

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

DEC 29 2015

S.C. Supreme Court

CURTIS NEALEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000881

A P P E N D I X

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

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

JESSICA KINARD
Senior Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	319
RETURN	365
POST-CONVICTION RELIEF HEARING TRANSCRIPT	372
PLAINTIFF'S EXHIBIT #1	456
ORDER OF DISMISSAL	457
RULE 59(E) MOTION	468
RETURN TO RULE 59(E) MOTION	473
ORDER DENYING RULE 59(E) MOTION	476
INDICTMENTS	477

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DARLINGTON	)	
	)	NOVEMBER 09, 2009
THE STATE	)	
	)	NOVEMBER 10, 2009
	)	
PLAINTIFF	)	2009-GS-16-0689
	)	2009-GS-16-0870
	)	2009-GS-16-0872
	)	2009-GS-16-0873
VERSUS	)	2009-GS-16-0874
	)	
CURTIS RAY NEALEY	)	
	)	
DEFENDANT	)	
	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

PATTI MCKENZIE, ESQUIRE
ATTORNEY FOR THE STATE

TONYA.COLEMAN-LITTLE, ESQUIRE
RICHARD JONES, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

INDEX

Welcome by The Court	Page 007
Motions	Page 007
Jury Selection	Page 035

JACKSON V DENNO HEARING

WITNESS	THE COURT	DIRECT	CROSS	REDIRECT	RECROSS
John Specht	56	47	54	57	
Curtis Nealey	58	60			

LYLE HEARING

WITNESS	THE COURT	DIRECT	CROSS	REDIRECT	RECROSS
Dorothy Ann Perkins		68	74		

Introduction to the Case	Page 087
Opening Statement by Ms. McKenzie	Page 095
Opening Statement by Ms. Little	Page 100

WITNESS	VOIR DIRE	DIRECT	CROSS	REDIRECT	RECROSS
Dorothy Ann Perkins		103	120	128	
Victoria Perkins		131	143	149	

DAY TWO OF TRIAL

Nancy Ann Nobles		155	160		
James C. Balvich, M.D.	162	166	172	174	175
Cedric Gibson		176	188		
Rodney B. Hopkins		190	197		
Jackie Ryan Catoe		197	205	207	
Neal Flowers		208	210		
Chad McInville		211			

Motion for a Directed Verdict Page 215

Examination of Mr. Nealey by The Court Page 220

WITNESS	VOIR DIRE	DIRECT	CROSS	REDIRECT	RECROSS
Curtis Ray Nealey		225	237		

Closing Arguments by Ms. Little Page 257

Closing Arguments by Ms. McKenzie Page 262

Charge on The Law Page 278

Jury Begins Deliberation Page 303

Verdict Page 303

Sentencing Hearing Page 307

Statement by Ms. McKenzie Page 307

Presentation of Prior Record Page 308

Statement of Ms. Dorothy Perkins Page 311

Statement of Ms. Victoria Perkins Page 311

Statement by Defense Counsel, Ms. Little Page 311

Statement of the Defendant Curtis Ray Nealey Page 312

Sentence of The Court Page 313

Certificate of Reporter Page 316

VOIR DIRE

Case No.: 2009-GS-16-869

Date: November 10, 2009

Plaintiff: The State

Attorney Patti McKenzie

Defendant: Curtis Ray Nealey

Attorney Tonya Little

Presiding Judge: J. Michael Baxley Reporter: Pamela Ozment-Cartee

*****		***** STRIKES *****				
Juror #	Juror Name	Race	Sex	Court	State	Defd
022	Elizabeth W. Castleberry	B	F		✓	✓
003	Katie E. Anhalt	W	F		✓	X
152	Joanne Lund			✓	---	---
027	William M. Coe	B	M		✓	✓
035	Denise L. English	B	F		✓	✓
025	Edrew S. Clark	W	M		✓	✓
092	Grover L. Moody, II	W	M		✓	✓
053	James R. Henderson	W	M		✓	✓
095	Alan R. Nestico	W	M		✓	✓
044	Frederica S. Goodson	B	F		✓	✓
054	Ryan C. Hendrix	W	M		X	---
072	Jennifer W. Jones	W	F		✓	X
140	Delene M. Yow	W	F		✓	X
125	Ellen H. Tiller	W	F		✓	X
048	Emmer J. Griffiths	W	F		✓	X
115	Robert L. Singleton	B	M		X	---
111	Ekefio C. Shaw	B	M		✓	✓
136	Keith L. Wilks	W	M		✓	X
040	Rhonda C. Fountain-Covington	B	F		X	---
091	Thresa M. Miller	W	F		✓	NORT H CARO LINA
134	Gloria J. Weeks	W	F		X	---
150	Casey Atkinson	W	F		✓	NORT H CARO LINA
	ALTERNATE					

036	Loretta M. Ervin	B	F		✓	X 5
129	Belinda B. Waldrop	W	F		✓	✓

COURT EXHIBITS

Number	Description	Page
1	Photographs A-H (8 photographs)	
2	Note from the Jury	

DEFENSE EXHIBITS

NONE OFFERED

STATE EXHIBITS

Number	Description	Page
1	Ceramic Figurine	085
2	Photograph	085
3	Photograph	085
4	Photograph	085
5	Photograph	085
6	Photograph	085
7	Photograph	085
8	Photograph	085
9	Photograph	085
10	Photograph	085
11	Photograph	085
12	Photograph	085
13	Photograph	085
14	Photograph	085
15	Photograph	085
16	Photograph	085
17	Photograph	085
18	Photograph	085
19	Photograph	085
20	Photograph	085
21	Photograph	085
22	Photograph	085
23	Photograph	085
24	Photograph	085
25	Photograph	085
26	Diagram	165

THE STATE V CURTIS RAY NEALEY

7

1 (Whereupon, this trial was called to order at
2 10:55 a.m., on Monday, November 9, 2009, in The Court of
3 General Sessions, Darlington, South Carolina.)

4 -- DAY ONE OF TRIAL --

5 THE COURT: Thank you. Please be seated, ladies and
6 gentlemen. All right, ladies and gentlemen, during the
7 break we lightened it up a little bit in the courtroom so
8 perhaps you can see a little bit better in the courtroom
9 now. We are here for the purpose of having qualified a
10 jury panel --- now picking a jury in the first case for
11 trial. Let me talk about this process for just moment or
12 two. I know just from human psychology that when you are
13 sitting in a group as you are, and hear a question called
14 you think well, maybe that doesn't apply to me. I am not
15 going to stand up and call attention to myself, I am just
16 going to pass. Please do just the opposite of that. If
17 you have some inkling that you should respond to the
18 question, please do so. There are no wrong answers in jury
19 qualifications. The purpose of this process is to make
20 sure that whatever jury we choose --- that whatever jury we
21 choose is, and the term I am going to use is disinterested,
22 and when I say that, I don't mean that you don't care.
23 What I mean is that you don't have some connection to a
24 party, or a case, or some issue or fact within a case that
25 might make you an inappropriate juror for that particular

THE STATE V CURTIS RAY NEALEY

8

1 case.

2 All right. Now the way this process works on the
3 criminal side of the Court is the Solicitor is the party
4 who is charged with calling the cases for trial and setting
5 the priorities of trial. So, Madam Solicitor, please call
6 your first case for trial.

7 MS. MCKENZIE: Thank you, Your Honor. If it please
8 the Court, at this time The State calls The State of South
9 Carolina verses Curtis Ray Nealey. Indictment Number:
10 2009-GS-16-0874, assault and battery with intent to kill.
11 09-GS-16-0871, possession of a weapon during the commission
12 of a violent crime. 09-GS-16-0872, criminal domestic
13 violence of a high and aggravated nature. 2009-GS-16-0870,
14 possession of a weapon during a commission of a violent
15 crime. 2009-GS-16-0873, kidnaping. 2009-GS-16-0869,
16 assault and battery with intent to kill.

17 THE COURT: Very good. Thank you. Now, Ms. Little,
18 do you represent --- or Mr. Jones, do you represent the
19 Defendant, Curtis Ray Nealey?

20 MS. LITTLE: I do, Your Honor.

21 THE COURT: All right, you have heard the various
22 charges that have been called by the Solicitor. And how
23 does the Defendant plead?

24 MS. LITTLE: Not guilty.

25 THE COURT: Very good. Then ladies and gentlemen,

THE STATE V CURTIS RAY NEALEY

9

1 you have heard the charges. You have heard a plea of not
2 guilty. The issues are now joined for trial, and we are
3 going to move forward and choose a jury in this case for
4 trial. We are going to begin this process by allowing the
5 lawyers --- the parties introduce themselves to you. So
6 for the prosecution, Madam Solicitor, please introduce
7 yourself to the jury panel.

8 MS. MCKENZIE: Thank you, Your Honor. My name is
9 Patti McKenzie. I am an assistant solicitor here in
10 Darlington County. I was for our elected solicitor, Mr.
11 Will Rogers. Seated with me at the table so far this
12 morning has been our Deputy Solicitor for Darlington
13 County, Sherrie Baugh. And assisting me with this trial, I
14 will be the lead counsel, and Solicitor Will Rogers may be
15 sitting with me during some portions of the trial. Thank
16 you.

17 MS. BAUGH: And he is here now, Standing right here.

18 THE COURT: All right. Very good. Let me introduce
19 our elected solicitor, ladies and gentlemen, for the Fourth
20 Judicial Circuit, which is Darlington, Dillon, Marlboro and
21 Chesterfield Counties, Mr. Will Rogers, also in the
22 courtroom. Welcome, Mr. Rogers.

23 MR. ROGERS: Thank you, Your Honor.

24 THE COURT: All right, very good. Now let's switch
25 to the Defense side and counsel for the Defendant, please

THE STATE V CURTIS RAY NEALEY

10

1 introduce yourself to the jury panel.

2 MS. LITTLE: Thank you, Your Honor. Tonya Copeland-
3 Little. I am an attorney from Hartsville. I practice
4 mostly here in Darlington, but all over the Fourth Circuit.
5 I am an Assistant Public Defender. Seated with me is Mr.
6 Rick Jones, also from Hartsville. He is also an assistant
7 public defender. And this is my client, Mr. Curtis Ray
8 Nealey. Thank you.

9 THE COURT: All right, thank you. You may be seated.
10 Now let's talk first about the lawyers. And these are
11 questions now for the jury panel. Ladies and gentlemen, I
12 want to ask you if you are related by blood or marriage,
13 have some close profession, social, or business connection
14 to the lawyers for the Solicitor, which you were introduced
15 to, Ms. McKenzie, Ms. Baugh, and Mr. Rogers, our elected
16 solicitor, who will be prosecuting this case. I ask you
17 now if you are related by blood or marriage to them, have
18 some close, business, professional, or social connection to
19 the solicitors, who will be representing this case. If so,
20 please stand. Let's let the record no one has stood. Let
21 me ask further about the Solicitor's Office, ladies and
22 gentlemen. The Solicitor's Office is in charge of
23 prosecutions in this fourth county circuit, which is
24 Darlington, Dillon, Marlboro, Chesterfield. I want to ask
25 if any of you have ever been represented by the Solicitor's

THE STATE V CURTIS RAY NEALEY

11

1 Office. That is not necessarily these lawyers here, but in
2 the Solicitor's Office, any lawyer who may be in the
3 Solicitor's Office, as a victim of crime, or if you have
4 some business relationship with the Solicitor's Office,
5 whatever that may be, as a contractor, vendor, or some
6 other connection to the Solicitor's Office. If that
7 applies to you, any of that, please stand. Let's let the
8 record reflect that no one has stood then with regard to
9 questions about the Solicitor's Office.

10 Now, I am going to switch to the Defense team. You
11 were introduced to Ms. Little and Mr. Jones. I ask if
12 there is any member of this jury panel related to them by
13 blood or marriage, have some close business, professional,
14 or social connection to them. These attorneys have also
15 been in private practice from time to time. I want to ask
16 if any of you have ever been a client of theirs or their
17 law firms during the time they were in private practice.
18 If any of that applies to you, with regard to the defense
19 counsel, please stand. All right. And then, let's begin
20 if we could, on the front row. Sir, please give us your
21 name and juror number. Mr. Coker. Yes, sir.

22 MR. COKER: Juror number 136, my name is Samuel
23 Coker, the III.

24 THE COURT: All right, and I asked a multi part
25 question. Mr. Coker, tell me why are you standing?

THE STATE V CURTIS RAY NEALEY

12

1 MR. COKER: Stanley Jones is a good friend of mine.
2 I plant sweet corn field this year and it is down, but I
3 have a long personal relationship with him Stanley Jones.

4 THE COURT: All right, very good. And let me say to
5 you that it's not unusual that someone on the jury panel
6 may know a lawyer, or have some connection to the lawyer,
7 but the question is this. Would you be able to be a fair
8 and impartial juror in a case if you are a juror and Mr.
9 Jones is an attorney in the case? Can you do that?

10 MR. COKER: Yes, sir. Yes, sir.

11 THE COURT: Are you certain of that?

12 MR. COKER: I'm positive.

13 THE COURT: Then I find that you are qualified by
14 your response. Thank you, sir.

15 And, Ma'am, please give us your name and juror number.

16 MS. TILLER: Ellen Tiller, 125. Many years we used
17 Mr. Jones, I think, for a Will.

18 THE COURT: All right. And you heard the question
19 that I asked Mr. Coker before you, and I ask you this.
20 Given the fact that you know Mr. Jones, and you've worked
21 with him professionally, would that prevent you from given
22 a fair and impartial trial if you are juror, ma'am?

23 MS. TILLER: No, sir.

24 THE COURT: Then I find that you are qualified by
25 your response. Thank you.

THE STATE V CURTIS RAY NEALEY

13

1 And, sir, please give us your name and juror number.

2 MR. CLARK: My name is Ed Clark, juror number 25.

3 THE COURT: All right, sir. And what connection do
4 you have to the defense team?

5 MR. CLARK: I know Rick Jones as a friend, a church
6 member. He's done some work for me before.

7 THE COURT: All right, sir. And would that prevent
8 you from those connections to Mr. Jones, from being fair
9 and impartial if you are chosen as a juror in this case?

10 MR. CLARK: No, sir.

11 THE COURT: All right, are you certain of that?

12 MR. CLARK: Yes, sir.

13 THE COURT: All right, then I find that you are
14 qualified by your response. Thank you.

15 And finally, please give us your name and juror
16 number.

17 MR. CAMPBELL: Ralph Campbell, juror number 142. My
18 office --- I worked for Darlington County and my office is
19 directly across from the Public Defender's Office, has been
20 for the past twelve-years.

