to exercise its discretion as urged but the State.

The State argues “the court refused to exercise his discretion,” and the court’s “feeling ‘compelled’ by statute” to order parole eligibility is “an abuse of his discretion.” Respondent’s Brief, p. 7. A close reading of Respondent’s brief, however, reveals the State actually acknowledges Mr. Hawes was a victim of domestic violence but complains:

[T]he clear legislative intent of mitigating a sentence of someone who has suffered as the clear victim of domestic violence is frustrated by applying the same statute to someone who was the primary aggressor and instigator *much more often than he was the victim* of domestic violence by the victim.

Respondent’s Brief, p. 8 (emphasis added).

As a threshold matter, this argument is not preserved for appellate review. The State did not move to reconsider this portion of the written order and give the trial judge an opportunity to correct or explain this alleged error. “An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court.” *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004). *See State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) (“[A]ll this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised to the lower court and passed upon by that court.”).

The State’s assertions, moreover, are not supported by the specific findings contained in the written order. *See Blackwell-Selim, supra*. In paragraphs two, three, four, and six of the written order, the trial court reviewed the evidence presented at the hearing. Order, R. 2-4. In paragraph ten of the written order, the trial judge “discuss[es] first *the facts which weigh against application of the section and the address[es] those facts which weigh in favor of [S]16-25-90’s application*, mindful that the Defendant carries the burden of proving application by preponderance of the evidence.” Order, R. 10-11 (emphasis added). The trial judge even discusses the relative weight of the evidence.

Rather than concluding one party was primarily responsible for instigating the couple’s troubles, Judge Addy actually found “both parties were primarily responsible for instigating arguments at different times.” Order, R. 6. In paragraph eleven of the written order, the trial court holds, “Viewing the record as a whole, I find that the Defendant has proven himself to be the recipient of a history of domestic violence by his wife, and he has met his burden of proof by the preponderance of the evidence.” Order, R. 7.

In paragraph twelve of the written order, the trial judge adds, based on the "competent evidence," that "this court is compelled to find that the Defendant has met his burden of proof." Order, R. 7. After viewing the previous eleven paragraphs, it is simply not fair to the trial judge of the State to take this one phrase out of context and argue a failure to exercise discretion. Rather, viewing the entire order, it is clear the judge reviewed the whole record and found "competent evidence" Mr. Hawes suffered from domestic violence. Once the trial judge found the evidence to be "competent" or credible, he was obligated to make the appropriate statutory finding. *Grooms, supra*. The trial judge expressly noted:

[B]y using the word 'shall' in the statute, the legislature obviously mandated that the statute apply where a defendant has demonstrated by preponderance of the evidence, that he was a victim of domestic violence. Clearly, had the legislature intended for the statute to apply permissively, the verb 'may' would have been used instead.

Order ¶8(a) (emphasis added), R. 4-5. See *South Carolina Dept. of Highways and Public Transp. v. Dickinson*, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986) ("Ordinarily, the use of the word "shall" in a statute means that the action referred to is mandatory."). The expressed legislative intent of §16-25-90 is "to provide the time which must be served by an inmate who has presented evidence of criminal domestic violence in connection with their offense." 1995 Act No. 7. The written order, accordingly, is consistent with the legislative intent.

Conclusion

The record supports the trial court judge finding a history of domestic violence inflicted by the deceased against Mr. Hawes. This Court, therefore, should affirm the trial court granting Mr. Hawes one-fourth parole eligibility pursuant to S.C. Code §16-25-90.

Respectfully submitted,

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March 7, 2012

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In The Court of Appeals

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Frank R. Addy, Jr., Circuit Court Judge

The State,

Appellant

v.

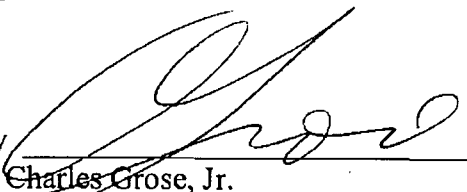
Alonzo Craig Hawes,

Respondent.

Certificate of Service

I certify that I have served two copies of the Final Brief of Respondent on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on date reflected below, addressed as follows:

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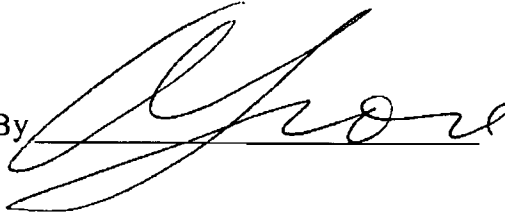
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Rule 211(b), SCACR Certification

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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