21 THE COURT: All right, sir. The fact that you are in
22 the Voter Registration Office and he's right across the
23 hall from you in the Solicitor's Office --- excuse me, in
24 the Public Defender's Office, would that prevent you, Mr.
25 Campbell, from giving a fair and impartial trial in this

THE STATE V CURTIS RAY NEALEY

14

1 case?

2 MR. CAMPBELL: No, sir.

3 THE COURT: All right, sir. Let me ask, would you be
4 able to put outside of your mind the fact that you may know
5 the lawyers, or see them on a daily basis, and make your
6 decision based on the evidence in this case, and solely on
7 that evidence. Can you do that?

8 MR. CAMPBELL: I could.

9 THE COURT: Are you certain of that?

10 MR. CAMPBELL: Yes, sir.

11 THE COURT: All right. Then I find by that you are
12 clearly qualified. Thank you for your response.

13 All right, anything further now that anyone would
14 stand that they have some connection to these Public
15 Defenders, or to the Public Defender's Office, which would
16 be as a vendor, have some business connection to them,
17 independently contractor, if so, please stand. And now
18 let's let the record reflect that no one has stood in
19 response to the Court's question.

20 All right, ladies and gentlemen, I want to introduce
21 now to you the parties in the case. We just talked about
22 the lawyers. Now, let's talk about the individuals that
23 are involved. In a criminal case you generally have a
24 Defendant, and on the other side you have a person that
25 would be the complaining witness, or an alleged victim.

1 Let me say, I use the word allege, and I use the word
2 victim, ladies and gentlemen, not to ask that you accept
3 that as some statement of truth or statement of fact.
4 Ultimately, what happened here is for the jury to
5 determine, not for the Court to say, and certainly not by
6 asking some question. But I simply will say that we have a
7 Defendant and then we have the complaining witness. So I
8 am going to ask the solicitor, please to introduce if you
9 will, the alleged victim, Ms. Victoria Perkins, to the jury
10 panel.

11 MS. MCKENZIE: Please stand, Ms. Victoria. Victoria
12 Perkins from Hartsville.

13 THE COURT: All right. Please stand and turn to the
14 jury panel so they can see you. Please be seated. And
15 let's have the Defendant stand again. Sir, if you would,
16 sir, Mr. Nealey. And you may be seated. All right, are
17 there also other complaining witnesses?

18 MS. MCKENZIE: Yes, sir.

19 THE COURT: Dorothy Perkins?

20 MS. MCKENZIE: Yes, Your Honor.

21 THE COURT: All right, please introduce Ms. Perkins
22 to the jury panel.

23 MS. MCKENZIE: This is Dorothy Perkins of
24 Hartsville.

25 THE COURT: All right. And counsel, tell the jury

THE STATE V CURTIS RAY NEALEY

16

1 panel what is the relationship between the two Perkins
2 members of the family who are present?

3 MS. MCKENZIE: Mother and daughter.

4 THE COURT: All right, very good. And so that the
5 jury panel will have an understanding. Where in the
6 community or county roughly where do they reside?

7 MS. MCKENZIE: They currently reside on East Home
8 Avenue in Hartsville.

9 THE COURT: In the Hartsville Community. All right,
10 very good. And, Ms. Little or Mr. Jones, where does Mr.
11 Curtis Ray Nealey reside?

12 MS. LITTLE: Here in Darlington City, Your Honor.

13 THE COURT: All right, very good. Now you have had a
14 chance to see the parties who are here. You've heard a
15 little bit of descriptive information about them. I want
16 to ask you this. With regard to either the complaining
17 witnesses or the Defendant, if there is any member of this
18 jury panel who is related to any of these individuals by
19 blood or marriage, have some business, professional or
20 social connections to them, or think you even know any of
21 these three to whom you were just introduced, if that
22 applies to you, please stand.

23 All right. And, Ma'am, please give us your name and
24 juror number on the front.

25 MS. BLUE: Ronetta Blue, number 11.

THE STATE V CURTIS RAY NEALEY

17

1 THE COURT: All right. Tell me your name again,
2 please.

3 MS. BLUE: Ronetta Blue.

4 THE COURT: Ms. Blue, tell me --- I asked a multiple
5 part question. For whom are you standing, ma'am?

6 MS. BLUE: Dorothy Perkins.

7 THE COURT: All right. And how do you now Ms.
8 Perkins?

9 MS. BLUE: I have worked with her at a convenience
10 store.

11 THE COURT: Okay. And since today, how long has it
12 been since you have seen her?

13 MS. BLUE: Just the other day in the store.

14 THE COURT: All right, very good. And are you still
15 both working there now?

16 MS. BLUE: No, I work somewhere else.

17 THE COURT: All right. So the question to you then
18 would be the same I asked other jurors who knew counsel in
19 the case. Would the fact that you know one of the parties
20 prevent you from giving a fair and impartial trial in this
21 case?

22 MS. BLUE: Probably so.

23 THE COURT: All right, let me ask you, Ms. Blue, do
24 you have knowledge about this case, and have you discussed
25 this with Ms. Perkins?

THE STATE V CURTIS RAY NEALEY

18

1 MS. BLUE: I just heard that she had a case, you
2 know, but that was when we worked together.

3 THE COURT: All right. But you believe that would
4 prevent you --- that fact that you have a close
5 relationship with Ms. Perkins, would be uncomfortable for
6 you. Am I correct? All right, then rather than put you in
7 a position where you would be uncomfortable or may be
8 comprised, I am going to release you as juror in this case.
9 Not that you are not capable, but I don't want there to be
10 some question about that might arise later on, ma'am. So I
11 am going to release you as a juror from this case. What I
12 would ask you to do is, after 6:00-o'clock tonight, please
13 call the juror number which you have in your information
14 packet for further information to the entire panel, okay.
15 You are free to go, ma'am. Have a good day. You are done
16 for the day.

17 All right, and then, Ma'am, on the inside, please tell
18 me your name and juror number.

19 MS. FLOYD: Donna Floyd, number 38.

20 THE COURT: And, Ms. Floyd, tell me why are you
21 standing, please.

22 MS. FLOYD: I know Curtis.

23 THE COURT: You know Mr. Nealey. And do you know him
24 or are you related to him?

25 MS. FLOYD: Know him.

1 THE COURT: All right. And in what capacity do you
2 know him?

3 MS. FLOYD: He worked for my son.

4 THE COURT: All right. And how long has it been
5 since you have seen him before today?

6 MS. FLOYD: Probably about a year.

7 THE COURT: All right. Would the fact that you know
8 him, prevent you from giving fair and impartial trial in
9 this case?

10 MS. FLOYD: No.

11 THE COURT: Are you certain of that?

12 MS. FLOYD: (Affirmative response.)

13 THE COURT: Is that a yes?

14 MS. FLOYD: Yes, sir.

15 THE COURT: I'm sorry, I just couldn't see you. All
16 right, thank you. I find based on your response that are
17 you qualified. You may be seated.

18 And, Ma'am, please give me your name and juror number:

19 MS. WEEKS: Gloria Weeks, Juror 134.

20 THE COURT: All right. And tell me why are you
21 standing, ma'am.

22 MS. WEEKS: I know Curtis Nealey.

23 THE COURT: All right. And how do you know him?

24 MS. WEEKS: He is a neighbor of mine.

25 THE COURT: He's your neighbor?

THE STATE V CURTIS RAY NEALEY

20

1 MS. WEEKS: Yes.

2 THE COURT: All right. And when is the last time you
3 saw him before today?

4 MS. WEEKS: Years.

5 THE COURT: All right.

6 MS. WEEKS: It's been awhile.

7 THE COURT: All right. Then would the fact that you
8 know him somehow prevent you from being a fair and
9 impartial juror in this case somehow?

10 MS. WEEKS: No.

11 THE COURT: Then I find that you are qualified by
12 your response, ma'am. You may be seated. Thank you.

13 Anyone else now, ladies and gentlemen, who would stand
14 with regard to the alleged victims or the Defendant? All
15 right, let's let the record reflect no one further has
16 stood.

17 I am going to ask the attorneys now to call out the
18 names of individuals who may be witnesses in the trial of
19 this case. If you are present in the courtroom ladies and
20 gentlemen, and your name is called as a witness, please
21 stand and face the jury panel, so that they will have the
22 opportunity to see you. And let's begin with the
23 solicitor.

24 MS. MCKENZIE: Thank you, Your Honor. Dorothy
25 Perkins and Victoria Perkins. They have already stood.

THE STATE V CURTIS RAY NEALEY

21

1 Cedric Gibson of Hartsville. Dr. James Balvich, works at
2 Carolina Pines. Tommy Perkins, of Hartsville. Nancy
3 Nobles of Hartsville. Darlene Jackson of Darlington.
4 Officer Jackie Ryan Catoe, formerly of the Hartsville
5 Police Department, now with the Sheriff's Office. Officer
6 John Weston, of Hartsville Police Department. Officer
7 Chris Stokes, of Hartsville Police Department.
8 Investigator John Speck of Hartsville Police Department.
9 Rodney Hopkins, now employed with the Hartsville Police
10 Department, prior to a week ago, as a deputy with the
11 Sheriff's Office. Investigator Chad McInville, with
12 Darlington County Sheriff's Office. Jean Gainey, works at
13 Carolina Pines. Laura Shakler, of The State Law
14 Enforcement Division. Neal Flowers, of the Darlington
15 County Sheriff's Office. April Cook, now with the
16 Sheriff's Office, but formerly worked for the Hartsville
17 Police Department. Dr. Brooks Banister, at Carolina
18 Pines. Laura South, of the Hartsville Police Department,
19 and Maria Bryant, of the Hartsville Police Department.

20 THE COURT: All right, thank you. Please be seated,
21 ladies and gentlemen. Now, you have heard the names of
22 several potential witnesses called, ladies and gentlemen of
23 the jury. Now when we were talking about the parties, I
24 ask you if you even knew them. My question is not so close
25 when I am asking about witnesses. What I am looking to

THE STATE V CURTIS RAY NEALEY

22

1 determine is whether you have some close, professional,
2 business, or social relationship to any of these witnesses,
3 or may be related to any of the witnesses by blood or
4 marriage. If that applies to you, please stand. All
5 right, sir, please give me your name and juror number.

6 MR. WILKS: Keith Wilks, 136.

7 THE COURT: And, Mr. Wilks, which of the jurors are
8 standing for?

9 MR. WILKS: I know Mr. McInville.

10 THE COURT: All right. And how do you know him?

11 MR. WILKS: We grew up around each other, we're
12 friends.

13 THE COURT: Very good. And how long has it been
14 since before today you just saw him that you've seen him?

15 MR. WILKS: Probably a month or two.

16 THE COURT: Okay. Would the fact that you know him,
17 which is not unusual that someone on a jury panel would
18 know a witness, but would that prevent you somehow from
19 giving a fair and impartial trial in this case?

20 MR. WILKS: No, it wouldn't.

21 THE COURT: All right, then I find that you are
22 qualified by your response. Thank you.

23 All right, ladies and gentlemen, I want to you talk
24 with you just a moment before I turn to the defense, and
25 ask a question; to make sure we all have the same

1 understanding. It is a bedrock foundational presumption of
2 our Courts that a Defendant is presumed innocent. The
3 Defendant never has the burden of proof in the courtroom.
4 The burden of proof is always on The State. So the
5 Defendant is not required to call witnesses. Not required
6 to put up a case. Not required to testify. That is their
7 decision. But they are not required to do anything,
8 because The State has the burden of proof. But I ask you,
9 Madam Defender, or Mr. Defender, if there are other
10 witnesses for whom I should qualify for this jury while we
11 are in the process? If so, please call their names. If
12 you are present, please stand.

13 MS. LITTLE: Your Honor, Dr. Harold Wheeler,
14 Carolina Pines Pathologist, and Dr. James Balvich, E.R.,
15 Carolina Pines.

16 THE COURT: All right. Very good. We've already
17 heard at least one of those names. Anyone who would stand
18 further in having some connection to the witnesses who may
19 be called for the defense that is related by blood or
20 marriage, or have some close, business, professional, or
21 social connection. Let's let the record reflect then that
22 no one has stood in response to the Court's questions.

23 All right. Ladies and gentlemen, I have in my hand a
24 series of documents, which are the indictments in these
25 cases. I want to say to you first of all, that the

THE STATE V CURTIS RAY NEALEY

24

1 documents and the indictments are just pieces of paper.
2 They are the documents --- an indictment is the document by
3 which the Solicitor commences a prosecution against an
4 individual. These are not to be accepted as evidence,
5 because they are not evidence. And what is said on them is
6 not to be accepted as the truth automatically. That is
7 because whatever the truth is in this case is going to be
8 determined by the jury, not because it says something on a
9 piece of paper, but because the evidence in the courtroom,
10 which is going to come right here from this witness stand
11 proves it. So please understand that what is in these
12 documents are simply a set of allegations with regard to
13 various charges that have all been combined into one trial
14 against the Defendant. Now with that understanding, I want
15 to give you certain allegations that are within these
16 documents, because then I want to ask you if you know
17 anything about this case from some source whatever that
18 source may be. The first thing I want to say to you, about
19 these allegations are, you heard it here in the courtroom,
20 they are denied by the Defendant. But even if the
21 Defendant didn't deny, even if the Defendant didn't enter a
22 plea, the Defendant is presumed innocent, and thus please
23 remember these are simply allegations at this juncture.
24 The allegations --- and what I am going to do is, I am
25 going to call out the charge and then tell you what the

1 specific allegation is with regard to that charge.

2 The first is assault and battery with intent to kill.
3 The allegations are, that the Defendant did on October 14,
4 2008, that is the operative date, October 14, 2008, with
5 malice aforethought, wilfully and unlawfully commit a
6 violent injury to the person of another, Dorothy Perkins,
7 to wit: That the Defendant, Curtis Ray Nealey, did while
8 traveling at a high rate of speed, push the victim, Dorothy
9 Perkins, off of his motorcycle in violation of South
10 Carolina law, and the victim did receive great bodily
11 injury. These are the allegations for assault and battery
12 with intent to kill.

13 There also is a charge of criminal domestic violence
14 of a high and aggravated nature. And the allegations in
15 that are, that on the same day, October 14, 2008, that the
16 Defendant, Curtis Ray Nealey, did unlawfully cause physical
17 harm or injury to a member of his own household, or offered
18 to attempt to cause physical harm or injury, with the
19 present apparent ability under circumstances that
20 reasonable create a fear of imminent peril, and did beat
21 the victim, Dorothy Perkins, about her face and head,
22 requiring her to seek emergency medical attention. These
23 are the allegations of criminal domestic violence of a high
24 and aggravated nature.

25 There also is a charge of kidnaping. The allegations

THE STATE V CURTIS RAY NEALEY

26

1 in the kidnaping charge are that on the same date, October
2 14, 2008, that the Defendant, Curtis Ray Nealey, did
3 unlawfully and willfully and knowingly seize, or confine,
4 or decor, or kidnap, or abduct, or carry away, one Dorothy
5 Perkins, by any means whatsoever without the authority of
6 law and without her consent. These are the allegations
7 with regard to kidnaping.

8 And then there is a second allegation of assault and
9 battery with intent to kill that alleges on that the same
10 date that Curtis Ray Nealey did, with regard to the alleged
11 victim, Victoria Perkins, --- the earlier one I read to you
12 had to do the alleged victim Dorothy Perkins; that he did
13 beat the victim, Victoria Perkins, about her face and head
14 with a ceramic ornament, causes her to seek medical
15 attention, and brandishing a knife while doing so. These
16 are the allegations with regard to assault and battery with
17 intent to kill, with regard to the victim, Victoria
18 Perkins.

19 Then further, with regard to both of the alleged
20 victims, there is a charge of possession of a weapon during
21 the commission of a violent crime. And these allegations
22 are, that with regard to both of the alleged victims, the
23 Defendant on October 14, 2008, again the same episode, the
24 same core set of occurrences or facts on that date, that
25 the Defendant did willfully display a knife during the

1 commission of a violent crime, which was assault and
2 battery with intent to kill, with regard to one victim, and
3 criminal domestic violence of a high and aggravated nature
4 with regard to the other victim. These again ladies and
5 gentlemen, are allegations only, but is a set of
6 allegations that the prosecutor has combined all into one
7 trial procedure. I tell you all that to ask you this. Is
8 there anybody who knows anything about this case from
9 whatever source it may come? If you know something about
10 this case and these allegations, please stand. Let's let
11 the record reflect no one has responded that they have some
12 knowledge about this case.

13 All right. Now ladies and gentlemen, I want to ask
14 you a little bit about yourselves. I want to ask if there
15 is any member of the jury panel who has ever been employed
16 full time in law enforcement. If you have ever worked full
17 time in law enforcement, you the juror, ever worked full
18 time in law enforcement, please stand.

19 All right. And now I want to ask you if any one of
20 the jury panel has an immediate family member that now
21 works in law enforcement. And I am going to define
22 immediate family member in the following way, for all these
23 questions I am going to ask you. It is your spouse and
24 your children, regardless of where they live, and anyone
25 who lives in your household. So your immediate family is,

THE STATE V CURTIS RAY NEALEY

28

1 everybody living in your household, plus your spouse,
2 wherever they may live, plus your children, wherever they
3 may live. I am asking now, if there is any member of this
4 jury panel who has a member of their immediate family that
5 is presently employed in full time law enforcement. If
6 that applies to you, please stand. Let the record reflect
7 no one has stood.

8 I want to ask now if there is any member of this jury
9 panel who is a member of an organization, which has as its
10 purpose the protection of or advocacy for the rights of
11 victims of crimes. And let me hasten to say immediately,
12 there is nothing wrong with being a member of such an
13 organization. I am simply asking you if you are. These
14 would organizations such as MADD, which is Mothers Against
15 Drug Driving. CAVE, which is Citizen's Against a Violent
16 Crime; CASA, is Citizen's Against Espousal Abuse. There is
17 Pee Dee Coalition Against Espousal Abuse. Any of these
18 against domestic violence, I should say, Pee Dee Coalition
19 Against Domestic Violence. If you are a member of these
20 organizations or any similar organizations, please stand.
21 All right. Again, I say there is nothing wrong with such a
22 membership. But, Ma'am, please give us your name and juror
23 number.

24 MS. YOW: I'm Delene Yow, juror 140.

25 THE COURT: All right, and Ms. Yow, tell me what

1 organization or organizations are you a member of?

2 MS. YOW: Mothers Against Drunk Driving.

3 THE COURT: Okay. Are you currently a member?

4 MS. YOW: Yes.

5 THE COURT: All right. And, of course, would that
6 --- this is not a case, I don't believe, of which Mothers
7 Against Drunk Driving would be involved. But let me ask
8 you, is there something in this case that would you prevent
9 you, in your opinion, from giving a fair and impartial
10 trial?

11 MS. YOW: No.

12 THE COURT: All right. Then I find that you are
13 qualified by your response, ma'am. Thank you.

14 All right. Ladies and gentlemen, I want to ask you
15 now if you as a juror --- I am asking first about the
16 jurors, and then we will ask about your immediate family,
17 have ever been a victim of a violent crime. When I say a
18 violent crime, what I mean is some inner-personal violence
19 committed in association with a crime with a primal act.
20 If you have ever been the victim of a violent crime, please
21 stand.

22 All right. Then, if you have ever had a member of
23 your immediate family as I just defined it for you, has
24 been the victim of a violent crime, please stand?

25 All right. And, Ms. Yow ma'am tell me if you will,

THE STATE V CURTIS RAY NEALEY

30

1 what family member are we speaking of?

2 MS. YOW: My mother was killed six years ago by a
3 drunk driver.

4 THE COURT: All right. And that, of course, would
5 explain your involvement with Mothers Against Drunk Driver.
6 And, Ma'am, let me ask you, would that prevent you in this
7 case from giving fair and impartial trial in your opinion?

8 MS. YOW: No, sir.

9 THE COURT: Then I find that you are qualified,
10 ma'am. Thank you for the candor of your response. All
11 right, anyone else who would further respond about
12 immediate family members?

13 All right. Also, I want to ask both sides of the
14 question. I want to ask if any member of this jury panel
15 has ever been accused of committing a violent crime. Have
16 you ever been accused, whether it went to prosecution or
17 whether it resulted in some type of verdict is not my
18 question, I am simply asking if you have ever been accused
19 of committing a violent crime, please stand?

20 I ask you now if there is any member of this jury
21 panel who has ever had an immediate family member accused
22 of committing a violent crime. If that applies to you,
23 please stand.

24 All right. Ladies and gentlemen, this case involves
25 allegations, and you heard it said earlier, what we call

1 criminal domestic violence, which is an allegation about
2 violence that occurs within the members of a household. I
3 ask you ladies and gentlemen; whether they be related by
4 blood or marriage is not required, it's just someone living
5 in the same household, and an allegation of criminal
6 domestic violence, which is denied. But I ask if there is
7 any member of the jury panel who has a belief, whether it
8 be a personal belief, religious, moral, moral conviction,
9 or whatever it may be, that given the allegations of
10 criminal domestic violence, or any other allegations that
11 you hear in this case, do not believe that you could be
12 fair or impartial. If that applies to you, please stand.

13 All right, and I asked a question about the specifics
14 of why you may not believe it, but let me just ask you this
15 way. Based on what you've heard, is there anybody who
16 doesn't think you should be a juror in this case for
17 whatever reason personal to you. If that applies to you
18 for whatever reason, please stand.

19 All right, the Court has asked a series of questions
20 now. Are there further questions for jury qualification
21 for The State?

22 MS. MCKENZIE: None from The State.

23 THE COURT: And from the Defense?

24 MS. LITTLE: No, Your Honor.

25 THE COURT: All right. Counsel, you want to turn

THE STATE V CURTIS RAY NEALEY

32

1 your back to me to face the jury panel. And let me talk
2 with our jurors about what we are going to do.

3 Now, first of all let me ask, how many strikes are
4 claimed by The State?

5 MS. MCKENZIE: Five.

6 THE COURT: Pursuant to Statute, The State has five
7 strikes. How many are claimed by the Defense?

8 MS. LITTLE: Ten, Your Honor.

9 THE COURT: All right. Is there any objection to the
10 claim of ten?

11 MS. MCKENZIE: Your Honor, I had looked up the rule.
12 I thought it was five.

13 THE COURT: All right, we will give you a moment to
14 do that.

15 MS. MCKENZIE: Ten would apply to murder, man
16 slaughter, burglary, arson, criminal sexual conduct, armed
17 robbery, grand larceny.

18 THE COURT: All right. Let me just stop you there.
19 What charge do you claim ten strikes?

20 MS. LITTLE: Your Honor, kidnaping. My understanding
21 was kidnaping.

22 THE COURT: What say you?

23 MS. MCKENZIE: Your Honor, it's not listed in this
24 Code Section. I may need to look on line to see if there
25 is an update.

1 THE COURT: Go ahead. We will let you do that. And
2 while you do that, I am going to talk to the jury panel.

3 All right, ladies and gentlemen, let's talk a little
4 bit about what we going to do now, how this process is
5 going to be. Everyone who is a qualified juror who has
6 been through our process this morning and now still remains
7 with us, your name is on a slip of paper, and has been
8 placed in a cylinder. That cylinder is surrounded by an
9 opaque piece of paper such as the Clerk cannot see through
10 it. He is going to spin the cylinder and randomly draw a
11 name. When your name is called, I am going to ask you
12 please to stand. And what is going to happen is, both
13 sides are going to have an opportunity to say whether or
14 not they seek you, or they excuse you. And let's talk
15 about that for a moment. Here is really what's going to
16 happen. You are going to stand up. They are going to be
17 whispering at the table. You know they are talking about
18 you. We all know that they're talking about you. So it's
19 a little bit psychologically uncomfortable. But I will
20 say, in some Courts you have to get up out of your seats,
21 and come up here and stand. We are not going to do that
22 today. We are just going to let you stand at the safety of
23 your seat there. And then these lawyers are going to
24 decide --- the parties are going to decide whether to seat
25 you or excuse you. Please don't be offended if you're not

THE STATE V CURTIS RAY NEALEY

34

1 chosen. It may suit you find if you're struck. That may
2 be your preference. But I will simply say this to you. If
3 you are not chosen, I want you to understand that it is not
4 because of your sex or your race. It is against the law to
5 strike for those reasons. And each side has the ability to
6 challenge the other side's strikes. It may be for some
7 tactic or strategy within the case that only the lawyers
8 know, or it may be some response made during jury
9 qualifications this morning. But it will not be for those
10 reason.

11 All right, just one moment, please. Counsel, do you
12 have the Statute available?

13 MS. MCKENZIE: Your Honor, I am having trouble
14 connecting.

15 THE COURT: All right. Counsel, if you would, come
16 up to the bench just a moment.

17 (Whereupon, a bench conference was held in the
18 presence of the jury panel, but out of the hearing of the
19 jury panel.)

20 THE COURT: All right, thank you. Ladies and
21 gentlemen, let me just say to you that through the years
22 our statutes --- when the legislature makes a decision, and
23 certain crimes are given more strikes than others. It
24 appears after some slight confusion, that kidnaping statute
25 does not include additional strikes. Thus, the strikes

THE STATE V CURTIS RAY NEALEY

35

1 will be five for The State, and five for the Defense. And,
2 we are ready to proceed. Mr. Clerk, please call the names.
3 Ladies and gentlemen, when your name is called, please
4 stand, and follow our Clerk's instructions.

5 CLERK OF COURT: Juror Number 22, Elizabeth
6 Castleberry. What says The State?

7 MS. MCKENZIE: Please present the juror.

8 CLERK OF COURT: What says the Defense?

9 MS. LITTLE: Please seat the juror.

10 CLERK OF COURT: If you would, ma'am, if you would,
11 bring whatever you brought with you today and have a seat
12 in the jury box for me, please.

13 Juror Number Three, Katie Anhalt. What says the
14 State?

15 MS. MCKENZIE: Please present the juror.

16 CLERK OF COURT: What says the Defense?

17 MS. LITTLE: Please excuse Ms. Anhalt.

18 CLERK OF COURT: You have been excused from this
19 case, Ms. Anhalt. If you will have a seat right where you
20 are, please. Thank you.

21 THE COURT: Let me say, ladies and gentlemen, if you
22 are excused, I cannot release you now. We may have to
23 revisit some strike issue that occurred, just if you would,
24 just be comfortable where you are.

25 CLERK OF COURT: Juror number 152, Joanne Lund. What

THE STATE V CURTIS RAY NEALEY

36

1 says The State?

2 MS. MCKENZIE: She was excused.

3 CLERK OF COURT: Juror number 27, William Coe. What
4 says The State?

5 MS. MCKENZIE: Please present Mr. Coe.

6 CLERK OF COURT: What says the Defense?

7 MS. LITTLE: Please seat Mr. Coe.

8 CLERK OF COURT: If you will come forward and have a
9 seat in the jury box for me, Mr. Coe.

10 Juror number 35, Denise English. What says The State?

11 MS. MCKENZIE: Please present Ms. English.

12 CLERK OF COURT: What says the Defense?

13 MS. LITTLE: Please seat Ms. English.

14 CLERK OF COURT: If you will come forward and have a
15 seat in the jury box, Ms. English.

16 Juror number 25, Ed Clark. What says The State?

17 MS. MCKENZIE: Please present Mr. Clark.

18 CLERK OF COURT: What says the Defense?

19 MS. LITTLE: Please seat Mr. Clark.

20 CLERK OF COURT: Please have a seat in the jury box
21 for me, Mr. Clark.

22 Juror number 92, Grover Moody. What says The State?

23 MS. MCKENZIE: Please present Mr. Moody.

24 CLERK OF COURT: What says Defense?

25 MS. LITTLE: Please present Mr. Moody.

1 CLERK OF COURT: If you will come forward and have a
2 seat in the jury box, Mr. Moody.

3 Juror number 53, James Henderson. What says the
4 State?

5 MS. MCKENZIE: Please present Mr. Henderson.

6 CLERK OF COURT: What says the Defense?

7 MS. LITTLE: Please seat Mr. Henderson.

8 CLERK OF COURT: If you will come forward and have a
9 seat in the jury box for me, Mr. Henderson.

10 Juror number 95, Alan Nestico. What says The State?

11 MS. MCKENZIE: Please present Mr. Nestico.

12 CLERK OF COURT: What says the Defense?

13 MS. LITTLE: Please seat Mr. Nestico.

14 CLERK OF COURT: If you will come forward and have
15 seat in the jury box for me, Mr. Nestico.

16 Juror number 44, Frederica Goodson. What says the
17 State?

18 MS. MCKENZIE: Please present Ms. Goodson.

19 CLERK OF COURT: What says the Defense?

20 MS. LITTLE: Please seat Ms. Goodson.

21 CLERK OF COURT: If you will come forward and have
22 seat in the jury box for me, Ms. Goodson.

23 Juror number 54, Ryan Hendrix. What says The State?

24 MS. MCKENZIE: Please excuse, Mr. Hendrix for this
25 trial.

THE STATE V CURTIS RAY NEALEY

38

1 CLERK OF COURT: Excuse from this case, Mr. Hendrix.

2 If you will have a seat for me, please.

3 Juror number 72, Jennifer Jones. What says The State?

4 MS. MCKENZIE: Please present Ms. Jones.

5 CLERK OF COURT: What says the Defense?

6 MS. LITTLE: Please excuse Ms. Jones.

7 CLERK OF COURT: Excuse from this case, Ms. Jones.

8 Juror number 140, Delene Yow. What says The State?

9 MS. MCKENZIE: Please present Ms. Yow.

10 CLERK OF COURT: What says the Defense?

11 MS. LITTLE: Please excuse Ms. Yow.

12 CLERK OF COURT: You are excused from this case, Ms.

13 Yow.

14 Juror number 125, Ellen Tillier. What says The State?

15 MS. MCKENZIE: Please present Ms. Tillier.

16 CLERK OF COURT: What says Defense?

17 MS. LITTLE: Please excuse Ms. Tillier.

18 CLERK OF COURT: You are excused from this case, Ms.

19 Tillier.

20 THE COURT: Defendant has only one strike remaining.

21 CLERK OF COURT: Juror number 48, Emmer Griffitts.

22 What says The State?

23 MS. MCKENZIE: Please present Ms. Griffitts

24 CLERK OF COURT: What says the Defense?

25 MS. LITTLE: Please seat Ms. Griffitts.

THE STATE V CURTIS RAY NEALEY

39

1 CLERK OF COURT: If you will come forward and have a
2 seat in the jury box for me, Ms. Griffitts.

3 Juror number 115, Robert Singleton. What says the
4 State?

5 MS. MCKENZIE: Please excuse Mr. Singleton from the
6 trial of this case.

7 CLERK OF COURT: You are excused from this particular
8 case, Mr. Singleton, thank you.

9 Juror number 111, Ekefio Shaw. What says The State?

10 MS. MCKENZIE: Please present Mr. Shaw.

11 CLERK OF COURT: What says the Defense?

12 MS. LITTLE: Please seat Mr. Shaw.

13 CLERK OF COURT: Please come forward and have a seat
14 in the jury box for me, Mr. Shaw.

15 Juror number 136, Keith Wilks. What says The State?

16 MS. MCKENZIE: Please present Mr. Wilks.

17 CLERK OF COURT: What says Defense?

18 MR. JONES: What was that number again, Mr. Clerk?

19 CLERK OF COURT: 136.

20 MS. LITTLE: Please excuse Mr. Wilks.

21 CLERK OF COURT: You have been excused from this
22 particular case.

23 THE COURT: The defendant has only challenges for
24 cause remaining.

25 CLERK OF COURT: Juror number 40, Rhonda Fountain-

THE STATE V CURTIS RAY NEALEY

40

1 Covington. What says The State?

2 MS. MCKENZIE: Please excuse the juror of the trial
3 of this case.

4 CLERK OF COURT: You have been excused from this
5 particular case, Ms. Covington.

6 Juror number 91, Theresa Miller. What says The State?

7 MS. MCKENZIE: Please present Ms. Miller.

8 CLERK OF COURT: Is there show for cause from the
9 Defense?

10 MS. LITTLE: None.

11 CLERK OF COURT: You can come forward and have a seat
12 in the jury box for me please.

13 Juror number 134, Gloria Weeks. What says The State?

14 MS. MCKENZIE: Please excuse Ms. Weeks for the trial
15 of this case.

16 CLERK OF COURT: You are excused for this weeks, Ms.
17 Weeks, thank you.

18 THE COURT: State has only one strike remaining.

19 CLERK OF COURT: Juror number 150, Casey Atkinson.
20 What says The State?

21 MS. MCKENZIE: Please present Ms. Atkinson.

22 CLERK OF COURT: Any show of cause from Defense?

23 MS. LITTLE: None.

24 CLERK OF COURT: If you will come forward and have a
25 seat in the jury box for me.

1 THE COURT: All right, Mr. Clerk, let's chose one
2 alternate juror, and the strikes will be one for The State
3 and two for Defense on the alternate.

4 CLERK OF COURT: Juror number 36, Loretta Ervin.
5 What says The State?

6 MS. MCKENZIE: Please present Ms. Ervin.

7 CLERK OF COURT: What says Defense?

8 MS. LITTLE: Please excuse Ms. Ervin.

9 CLERK OF COURT: You have been excused from this
10 case, Ms. Ervin, thank you.

11 Juror number 129, Belinda Waldrop. What says the
12 State?

13 MS. MCKENZIE: Please present Ms. Waldrop.

14 CLERK OF COURT: What says the Defense?

15 MS. LITTLE: Please seat Ms. Waldrop.

16 CLERK OF COURT: If you will come forward, Ms.
17 Waldrop, and have a seat in the first chair outside the
18 jury box for me please.

19 THE COURT: All right. First of all ladies and
20 gentlemen, I know you came in this morning, and you had
21 safety in numbers, and now you had, of course, the jury
22 drawing, and there you seat in the jury box. Let me ask
23 you, how many of you have served on a jury before, please
24 raise your hand. All right, very good. We've got some
25 experience on the jury box. Let me just say to those of

THE STATE V CURTIS RAY NEALEY

42

1 you who find yourself in the jury box, for the first time
2 in your life, don't feel uncomfortable about where you find
3 yourself. To serve on a jury you need two tools and you've
4 got them both. First, is your ability to listen, and
5 second is your collected common sense, armed with those two
6 things you are going to find yourself in a good stead. So,
7 welcome to the jury box.

8 Now, while we are in the presence of this jury, are
9 there any objections to the procedure employed by the Court
10 to choose this jury, or the strikes employed by the other
11 side. What says The State?

12 MS. MCKENZIE: None, Your Honor.

13 THE COURT: And Defense?

14 MS. LITTLE: No, sir.

15 THE COURT: Very good. Then that means you will be
16 our jury, ladies and gentlemen. Just one moment, please.

17 (PAUSE.)

18 THE COURT: Let's talk a little bit about scheduling.
19 Counsel, step up a moment so I can give both our jury
20 panels a little bit further information.

21 (Whereupon, a bench conference was held.)

22 THE COURT: All right. Ladies and gentlemen, after
23 having a little pow wow at the bench, this is what we are
24 going to do. We are not going to start this trial
25 immediately. There are some things that we need to do to

1 prepare the matter for trial, and we are going to start the
2 trial at 3:00-o'clock this afternoon, so that is going to
3 give you a three-hour lunch. Now, don't get use to that.
4 We will not have a three-hour lunch every day, but you will
5 have three hours for lunch. What we are going to do is, we
6 are going to let you leave first. We are all going to
7 remain out of respect. We are going to let Mr. Medlin, the
8 bailiff, take you back and show you where the jury room is.
9 And so at 3:00-o'clock, come back to the jury room instead
10 of here in the open courtroom, and we will be ready to
11 start about 3:00-o'clock.

12 All right now, just a couple of thoughts. First of
13 all, if your loved ones, if you see them or talk to over
14 the lunch hour, we start our Court about 9:30 every morning
15 we end about 5:00-o'clock, just business hours generally.
16 So that is what we expect whenever we begin jury service.

17 Secondly, please do not undertake some investigation
18 over the lunch about this incident here, whether that be on
19 the internet or through some other source, and please don't
20 discuss the facts. We don't even know enough about the
21 facts to have a discussion with anyone. But, please don't
22 attempt to gather information about the matter, just have a
23 good lunch, and come back at 3:00-o'clock, and the lawyers
24 will be ready, and the Court will be ready at that time,
25 and we will proceed from there. All right, are there any

THE STATE V CURTIS RAY NEALEY

44

1 questions about our schedule with the jury? Then we will
2 see you at 3:00. Let's all remain where we are at out of
3 respect while our jury departs the courtroom.

4 (Whereupon, the jury exits the courtroom at 11:50
5 a.m.)

6 THE COURT: Mr. Suggs, do you need any information
7 from our greater jury panel?

8 CLERK OF COURT: Does anyone need to change their
9 address from what was on the Summons? If you corrected it
10 on the Summons and sent it back, we're good. If you
11 changed it since then, I need to know, because we've got to
12 go in and change it. Is there anyone who needs to change
13 their address?

14 (PAUSE.)

15 THE COURT: All right. Ladies and gentlemen, we are
16 going to give this other jury just a minute to clear, but
17 let me say this to you. I can't tell you that you are
18 finished for the week. If I could tell you with
19 definitiveness would. What I am going to ask you to do is
20 after 6:00-o'clock tonight, please call the jury number for
21 further instructions to the entire panel. If I knew what
22 those instructions were I would tell you now. But we don't
23 know what is going to happen here. We won't know until the
24 end of the day what the information on the jury number
25 information line will be. So the rest of the day is yours.

1 It's a beautiful day outside, enjoy. But please call after
2 6:00-o'clock tonight to the jury information number. If
3 you don't have that number, make sure you get it from the
4 bailiff on the way out the door, and have a good day,
5 ladies and gentlemen. You are free to go at this time.

6 (Whereupon, the jury panel is released at 11:55
7 a.m..)

8 THE COURT: All right. What Motions do we have
9 before court?

10 MS. MCKENZIE: Your Honor, we would reference a
11 pending CDV charge that the Defendant had at the time of
12 this incident occurred against the same victim, Dorothy
13 Perkins.

14 THE COURT: All right.

15 MS. MCKENZIE: I was going to offer Ms. Perkins, to
16 kind of get into some of the details about that.

17 THE COURT: All right. That's two. What else do we
18 have?

19 MS. MCKENZIE: Also just *in limini*, to try and go
20 ahead and discuss the issue of whether or not the fact that
21 her kids were in the custody of DSS at the time this
22 happened. I have discussed that with Ms. Little, and I
23 believe that she is going get into that through some of her
24 case. It may not be timely, but I just want to go ahead
25 and have something *in limini*, to prevent something from

THE STATE V CURTIS RAY NEALEY

46

1 coming out in the opening, if Your Honor decides that is
2 irrelevant or under 403 presidential.

3 THE COURT: All right, three. What else?

4 MS. MCKENZIE: Also *in limini*, to exclude any
5 references in the opening statements or on cross
6 examination of my witnesses, about anything found in the
7 victim's blood when she got to the hospital, on the basis
8 that the Defense is not going to be able to establish a
9 chain. There was a urine analysis, and you know, blood
10 screens done at the ER.

11 THE COURT: Very good. Any other issues?

12 MS. MCKENZIE: That's all. Four. Are there any from
13 the Defendant prior to trial that the Court needs to
14 resolve?

15 MS. LITTLE: No, Your Honor. Other than these issues
16 she discussed.

17 THE COURT: All right, very good. Let's start with
18 Jackson v Denno. Let me first ask, counsel, have you all
19 had an opportunity to talk among yourselves about the
20 alleged statement that The State seeks to put into
21 evidence, and is there some agreement in part or in whole
22 on what issues are before us in Jackson v Denno?

23 MS. MCKENZIE: Your Honor, this is an issue we really
24 haven't discussed in a lot of detail. I didn't know if Ms.
25 Little was going to object on the basis of whether or not

1 is was voluntary. He did not sign the Miranda Form after
2 being advised, and he would not give a written statement,
3 but did agree to have a discussion with Investigator John
4 Spect. And in that discussion admitted to flight, to the
5 fact that he left town and went to Louisiana.

6 THE COURT: All right. So you've heard the statement
7 the Court has put in. Is there some objection to that?

8 MS. LITTLE: Your Honor, my client doesn't have a
9 clear recollection of being read his Miranda rights. Also,
10 there may be a issue. He tells me there was, some things
11 he put in his statement or that he told Officer Spect that
12 are not in the report. Other than that, those are the only
13 issues we have.

14 THE COURT: Well it appears this is some contest in
15 about what has happened here, so let's go ahead and precede
16 in the hearing. Please call your first witness.

17 MS. MCKENZIE: Your Honor, at this time I called
18 Investigator John Spect.

19 THE COURT: Please come forward and take the oath of
20 a witness.

21 JACKSON VERSUS DENNO HEARING

22 WHEREUPON, JOHN SPECT

23 BEING DULY SWORN TESTIFIES AS FOLLOWS

24 DIRECT EXAMINATION BY MS. MCKENZIE

25 Q. Please state your full name for the record?

JOHN SPECT - DIRECT EXAMINATION

48

1 A. John Spect.

2 Q. Where are you employed?

3 A. I am employed with the Hartsville Police Department.

4 Q. What is your position now?

5 A. At the time I was an investigator sergeant.

6 Q. Would you please tell us about your involvement with
7 the case involving Defendant Curtis Nealey back in
8 October of 2008?

9 A. The investigators in Hartsville --- We take week-long
10 terms of being on call, and I was on call when the
11 incident took place. I received a phone call from the
12 patrol officer, who responded to the scene about this
13 case, but I didn't come out. They took some evidence,
14 took photographs I think, and kind of did their thing
15 and had anything --- there really wasn't anything for
16 me to come out to do, so I didn't respond at that
17 time. However, I was the investigator on paper when
18 this case came onto my desk for purposes of follow-up,
19 and tying up loose ends, and whatnot. The warrants
20 had already been signed. He had already been put in
21 NCIC, you know, all that was already done prior to me
22 being involved in it.

23 Q. Okay.

24 A. I did --- Obviously I knew about --- and when the
25 capture came up, I was somewhat involved in the

1 capture of the Defendant. The next day after the
2 capture, I went to the jail to speak with him.

3 Q. Okay. What day is that you went to jail --- what date
4 was that?

5 A. October 24, 2008.

6 Q. And the Defendant that you spoke with is he seated in
7 the courtroom?

8 A. He is. At the defense table.

9 Q. And where did you have the discussion with him
10 specifically within the jail?

11 A. At the entrance to the pods, and this was in A-pod.
12 At the entrance of each pod there is private interview
13 room off to the side, and that's where we went.

14 Q. Okay. At that time did you identify yourself to the
15 Defendant?

16 A. I did.

17 Q. And did you advise him of his Miranda Rights after
18 reading the warrants?

19 A. I did. I read them directly from the piece of paper
20 that I had in my hand.

21 Q. What is that piece of paper that you took in there
22 with you?

23 A. A standard Hartsville Police Department Form that we
24 have with some Miranda Warnings on it, and a place for
25 signatures down at the bottom.

JOHN SPECT - DIRECT EXAMINATION

50

1 Q. Did he say that he understood his rights after you
2 read them?

3 A. He did.

4 Q. Did he sign the form?

5 A. He would not sign the form.

6 Q. Did he make any statements regarding as to why, or why
7 not?

8 A. No, he said he really didn't want to sign it.

9 Q. Okay. Did he agree to give you a statement?

10 A. We continued after that to have conversation about the
11 incident.

12 Q. Okay. Now, what type of condition did the Defendant
13 appear to be in at the time?

14 A. He appeared sober and competent at that time. He had
15 been in jail for a day or so at time also.

16 Q. Okay. So do you believe he was under any influence of
17 alcohol or drugs at that time?

18 A. I don't believe that.

19 Q. And after you read the Miranda Rights, tell us what
20 happened?

21 A. Well we had a conversation about --- he knew what
22 incident I was there to talk with him about.
23 Obviously, it was apparent. He gave me his version of
24 the events of that evening.

25 Q. Okay. I want to backtrack just for a second and go

JOHN SPECT - DIRECT EXAMINATION

51

1 back to the rights. Did he make any comment as to
2 whether or not he wanted an attorney present?

3 A. He did not.

4 Q. But that was part of you're your Miranda Warning with
5 the Arrest Warrant, is that correct?

6 A. It was. Had he asked for an attorney, then I would
7 have taken him back to his place and left him.

8 Q. I want you to continue on and tell the Court what his
9 statement was to you on that day?

10 A. Okay. His statement was somewhat disjointed. I think
11 as we go over that, you'll see what I mean. He told
12 me that he and Dorothy had gotten together around 5:00
13 or 6:00-o'clock on the day of the incident. He was
14 vague about the time. Five or six is what I wrote
15 down. He said that she isn't allowed to be around
16 him, because DSS had already taken her children away,
17 and apparently there was some prohibition on paper
18 where she wasn't to be around him. He mentioned that.
19 He said they were drinking beer around the house, and
20 then they went out to get more beer. They ended up at
21 Frank's Bar, which is a bar on North Fifth Street just
22 outside of town, formerly known as the Saloon, and
23 some people still, call it that. At the bar he drank
24 beer and drank liquor shots, and also began
25 consumption of prescription medication, although it

JOHN SPECT - DIRECT EXAMINATION

52

1 wasn't prescription medication for him. He
2 specifically mentioned some morphine pills but I'm not
3 sure exactly what that was. And he held up his hands
4 at that time to indicate that they were about an inch
5 long. He lost track of time. He didn't remember what
6 time they left the bar, but then they went back to the
7 house on Home Avenue, and they were riding the
8 motorcycle. He also mentioned, that he had CDV Court,
9 criminal domestic violence court the next day for an
10 unrelated incident with the same victim, that that was
11 pending. He added in there about the portion where
12 she was thrown off the motorcycle. He said, that was
13 concocted by Dorothy. In other words, she told the
14 police that in order to cover her own self for DSS's
15 benefit, because she wasn't supposed to be around him
16 to begin with. The domestic at the house, when they
17 got back to the house, he claimed that she was the one
18 who started throwing the items in the house, and that
19 the item that struck her mother, the other victim, was
20 actually thrown by Dorothy, and was no result of
21 anything he did. After the fight in the house, they
22 jumped on the motorcycle and headed toward Darlington,
23 down Billy Farrow Highway. Said one minute they were
24 going down the road, and the next minute she was gone
25 off the back of the motorcycle, but that he didn't

1 push her off the motorcycle. He said he turned around
2 and saw her sliding down the road. He went back to
3 check on her, and as he pulled up to check on her, a
4 truck pulled up --- pulled up and stopped, you know,
5 to see what had happened. The next thing he knows, he
6 woke up on the couch at his house over a day later.
7 He says when he woke up, he had --- and I'll quote,
8 "Like fifteen missed calls on my phone" end quote,
9 which told him something must have been bad wrong. At
10 some point after that, before he fled the area, he
11 visited with his ex-wife and his children, and went to
12 a friend's house to get his truck, and then left town.
13 He drove toward Louisiana, not for any particular
14 reason other than he was just going to Louisiana. He
15 got down to Baton Rouge and he didn't like Louisiana,
16 so he decided to come back. On the drive back he got
17 to thinking about what had happened, and thought the
18 right thing to do was to turn himself in. On his way
19 back from Louisiana, the truck broke down in Georgia.
20 He sold the truck to purchase a bus ticket and caught
21 a bus back to Florence, where he ran up with some
22 people that he knew, and it was not long after that
23 when he was captured.

24 Q. Okay. Please answer any questions Ms. Little may
25 have.

JOHN SPECT - CROSS EXAMINATION

54

THE COURT: Cross examination.

CROSS EXAMINATION BY MS. LITTLE

Q. Officer Spect, do you have a form that you normally get a Defendant sign saying that they waived their rights?

A. I do.

Q. And did you use that form on this occasion?

A. I did.

Q. Did Mr. Nealey initial each question that you answered, asked him?

A. He didn't want to write on my form at all.

Q. So you proceeded to take an oral statement from him?

A. I did.

Q. Now, do you have a capability to record statements of Defendants?

A. At that time I didn't have anyway to record it. The pods --- We were in the interview room inside the jail.

Q. Do you have the ability to take him somewhere else where video cameras can be set up and you can record that statement?

A. I could have taken him back to Hartsville and done it at the office, or even done it over at the Sheriff's Office.

Q. Okay. But you decided instead --- Did you take notes

JOHN SPECT - CROSS EXAMINATION

55

1 that day what the Defendant was saying?

2 A. I did.

3 Q. Do you recall the Defendant telling you where he
4 bought the drugs --- prescription drugs from that he
5 was using that night?

6 A. No, I do not.

7 Q. You don't remember him telling you he bought them from
8 the victim's mother?

9 A. I do not.

10 Q. Do you remember him telling you that Ms. Dorothy
11 Perkins was also drinking, and doing shots, and taking
12 drugs?

13 A. He --- I don't know about the drugs, but he indicated
14 that they were drinking together, yeah.

15 Q. But you didn't put that on your report that she was
16 also drinking at the bar?

17 A. At any rate, they were drinking beer at the house, and
18 then went out for more beer.

19 Q. And then when they went to Frank's I believe you say,
20 he was drinking?

21 A. Yeah. He only talked about him.

22 Q. You don't recall whether or not he ever said that the
23 victim was drinking also?

24 A. I don't recall that specifically at the bar, no. It
25 was my impression they were both drinking beer

JOHN SPECT - EXAMINATION BY THE COURT

56

1 together the entire time.

2 Q. Just one moment. On the form, the Miranda Waiver, did
3 you pull out a Miranda Waiver form, and fill it out,
4 and then write at the bottom, refuse to sign?

5 A. I would have filled out the top portion.

6 Q. Okay. And you submitted that into evidence?

7 A. I don't know if I wrote refuse to sign on it, but I
8 would have taken it back to the office and thrown it
9 in the folder most likely.

10 **MS. LITTLE:** No further questions, Your Honor.

11 **THE COURT:** All right. Sir, do you have that form
12 that was referred to by Ms. Little to; is there some piece
13 of paper that notes that he refused to sign or is that not
14 in existence?

15 **MR. SPECT:** I don't have it with me. If I have it,
16 it would be in my folder at the office. Now, I didn't
17 bring it with me.

18 **THE COURT:** All right. You said he refused to sign,
19 and then you said there was a discussion started. How did
20 that happen? How did the talk about this case initiate?

21 **MR. SPECT:** Well, I of course, he knew why I was
22 there. I was there to get his version of the events, and
23 he wasn't standoffish about signing the Miranda Form, he
24 just didn't want to write anything down. But then, you
25 know, he knew that I was there to talk to him about what

1 happened, and he told me his side of the story.

2 THE COURT: All right, sir. Did you start him with a
3 question, or did he just start talking, or how did that
4 happen?

5 MR. SPECT: I don't remember how it started ---
6 exactly how it started. He certainly wasn't forced to talk
7 to me. Had he wanted to have an attorney, he certainly
8 could have said something, and I would have stopped
9 immediately.

10 THE COURT: All right. Did you ever ask him that,
11 even though he's not signing the paper, that he is willing
12 to make a voluntary discussion with you, a statement. Did
13 you ask him that?

14 MR. SPECT: I don't know if I asked him specifically
15 in those words, but that was the understanding.

16 THE COURT: All right, but that was your impression?

17 MR. SPECT: It certainly was.

18 THE COURT: All right. Do you have any doubt about
19 that?

20 MR. SPECT: I do not.

21 THE COURT: All right. Now I've asked a series of
22 questions. Any follow up to my questions from The State?
23 Anything further?

24 MS. MCKENZIE: Just one question briefly, Your Honor.

25 REDIRECT EXAMINATION BY MS. MCKENZIE

JOHN SPECT - EXAMINATION BY THE COURT

58

1 Q. Investigator Spect, the form that you had with you
2 that day, is that the standard form that you use for
3 Miranda --

4 A. It is.

5 Q. -- from your agency?

6 A. I just print one off my computer when I need one.

7 THE COURT: Is there any followup from the Defense?

8 MS. LITTLE: No, Your Honor.

9 THE COURT: All right, sir, you may step down. Thank
10 you. Any further witnesses for The State?

11 MS. MCKENZIE: No, Your Honor, not for this issue.

12 THE COURT: All right. Any witnesses from the
13 Defense?

14 MS. LITTLE: Yes, Your Honor. The defense calls Mr.
15 Curtis Nealey.

16 THE COURT: All right, sir. Please come forward and
17 take the oath of a witness. Please follow our Clerks's
18 instructions.

19 WHEREUPON, CURTIS RAY NEALEY

20 BEING DULY SWORN TESTIFIES AS FOLLOWS

21 MR. NEALEY: Yes, I do.

22 CLERK OF COURT: If you will have a seat and watch
23 your step.

24 THE COURT: Give us your full name, please sir.

25 MR. NEALEY: Curtis Ray Nealey, the II.

1 THE COURT: All right. Mr. Nealey, the purpose of
2 this hearing is a limited purpose to determine the
3 voluntariness, or what happened in the circumstances that
4 surround your first discussion with police in this case, or
5 at least with the investigator. I want you to understand
6 that what you say in this hearing is not going to be told
7 to the jury. The fact that this hearing has occurred is
8 not going to be discussed with the jury. By speaking to
9 the Court or testifying in this hearing does not mean you
10 are required to testify later in the trial. Do you
11 understand that, sir?

12 MR. NEALEY: Yes, sir.

13 THE COURT: All right. Do you have any further
14 warnings you wish for me to extend to the Defendant at this
15 time about the purpose of this hearing and what we are
16 doing here, Ms. Little?

17 MS. LITTLE: No, Your Honor.

18 THE COURT: Anything from The State?

19 MS. MCKENZIE: No, sir.

20 THE COURT: All right, very good. You may proceed.

21 DIRECT EXAMINATION BY MS. LITTLE

22 Q. Mr. Nealey, do you recall a conversation with Officer
23 Spect at the Darlington County Detention Center?

24 A. Yes, ma'am.

25 Q. That would have been I believe, October 24th, shortly

CURTIS RAY NEALEY - DIRECT EXAMINATION

60

1 after your arrest?

2 A. Yes, ma'am, I was inside the pod, in the back room.

3 Q. So you were not in the interview room on the outside
4 the A-pod?

5 A. No, ma'am.

6 Q. You were in the --- When you walk through the pod you
7 ---

8 A. You walk through to the back room.

9 Q. -- were in the back room?

10 A. Yes, ma'am.

11 Q. Who else was present?

12 A. Spect and the CO, whatever that let me out of the
13 room.

14 Q. Okay. And when you had the conversation with Officer
15 Spect, do you recall him reading you your Miranda
16 Rights?

17 A. No, ma'am, I don't. You talking about --

18 Q. -- Do you know what I mean by Miranda Rights?

19 A. You talking about right remain silent, is that what
20 you're talking about?

21 Q. The right to ---

22 A. No, I don't remember him telling me that --- reading
23 that, no, ma'am.

24 Q. Okay. Did he give you a piece of paper and ask you to
25 sign it, saying that you waiver your right to counsel?

CURTIS RAY NEALEY - CROSS EXAMINATION

61

1 A. No, ma'am. I had no paper or nothing to sign, or
2 nothing.

3 Q. Did he tell you that anything you said to him could be
4 used against you at a future time?

5 A. No, ma'am. I mean, I didn't --- I didn't understand
6 actually what was going on. I didn't know whether I
7 needed a lawyer there or not, because I had never been
8 in that situation before. I didn't know.

9 Q. So did you, voluntary waive your right to counsel to
10 Officer Spect, before you gave a statement?

11 A. No, ma'am. If I knew I needed a lawyer there, I would
12 have had one there.

13 Q. Just one moment.

14 MS. LITTLE: Nothing further, Your Honor.

15 THE COURT: All right, sir. Is there cross
16 examination?

17 MS. BAUGH: Beg the Court's indulgence, yes, sir.

18 MS. MCKENZIE: Beg the Court's indulgence, Your
19 Honor.

20 CROSS EXAMINATION BY MS. MCKENZIE

21 Q. Mr. Nealey, you have been arrested about twice before
22 this particular arrest October 24th, isn't that right?

23 A. Yes, ma'am.

24 Q. Didn't you agree to talk to Investigator Spect ---
25 did you willingly talk to him?

CURTIS RAY NEALEY - CROSS EXAMINATION

62

1 A. I didn't know I was not suppose to talk him willfully.
2 If I knew I was supposed to have a lawyer there, I
3 would have had one appointed to me. I didn't know.
4 Yes, I've had some other prior charges on me or
5 whatever, but I haven't been convicted of none of
6 them.

7 Q. So the time now you know for your lawyers do not
8 approve of your talking to Investigator Spect now, but
9 in October of 2008, was that a willingly conversation?
10 Did you willingly talk to him?

11 A. No, not willingly, no. He started asking me questions
12 and I didn't know whether I was suppose to answer them
13 or not.

14 Q. Did you answer those questions?

15 A. Yes, I did answer some questions.

16 Q. And you're saying you didn't even see a form?

17 A. No, ma'am, not that I recall. I mean, he had a bunch
18 of paperwork and stuff there, do you know what I'm
19 saying, in front of him, but I don't remember --- but,
20 I don't remember --- I don't know what kind of form
21 it's suppose be, or what it says, or anything on it
22 but, I mean, you know, if I knew I had to have a
23 lawyer there before I spoke or whatever, I would have
24 had one there. These are kind of stiff allegations I
25 got against me here.

CURTIS RAY NEALEY - CROSS EXAMINATION

63

1 Q. Yes, sir. You knew who Investigator Spect was, isn't
2 that right?

3 A. I knew he was an investigator, yes.

4 Q. And you knew why he was there, is that right?

5 A. I knew he was there, but I didn't know whether ---
6 Yes, I knew he was there to talk to me, but I didn't
7 know I wasn't supposed to talk to him until I had a
8 lawyer present.

9 Q. So did you willingly talk to him at that time? I know
10 now you're saying, you know, your lawyer probably
11 isn't happy that you talked to him, but at that time,
12 did you willingly discuss some things with him?

13 A. He sat there and ask me some of the questions. I did
14 answer --- volunteer answer the questions, but I mean
15 I didn't know no better.

16 MS. MCKENZIE: All right, nothing further.

17 THE COURT: All right, sir, you may step down. And,
18 sir, I should have asked seated there, but please remember
19 you remain under oath. How far did you go in school?

20 MR. NEALEY: Me?

21 THE COURT: Yes, sir.

22 MR. NEALEY: I quit in the eleventh grade. Went back
23 and got by GED. Went back to college. Got certification
24 --- AFC certification for auto mechanics. I went back to
25 Florence/Darlington TEC. I got my central heating and air

CURTIS RAY NEALEY - CROSS EXAMINATION

64

1 license, whatever, on eighteen builders. I run a
2 mechanic's shop also. And I went to school for Xerox in
3 Georgia, for months on months end, whatever, training for
4 copy machines, fax, printers, computer programing, laser
5 training.

6 THE COURT: All right, thank you. All right,
7 counsel, the Court finds that --- I probably should have
8 state it in the negative. The Court does not find that
9 this is a knowing and voluntary statement, and I say that
10 for absence of proof. I have testimony of one witness who
11 says one thing and one says another. The better evidence
12 would either the written form, which has a indication of
13 being advised Miranda, but refused to sign, and when that
14 happens, then a video, or audio, or video and auto
15 recording of the exchange. It's just not sufficient
16 reliability of understanding and voluntariness for the
17 Court to permit this statement. And I am going to exclude
18 it.

19 MS. MCKENZIE: Thank you, Your Honor.

20 THE COURT: Thank you. Is there anything further now
21 with regard to Jackson v Denno?

22 MS. MCKENZIE: No, Your Honor.

23 THE COURT: All right. Then let's go to the next
24 issue.

25 MS. MCKENZIE: Do you want to go to one of the issues

CURTIS RAY NEALEY - CROSS EXAMINATION

65

1 that will probably take less time?

2 **THE COURT:** Well, let's go to the Lyle Evidence.
3 Let's go to what you propose to put in evidence of the
4 facts that there were other charges pending.

5 And before we take testimony on it, let me just have
6 you tell me what it is you believe allows you to get this
7 in, and what evidence on that point will be available for
8 the record.

9 **MS. MCKENZIE:** Okay. Your Honor, on that day of
10 October 14, 2008, the victim Dorothy Perkins, spent some
11 time with Curtis Nealey. He did come over to the house.
12 She will testify they rode to Frank's bar. She stated that
13 over the course of that evening, he kept asking her, are
14 you going to go to Court with me tomorrow, right. I want
15 you to go up there, and the Solicitor you want to drop
16 those charges, and she kept saying no. He continuously
17 asked her. Kept repeating that question to her. Later in
18 the evening, when they were back at the house, he asked
19 her; they were in the living room there at her mother
20 house. She was living with her mother. And he got
21 angered, and did become violent because she would not agree
22 to go to Court with him the next day and ask the solicitor
23 to drop pending charges. So I filed a Motion for the
24 Court. In that Motion I cited that it goes to intent under
25 404(b) that even though I know it's not it is not

CURTIS RAY NEALEY - CROSS EXAMINATION

66

1 admissible to show to prove character or show action in
2 conformity, but should be admissible to show motive or
3 intent. And I have cited some case law in that Motion.

4 THE COURT: All right, that sufficient, there is no
5 need to cite that further.

6 Counsel, go ahead. What do you say in response?

7 MS. LITTLE: Your Honor, we would argue that that is
8 unduly prejudicial and confusion --- would confuse the
9 jury. She is talking about --- the Defendant did have a
10 pending Court date the next day, which was an unrelated ---
11 it was a --- I'm not saying unrelated. It was a General
12 Session case, where he has a pending charge for an
13 incidence with Ms. Perkins' ex-husband or boyfriend.

14 THE COURT: All right, just one moment, please. All
15 right. Go ahead, Counsel, thank you.

16 MS. LITTLE: Your Honor, the Court date that he had
17 the next day was for a pending I believe ABWIK charge. Did
18 not have anything to do with the pending criminal domestic
19 charge that was pending at the time regarding the victim,
20 Ms. Dorothy Perkins. To get into the fact that he had a
21 Court date, I think, would require discussion about what
22 type of Court date. They are saying that he wanted her to
23 drop the charges. Well what he was going to Court for.
24 She had not the power to drop those charges. She was a
25 witness, but was not the alleged victim in that case.

CURTIS RAY NEALEY - CROSS EXAMINATION

67

1 THE COURT: All right. And response?

2 MS. MCKENZIE: Your Honor, on that date, October
3 fourteenth, I do have proof from the Clerk's Office, and in
4 that other pending files, he did have a Court date on the
5 fifteenth. It was a case management court date for his
6 initial appearance. Those of us that work in the system
7 know that those initial appearance dates they attach to
8 arrest dates. So if you are arrested on a certain date,
9 you are going to have that appearance within ninety days or
10 a hundred and twenty days. So the actual appearance he had
11 the next day, was for the assault and battery with intent
12 to kill involving Kenneth Gainey, but we would still show
13 --- we would still ask the Court to allow that in as
14 relevant to show his state of mind. It still shows his
15 intent. Often I find that Defendants, when they have more
16 than one pending file, don't always understand exactly what
17 charge it is they are coming up to Court for. And this
18 Defendant knew he had a Court date the next day. I believe
19 he may have thought it was for the charge that involved
20 Dorothy Perkins. He wanted her to come up here and drop
21 the charges. I am not trying to get into the details of
22 the assault and battery with intent to kill that involved
23 Kenneth Gainey, or you know, discuss that warrant, or that
24 that Court date was specifically for that warrant in front
25 of the jury, and I would even be agreeable to just leaving

DOROTHY PERKINS - DIRECT EXAMINATION

68

1 it to, he wanted her to come up here and drop charges. We
2 could even omit testimony back the next day.

3 THE COURT: Well, let me stop you there. Obviously,
4 there is a dispute about what the charges pending was. If
5 your witness has testimony on that point, we probably
6 should take testimony on that point outside the presence of
7 the jury. Please call your witness.

8 MS. MCKENZIE: Okay, Your Honor. We call Dorothy
9 Perkins.

10 THE COURT: Please come forward and take the oath of
11 a witness.

WHEREUPON, DOROTHY ANN PERKINS

BEING DULY SWORN TESTIFIES AS FOLLOWS

12
13
14 MS. PERKINS: Yes, ma'am.

15 CLERK OF COURT: If you would go and have a seat and
16 watch your step.

17 THE COURT: All right, counsel, what I would like for
18 you to focus on are the discussions during that day, and
19 the witness's understanding, and the Defendant's
20 understanding of what pending charges are. You may
21 proceed.

DIRECT EXAMINATION BY MS. MCKENZIE

22
23 Q. Please state your full name for the record?

24 A. Dorothy Ann Perkins.

25 Q. And Ms. Perkins, can you tell us --- let me take you

DOROTHY PERKINS - DIRECT EXAMINATION

69

1 back to October 14, 2008. What point did you first
2 see the Defendant, Curtis Nealey that day?

3 A. He came over, I think it was around 5:00, 5:30. Me
4 and my Mom, brother, and sister-in-law was sitting on
5 the front porch. He pulled up on the motorcycle.

6 Q. Okay. And just quickly summarize, what did you all do
7 early that afternoon or early evening, after he came
8 up on the motorcycle.

9 A. We sat on the porch for a few minutes. My brother
10 walked home. He lives right next door. He and my
11 sister-in-law. We went inside my house. We cooked
12 supper, and then we ate. And me and him rode off to
13 shoot a couple of games of pool.

14 Q. Okay. And did he say anything to you about the Court
15 date the following day?

16 A. Yes, he did.

17 Q. And please tell the Court what the Defendant asked?

18 A. He told me that he had to come up here and talk to the
19 solicitor the next morning about the CDV, the pending
20 CDV I had on him, and that he wanted me to come up
21 here with him to see if I could drop the charges. I
22 told him I was not going to drop the charges. I mean,
23 because he was guilty, and I let him go in the past
24 with some CDV's.

25 Q. Okay. And how many times would you say he asked you

DOROTHY PERKINS - DIRECT EXAMINATION

70

1 that night?

2 A. Maybe about ten or fifteen times.

3 Q. Okay. And how did it keep coming up?

4 A. Well, I mean ---

5 Q. The conversation about it, keep coming up.

6 A. He would just ask me, well, you know, I got kids. I
7 don't need to go to prison. And, I will just stay
8 away from you if you just drop the charges. And you
9 know, then he would leave it alone for a few minutes,
10 and he will bring it back up. And the more I said no,
11 the angrier he got.

12 Q. Now did he ever make a statement to you about why he
13 was coming to Court the next day? What that
14 particular date was for?

15 A. He told me he had to be in Court at 9:00-o'clock to
16 talk to the solicitor, and that I needed to come with
17 him, that it was about the CDV charge.

18 Q. Okay.

19 A. He got a letter stating he needed to be here at 9:00-
20 o'clock.

21 Q. Now about the CDV charge that was pending, when did
22 that incident occur?

23 A. I'm thinking maybe earlier in the year. I'm not sure
24 which month.

25 Q. Do you have any knowledge about him having to report

DOROTHY PERKINS - DIRECT EXAMINATION

71

1 to Court earlier that year for the charge?

2 A. I think he had to come up one time. Well I know he
3 had to go --- well he went to jail and got out on
4 bond, and I believe he had to come talk to the
5 Solicitor one time before this.

6 Q. Did you ever accompany him to the Magistrate's Office
7 in Hartsville?

8 A. No, sir --- I mean, no, ma'am.

9 Q. Okay. And can you tell us about what you remember
10 about the last time he asked you about the court date?

11 A. It was after we got back from Frank's. We were
12 sitting on the couch and he was laying on the opposite
13 couch across from me. I was on the love-seat. My
14 mother was in the recliner chair like sitting between
15 us, and I could tell in his voice he was getting
16 violent. And he asked me --- he said, I am going to
17 ask you one more time. Are you going to go up there
18 in the morning with me to talk to the Solicitor? I
19 told him, no. I am not going up there, Curtis. That
20 is when he stood up and did what he did.

21 Q. What was the first thing he did?

22 A. He grabbed a whatnot that sitting beside me on the
23 coffee table and started hitting me in my head with
24 it.

25 Q. Dorothy, I want to go back to your mentioning a

DOROTHY PERKINS - DIRECT EXAMINATION

72

1 letter. Did you see that letter?

2 A. No, ma'am.

3 Q. What did he say about the letter?

4 A. He just said that he got a letter. He was suppose to
5 be up at the Solicitor's Office the next morning at
6 9:00-o'clock to talk to the Solicitor, and he told me
7 I needed to come with him to see if I could get the
8 Solicitor to drop the CDV that was pending on him.

9 MS. MCKENZIE: Okay. I have no further questions.

10 THE COURT: All right. Counsel, I will ask at this
11 time, what is this witness's position is of what happened
12 that the incident she exited the motorcycle. Make it a
13 causation on this issue.

14 Q. Okay. Ms. Perkins, what happened after the last time
15 he asked you about coming to Court with him? From the
16 point where you all left the house.

17 A. You want me to tell you ---

18 Q. The last moments at the house. The last moments at
19 the house.

20 A. Well, he was taking me out the door with a knife to my
21 neck, and I ask him to let me put the helmet on. He
22 said, no. He was saying he was gonna go ahead and
23 kill me, and kill himself, and made me get on the back
24 of the bike. And told me if I screamed when I went
25 outside that he would go ahead and slice my throat

DOROTHY PERKINS - DIRECT EXAMINATION

73

1 right there, because my brother lived right next door,
2 and if I tried to run across the yard. I got on the
3 bike. He hit Billy Farrow. He kept speeding up, and
4 he popped one wheelie and then he knew I couldn't
5 hardly hold on because he done broke one of my arms
6 --- well me wrist, at my home. He kicked it up the
7 last time and shoved me off the back of it with his
8 left arm. When I hit the road, I remember rolling
9 some, and I seen lights, and I remember looking up.
10 He was beside the road running toward me, talking
11 about he was going to kill me. And that's when I run
12 up to the truck, and was trying to get the man to let
13 me in the truck.

14 Q. What happened when the man came up in the truck?

15 A. I remember hanging on the side of it --- onto the
16 mirrors, screaming to let me in, that he was trying to
17 kill me, and he was trying to snatch me off the truck,
18 talking about he was going to still kill me. And
19 another car approached, and I guess he got scared.
20 The guy told him he was calling the law --- was
21 hollering he was going to call the law. And another
22 car approached beside us and they pulled up some, and
23 I guess that's when he got scared, and he hauled tail
24 and left.

25 Q. Okay. When did you see him again?

DOROTHY PERKINS - CROSS EXAMINATION

74

1 A. At the bond hearing.

2 THE COURT: Thank you. Cross examination.

3 MS. LITTLE: Thank you, Your Honor.

4 THE COURT: Thank you.

5 CROSS EXAMINATION BY MS. LITTLE

6 Q. Ms. Perkins, were you aware of whether or not, and you
7 may have answered this --- I'm sorry, whether or not
8 Curtis had gone to Court on the CDV charge at all?

9 A. No, I wasn't.

10 Q. Did you know he also had a pending charge involving
11 the father of your children?

12 A. Yes, I did.

13 Q. And did you know that that was a General Sessions
14 charge?

15 A. Yes.

16 Q. And did he ever ask you to talk to the Solicitor about
17 that charge?

18 A. No.

19 Q. So --

20 A. -- No, ma'am.

21 Q. You weren't aware that what he had to come to Court
22 for the next day was that charge?

23 A. No, ma'am.

24 MS. LITTLE: Just one moment.

25 (PAUSE.)

1 Q. Did you know whether or not you had any authority to
2 drop charges on the case that involved the father of
3 your children?

4 A. No, I just witnessed what happened that night.

5 MS. LITTLE: Okay. All right. Nothing further, Your
6 Honor.

7 THE COURT: All right, Ma'am, you may step down.
8 Please watch your step exiting the witness box.

9 All right, counsel, The State moves to put the
10 evidence in. What says Defense?

11 MS. LITTLE: Your Honor, again --

12 THE COURT: I just want to hear from Defense on their
13 --- I understand your position. You need to change your
14 position?

15 MS. MCKENZIE: No, sir. There was just one
16 additional --- I just want to make it clear for Your
17 Honor, that the CDV that was pending, was the CDV Second,
18 and it had been waived up to General Sessions. Initially,
19 Curtis Nealey had a date down at the Hartsville
20 Magistrate's Office, and usually they will realize down
21 there that if it's more than a first, then they will send
22 it up here, so the warrant had been received up here in our
23 Clerk's Office.

24 THE COURT: All right, thank you.

25 MS. LITTLE: Your Honor, Defense objection would

THE STATE VERSUS CURTIS RAY NEALEY

76

1 again under Rule 403, that the probative value of this ---
2 what she is trying to say would be outweighed by the danger
3 of unfair prejudice.

4 Also, particular confusion of the issues with the fact
5 that there were two pending Court cases, the one that they
6 are talking about was not even the one that he was
7 scheduled to go to Court for the next day. And, Your
8 Honor, we would ask that you exclude it.

9 THE COURT: All right. I am going to grant the
10 State's Motion. Ms. Little, clearly, this evidence is
11 really not Lyle evidence. This is part of the res geste of
12 the crime, it's as the witness testified. Again, this is
13 her position that it was a threat, that if she did not
14 comply, he would harm her. She was, in fact, harmed.

15 The Court finds that while that may be prejudicial to
16 the Defendant, it is highly probative of what happened
17 here, and the Court is going to permit it, finding that the
18 probative value substantially outweighs any prejudicial
19 impact.

20 Now I will let the parties talk about this. Counsel,
21 discuss it among yourselves. If you wish to tailor the
22 testimony so that it excludes the fact that there were
23 actually two separate charges pending, and the Defendant
24 was under a mistaken fact. So The State says that it was
25 just a CDV for the next day that it was up, and leave out

1 the other greater charge which must have been pending as
2 well. Then I will work with you to structure the evidence
3 to reduce the prejudicial impact to the Defendant. But as
4 far as that evidence itself coming in, the Court will allow
5 it, and finds that not only does it fit under Lyle, but
6 really other than the Lyle issues, it's just part of what
7 happened here, and thus part of the crime itself, and not
8 really evidence that would be considered Lyle.

9 All right, anything further before we go into trial?

10 MS. MCKENZIE: Your Honor, I want to go ahead and in
11 limini Your Honor, I wanted to go ahead and address the
12 issue of the blood and the urinalysis from Carolina Pines,
13 and any reference to that, that she may make on cross
14 examination. I, of course, understand that she would be
15 entitled to ask the witness about any alcohol consumption
16 that night. But as far as the specifics of any blood
17 alcohol level or anything that was in her system, or just
18 for the reason that, you know, there would be no chain of
19 custody.

20 THE COURT: All right. So that the Court will
21 understand what the record will reflect, what it is we are
22 talking about, what is the evidence? What did the blood
23 test show?

24 MS. MCKENZIE: Your Honor, the blood test showed a
25 blood alcohol level of .1753, and I spoke with Morris

THE STATE VERSUS CURTIS RAY NEALEY

78

1 Shackle from SLED, and she informed me that the methods
2 that hospitals use to get blood alcohol levels for medical
3 purposes are different from forensic methods, and that that
4 amount could be reduced by as much up to 20% inaccurate,
5 and it usually does fly a bit higher. And the number she
6 gave me that was probably more closer to what it was or
7 would have been at the time was, .14.

8 Your Honor, also there was a positive flag for
9 opiates. But what the victim had for that urinalysis was
10 before the sample was taken. The victim had already been
11 receiving morphine injections pretty much on the arrival to
12 the ER, and that sample was collected a few hours later.

13 THE COURT: All right. Any presence of any other
14 drugs or illegal substances?

15 MS. MCKENZIE: She also had a positive flag for
16 tricyclics, and I've spoken with her, and my victim has
17 informed me that she did ask her Mom for something to sleep
18 a few days prior to this incident. She doesn't know what
19 she took, and Dr. Balvich, at the hospital informed me that
20 they often have that flag in the urine screen. He didn't
21 understand why, it was common. There are a lot of
22 different drugs that cause that to register.

23 THE COURT: All right, very good. What --- Defense,
24 what use, if any, do you intend to make of this evidence?

25 MS. LITTLE: Your Honor, as to the blood alcohol

1 level, we would possibly want to offer that for impeachment
2 purposes. She gave a statement to law enforcement that she
3 had had two beers earlier that evening. If she does
4 testify to that on the stand, Your Honor, we would offer
5 the blood alcohol for impeachment purposes. She had a very
6 high alcohol or blood level of alcohol in her blood.

7 THE COURT: All right. What witness do you have that
8 would explain the impact of that particular level on a
9 person, and the different between blood drawn at the
10 hospital and the breathalyser result?

11 MS. LITTLE: I have Dr. Wheeler, who could testify
12 about the level, and that that would be illegal, that she
13 would be legally intoxicated in most states. However, he
14 is not able to testify as to the difference in the type of
15 blood draw that SLED and the 18% that maybe --- it maybe
16 18% higher based on the manner of testing. He has no
17 information about that.

18 THE COURT: All right. Anything in response?

19 MS. LITTLE: Excuse me, Your Honor, Dr. Balvich will
20 testify that she was intoxicated when she was presented to
21 the ER.

22 THE COURT: Very good. Anything in response, Ms.
23 McKenzie?

24 MS. MCKENZIE: Yes, Your Honor, I apologize, I lost
25 my train of thought. In reference to Ms. Little speaking

THE STATE VERSUS CURTIS RAY NEALEY

80

1 of impeachment purposes, Ms. Perkins will testify that she
2 had a few drinks that night. I met with her beginning
3 August of '09 to discuss the case, and she's always been
4 consistent with me on that. She will admit that she had a
5 few drinks. I believe law enforcement in their report
6 indicated that at the time, she said two. With the
7 condition she was in, I don't think she could recall
8 whether she even actually said that or not, but she will
9 admit that she had a few drinks that night.

10 THE COURT: All right. The Court will allow that
11 evidence to come in under the following circumstances.

12 Number one, if it's impeachment. If she testifies
13 that she was not intoxicated or to a level that would
14 indicate she would not be intoxicated. And secondly, you
15 can provide a witness that can explain to the jury what
16 that blood alcohol level means. On impeachment, the Court
17 would not require a chain of custody. It simply could come
18 in on impeachment. If it was in direct evidence, the Court
19 would require the chain of custody and all the other
20 necessary evidence. But I will allow it in on those
21 circumstances. Again, that completely depends on what the
22 testimony of the witness is during her trial testimony.

23 All right. Anything further now before we stand down?
24 Any other issues?

25 MS. MCKENZIE: Your Honor, I would like any reference

1 to the fact that she did not have custody of her kids at
2 the time, and that DSS had taken emergency protective
3 custody of kids earlier, either in late 07 or early 08. At
4 that time she was in a relationship with a different man,
5 and her kids were taken, and that didn't necessarily
6 involved Curtis Nealey, that involved a John Avant. And I
7 just believe that it would be prejudicial to my witness,
8 and that Ms. Little on cross examination made references to
9 the fact that she did not have her children at that time,
10 or about some alcohol abuse classes she was taking, that
11 that would be relevance and it may be prejudicial.

12 THE COURT: And, yes, ma'am, in response?

13 MS. LITTLE: Your Honor, we would offer evidence that
14 at the time of this incident, Ms. Perkins did not have
15 custody of her children. I questioned her mother, and
16 according to testimony that I anticipate from Mr. Nealey,
17 the reason her children were taken was because of her
18 drinking problem. She was going through a DSS treatment at
19 the time. I think maybe some --- she went through rehab
20 and maybe parenting classes. And Defendant's theory of the
21 case is that she concocted the story about him pushing her
22 off the motorcycle, because DSS had already warned her
23 about drinking and being around people who were drinking
24 and that if they found out she was drinking, and partying
25 that night, she would not be able to get her children back.

THE STATE VERSUS CURTIS RAY NEALEY

82

1 THE COURT: All right. Anything further?

2 MS. MCKENZIE: Your Honor, I may need to rephrase
3 what I said earlier. The first level of my objecting to
4 any of that coming in would be that the fact is that it's
5 irrelevant. Secondly, it would be prejudicial that the
6 accuser is also entitled to a fair trial here this week,
7 and it would be prejudicial.

8 THE COURT: All right. Of course ladies and
9 gentlemen, we don't know what happened here, none of us
10 here other than the two parties which are before us. But
11 this case in great part is going to rely on the credibility
12 and believability of the witnesses who testify. The Court
13 is going to permit this evidence to come in, if it shows
14 motive on the part of the accuser, just as we've allowed
15 evidence on the motive on the part of the Defendant. What
16 is fair for one side, is only fair for the other, thus the
17 Court will permit that evidence to come in.

18 Now if there is some specific point that you believe
19 needs to be addressed further as to how far we can go, the
20 Defense can go when they put that in. Of course, you will
21 have to raise that contemporaneously, because it really
22 depends on what the testimony is as to what can be put in,
23 in rebuttal.

24 All right, is there anything further now from the
25 State before we stand down for lunch?

1 MS. MCKENZIE: No, Your Honor.

2 THE COURT: From Defense?

3 MS. LITTLE: No, Your Honor.

4 THE COURT: All right, now long do you anticipate
5 your opening to be for The State?

6 MS. MCKENZIE: Ten minutes.

7 THE COURT: And for Defense?

8 MS. LITTLE: Five or ten minutes.

9 THE COURT: And, counsel, are there exhibits? Is
10 there evidence?

11 MS. MCKENZIE: Your Honor, we have some pictures
12 here. And then there is one item that is in evidence, the
13 ceramic whatnot. That will be it. I will get with Ms.
14 Cartee about getting the pictures marked.

15 THE COURT: Well, I am going to let you all review
16 that between yourselves. If you can agree on the evidence
17 and go ahead and mark it, then you can use it in your
18 opening. The Court has no objection if it's going to come
19 in by agreement, then we can use it in opening.

20 All right, is there any reason for us to reconvene
21 before we start at three? I thought it was going to take
22 us a little longer. I'm talking in this case. We've got
23 other business, but I'm talking about in this case.

24 MS. MCKENZIE: I think that covers all our issues,
25 Your Honor.

THE STATE VERSUS CURTIS RAY NEALEY

84

1 MS. LITTLE: No.

2 THE COURT: All right. Ladies and gentlemen, we are
3 going to stand this case down to 3:00-o'clock. Be prepared
4 for this trial at 3:00-o'clock. Anything further?

5 THE COURT: Then we will be in recess for this case
6 until 3:00-o'clock. Court is in recess.

7 (Whereupon, a recess was taken from 1:12 p.m.
8 until 2:47 p.m..)

9 THE COURT: Ladies and gentlemen, come back to order.
10 I am told that there has been --- Have we resolved the
11 evidentiary issues yet, the photographs and exhibits?

12 MS. MCKENZIE: Yes, Your Honor, these are the photos
13 that we could all agree on.

14 THE COURT: All right, let's take a look at those and
15 Madame Solicitor, step up with us and I might ask you a
16 question on an unrelated matter.

17 (Whereupon, a bench conference was held.)

18 THE COURT: All right, ladies and gentlemen, let's
19 got back on the record now to the trial. Let me first all
20 place on the record and advise counsel, my clerk, of
21 course, is a graduate of Walford, as well as The Charleston
22 School of Law. She was the roommate of one of the juror's
23 daughter's, which is Mr. Clark, while she was at Walford,
24 and I just want to put that on record. She knows this
25 juror socially. Really nothing about that of course, but I

THE STATE VERSUS CURTIS RAY NEALEY

85

1 just want to advise the parties of that. I am not of the
2 impression that will any way effect the way this trial is
3 handled or any rulings I might make, but I would be glad to
4 hear from either of you, if there is some objection on
5 that. What says The State? Hearing none. What says
6 Defense?

7 MS. LITTLE: None, Your Honor.

8 WHEREUPON, STATES EXHIBITS

9 NUMBERS 1 - 25 WERE MARKED

10 AND ADMITTED INTO THE RECORD.

11 THE COURT: All right, very good. Thank you. Now we
12 have put into evidence Exhibits 1 through 25 for The State,
13 and we have had a bench conference that was a little bit
14 unwieldy to do this on the record, but the Court excluded
15 several pictures that The State sought to put in. There is
16 a charge here of CDVHAN, as well as assault and battery
17 with intent to kill. The Court has allowed some
18 photographs that showed the extent of the injuries to the
19 victims, so that the jury can make a determination of
20 whether there was sufficient force to intend to kill
21 someone, or to commit a high and aggravated CDV. Some of
22 these have --- the photos that are included show blood at
23 the scene, as well as the blood on the victims, and the
24 Court believes that the probative value of that is
25 necessary for one of The State's elements of proof. I have

THE STATE VERSUS CURTIS RAY NEALEY

86

1 excluded others. We have made a Court's Exhibits of the
2 photographs that are excluded, in an effort to be fair to
3 both sides. Now is there any objection to the way ---
4 Well, first of all, any further objection on this matter.
5 Is there any from The State?

6 MS. MCKENZIE: No, Your Honor.

7 THE COURT: All right. Ms. Little?

8 MS. LITTLE: Just one moment, Your Honor. Your
9 Honor, my client just wants to see them briefly. I did not
10 show them to him right before ---

11 THE COURT: All right, go ahead.

12 (PAUSE.)

13 THE COURT: All right, now. What objections do you
14 have with the photographs?

15 MS. LITTLE: No further objection, Your Honor.

16 THE COURT: All right, very good. Of course, a
17 conference here at the bench was actually started because
18 Ms. Little objected to the photographs that The State had.
19 Of course, these charges have an allegation of what is
20 basically a violent attack at the household before the
21 incident occurred, where the victim --- the younger victim
22 was ejected from the motorcycle, allegedly. And thus, the
23 Court feels like those photographs of the scene that have
24 blood are necessary to The State's proof.

25 All right, let's bring in the jury. Thank you.

INTRODUCTION TO THE CASE

87

1 (Whereupon, the jury enters the courtroom at 3:08
2 p.m.)

3 **THE COURT:** All right. Ladies and gentlemen, welcome
4 back to the courtroom. I trust you had a nice extended
5 lunch hour. We are now ready for trial, and we have
6 resolved certain issues which has allowed the trial to be
7 ready to be presented to you. We are going to start this
8 trial with you accepting the oath as jurors in this
9 specific case. Please follow our Clerk's instructions.

10 (Whereupon, the jury, was sworn at 3:10 p.m.)

11 INTRODUCTION TO THE CASE

12 **THE COURT:** All right, all of our jurors are seated,
13 thus everyone has taken the oath. Ladies and gentlemen,
14 let's begin this trial with me giving you a few comments in
15 advance of the trial, that I think are some things you need
16 to know before we start the trial. Let me just first all
17 of say that these comments to you at this point are not
18 intended to take the place of a much more detail charge on
19 the law that I will give you at the end of the case. In
20 fact, one of the last persons you will hear from before you
21 will retire to the deliberate, will be the Court giving you
22 a detail charge on the law. These are just some things
23 that I want to say to you in advance of the trial. As you
24 are aware, this is a criminal case. I will tell you that
25 one of the traditions in our courtroom is that the party

INTRODUCTION TO THE CASE

88

1 with the burden of proof seats closes to the jury. If you
2 will look out in the courtroom you will see that The State
3 is seated at the table closes to you, and that is because
4 this is a criminal case. It is commenced by The State, and
5 I may refer to them as the prosecution or the solicitor
6 throughout this trial. The cases are based on the
7 indictment portions of which were published to you when we
8 were selecting you as jurors this morning. Please
9 understand, I don't mean to be repetitive, but it is of
10 such importance I want to make sure we all understand that
11 the indictments, all six in this one trial, are simply a
12 set of allegations. They are documents by which the
13 Solicitor commences a prosecution against someone. The
14 Defendant has plead not guilty to these charges. The State
15 has the burden of proof at all times, which again is why
16 The State is seated at the table closes to you, of proving
17 each and every element of the charges that The State has
18 leveled against the Defendant, beyond a reasonable doubt.
19 They must prove their cases, beyond a reasonable doubt, for
20 a conviction on any particular case that may occur. The
21 purpose of this trial is to determine whether or not the
22 State can meet this high burden. I tell you, it is a high
23 burden, and I further tell you that of course, you heard
24 the Defendant enter a plea of not guilty to The State's
25 charges, but even over and above that, if the Defendant

INTRODUCTION TO THE CASE

89

1 entered no plea, the Defendant is presumed innocent, and
2 that presumption continues with this Defendant, unless and
3 until such time as The State proves each and every element
4 of these charges, or any of these charges, beyond a
5 reasonable doubt.

6 Now with that basic understanding, let's talk about
7 your role in the trial. Let me first all say that I am the
8 Judge of the law in the courtroom, which means I will make
9 the decision about motions and issues that come up during
10 the trial itself, but you are the judges of the facts. No
11 one else in this courtroom are the judges of the facts.
12 And what that really means is just to put it in simple
13 terms, you will listen to the testimony, which is why you
14 seat where you do and the witnesses who come testify sit
15 right there. And you will make a determination after
16 hearing all the testimony of what the facts of the case
17 are, or what the truth is. You then apply those facts, the
18 truth, to the law that I give you at the end of the case,
19 and working together, that is how we will reach a verdict.
20 Just in a nutshell, that's how this process works.

21 Now let me just to you that one of the things you are
22 going to have do in order to be the judges of the facts is,
23 determine the credibility and believability of the
24 witnesses who appear before you. I think --- well, just
25 like you in this case I have not heard the testimony here.

INTRODUCTION TO THE CASE

90

1 But I know that in many cases we will have witnesses who
2 will come in, and sometimes say things that seem somewhat
3 inconsistent, and sometimes absolutely mutually exclusive
4 and cannot be reconciled. Now I am not telling you that
5 someone is lying. This is for you to decide. I don't know
6 that. I think we all know from human experience that some
7 event will occur. We will hear descriptions of that event
8 from various people who may have seen it that are so
9 different and so variably, we wonder if this is the same
10 event that everyone is talking about, because peoples'
11 perceptions of what they are observing, they are different.
12 So, it is up to you to determine first of all, whether
13 someone is being honest and dishonest. But secondly, what
14 the credibility and believability of the witnesses are, so
15 you can decide what the facts of the case are.

16 Now if you will think about this, we do this every
17 day. We do this constantly in our lives. We assess
18 people, everyone we speak with for credibility and
19 believability. We may not do it consciously, but we do it
20 subconsciously. You should employ the same factors you use
21 in your everyday life right here in the courtroom to
22 determine credibility and believability. I will tell you
23 that some of the things you may want to look to, in
24 addition to the everyday factors you use are; number one,
25 what is the demeanor of a witness while they are

INTRODUCTION TO THE CASE

91

1 testifying. Are they hesitant? Are they straightforward?
2 What is their ability to know what they are talking about?
3 Is the witness's testimony consistent even with itself, and
4 is it weakened or strengthened by other evidence in the
5 case? And further, in light of the global evidence in
6 this case as you determine that to be, how reasonable is
7 what that witness is saying. And finally, might there be a
8 reason that a witness would want to help or hurt one side
9 or another of the case. Might that witness have a bias or
10 a prejudice? I tell you this in advance so that you can
11 consider these things as you listen to the witnesses
12 testify.

13 Now, let's talk a little bit about how what our actual
14 procedure will be here in the trial. In just a moment the
15 lawyers will come before you in opening statement. That is
16 when the lawyers have an opportunity to tell what they
17 believe the evidence in the case either will show or
18 perhaps won't show. After opening statements are concluded
19 by both sides, then The State, with the burden of proof
20 goes first. The State calls their witnesses one after
21 another. Every time The State calls a witness, that
22 witness will take the witness stand under oath, and be
23 subject to direct examination by The State's lawyers, and
24 cross examination by Defense counsel.

25 Now after The State has called all their witnesses one

INTRODUCTION TO THE CASE

92

1 after another, The State rests. And when they rest, then
2 we move to the Defendant. But the Defendant is not
3 required to call a witness. They are not required to put
4 up a case, not required to testify. They have no burden of
5 proof in this courtroom. But if they wish to, then they
6 will call witnesses, and every witness they call will be
7 subject to direct examination by their attorney, cross
8 examination by The State. Then all the testimony closes,
9 and the lawyers come before you in closing statement, which
10 is where they argue to you what the evidence has or has not
11 shown. I give you the charge on the law, and you retire to
12 deliberate. That is going to be our process stated in very
13 brief form there.

14 Now just a few more things about that. First of all,
15 I usually go about an hour and a half or so before I take a
16 break. I don't want you worried about that and watching
17 the clock. We never know to the moment when we will break.
18 It just depends on where we are in the testimony. But if
19 we need --- if you need to take a break before we reach a
20 break point, please raise your hand. I will understand
21 what that means, and we will stop. We will take a break
22 right then at your request. I do that for two reasons.
23 Number one, you are giving your time, or almost giving it
24 for a very high civic duty and important public purpose,
25 and I want you to be comfortable about what you are doing.

INTRODUCTION TO THE CASE

93

1 But secondly, I don't want you worried about something
2 else. I want you to be able to listen to the witnesses and
3 the testimony, and decide what the facts are. So if you
4 need to stop us before we take a break, please do so.

5 Secondly, when we take a break, please don't go back
6 in the jury room and discuss the case. And the reason for
7 that is this. We have several witnesses who are going to
8 testify. If the jury heard part of one witness and we took
9 a break and went back and made some preliminary decision
10 that drove the rest of the case, it would be unfair, and so
11 please don't discuss the case among yourselves until it is
12 given to you for deliberation. That is the appropriate
13 time, and only then to discuss the case. And then finally,
14 two things. One, when the lawyers come before you in
15 opening and in closing, please remember that the lawyers
16 are advocates. I am not telling you they are going to be
17 dishonest with you. They are going to be honest. But they
18 are honest advocates for one side or the other. And what
19 the lawyers say in the case in their opening or closing
20 statements is not evidence. The lawyers are not under
21 oath. The lawyers are not under direct and cross
22 examination, the witnesses are. So the evidence is what
23 the witnesses say, and what the exhibits that are put into
24 evidence during the course of the trial say, so please
25 distinction between a lawyer's argument and evidence in the

INTRODUCTION TO THE CASE

94

1 case. And then finally, we operate this Court on a system
2 of rules that we call the rules of criminal procedure. And
3 Ma'am, do you need something to drink? Are you okay? Do
4 we need to get you a cough drop, are you okay?

5 JUROR: Can I get a cough drop?

6 THE COURT: We will get you a little bit of water.
7 Please do that, Mr. Medlin. Do you need to take a break?
8 Are you okay? I didn't mean to call attention to you, but
9 I just want to make sure you're okay.

10 But we use a system of rules, and we call it the rules
11 of criminal procedure. Now when one side or the other
12 thinks the other is either about to break those rules or is
13 breaking them, well, they call that to my attention by an
14 objection. Well just like you're sitting where you are,
15 and I am sitting over here where I am, I don't know what
16 the objections are before they come. When they come, I
17 rule on them. I rule on them based on my training as a
18 Judge, my understanding of the law, my experience as a
19 Judge, and as a lawyer for many years before I became a
20 Judge. But never do I rule on something to somehow send
21 you a message about how I may feel about the facts or what
22 is before me. Because I tell you right now, I don't have a
23 position on the facts. If I did, I would be invading your
24 privacy. You are the judge of the facts, not me. So
25 please take no inferences from any ruling you may see the

OPENING STATEMENT BY MS. MCKENZIE

95

1 Court make, other than the fact I am making a ruling on a
2 issue that is before, and that's all.

3 All right, with that understanding, the Court --- I
4 tell you, I look forward to working with you and the Court
5 recognizes prosecution for opening statement.

6 MS. MCKENZIE: Thank you, Your Honor.

7 THE COURT: All right, Ms. McKenzie.

OPENING STATEMENT BY MS. MCKENZIE

8
9 MS. MCKENZIE: Defense counsel, ladies and gentlemen
10 of the jury, good afternoon. In this case here today, and
11 the reason why we're all here is because this is a case
12 about criminal domestic violence. I know that we all hear
13 a lot in the media, we see movies on t.v. about criminal
14 domestic violence, and this is a problem in our society. I
15 want to talk to you more about --- This is a different
16 animal up here in the courtroom. It's not like a case
17 where a stranger steals someone's car, or I'm up here
18 prosecuting drug cases sometimes, or a stranger may break
19 into a homeowner's home at night. And there is no
20 relationship there between the Defendant and the victim.
21 So we deal with a lot of cases where there is no
22 relationship and often the Defendant is a stranger to the
23 victim of a crime. Sometimes in crimes, there is no victim
24 in crimes in drug cases we deal with up here in Darlington
25 County. So it is a different animal. And the parties

OPENING STATEMENT BY MS. MCKENZIE

96

1 here, the victim and the Defendant at one time were
2 intimately involved. They know each other. They shared
3 experiences, life experiences. Spent time together. At
4 one point here in Darlington County, resided together and
5 lived together as boyfriend and girlfriend. And so they
6 know each other. They know each other very well. And they
7 have those shared memories together. But criminal domestic
8 violence is violence suffered at the hands of someone that
9 you love, or someone that you care about. Someone that you
10 thought that you could trust, someone that you didn't think
11 would hurt you. And here in this case that is exactly what
12 happened. The Defendant, Curtis Nealey, hurt Dorothy
13 Perkins. But on this day, on October 14, 2008, not only
14 did he hurt her but he hurt her mother, and at the time a
15 sixty-two-year-old Victoria Perkins. Now criminal domestic
16 violence often is a crime of secrecy. It's a crime about
17 stuff that goes on behind closed doors. For a victim it
18 can be a crime of shame and a crime of embarrassment. But
19 on this particular day, on October 14th, it's a crime that
20 almost cost Dorothy Perkins and Victoria Perkins their
21 lives. Let me show you what is marked as State's Exhibit
22 2. Here is a picture of [REDACTED] East Home Avenue where
23 Victoria and Dorothy mother and daughter were living
24 together at the time in Hartsville. Here is a picture of
25 their house. Nothing really significant there other than a

OPENING STATEMENT BY MS. MCKENZIE

97

1 picture of a house. Then on October 14, 2008, this was
2 what was behind closed doors. You can see the blood that
3 was left behind in this home.

4 Now on that day, and I will start with what happened
5 earlier that day. On that day, on October 14, 2008,
6 Defendant Curtis Nealey, came over to the residence, came
7 over to see Dorothy. They were in a period of their
8 relationship where they were broken up. He came over to
9 see her. He came up on his motorcycle. They talked a
10 little bit. Hung out on the front porch. Ms. Dorothy was
11 there. Excuse me. Ms. Victoria was there. Some other
12 family members were there. They, you know, socialized for
13 a little bit, and Dorothy went off with him on his
14 motorcycle. They ate supper first. Fix supper, had supper
15 at the house. And he was asking her, will you go with me
16 to Court tomorrow. I need you for you to go up with me to
17 Court tomorrow and drop that charge that is pending. I
18 want you to go up to Court with tomorrow, and she kept
19 saying no. She told him she wasn't going to do it. And as
20 the night progressed, they go to Frank's in Hartsville.
21 They come back to the house. He keeps asking her, will you
22 go up with me to Court tomorrow. I need you to go up to
23 the courthouse with me tomorrow and drop that charge. She
24 stuck to her guns and persistently told him no. And it was
25 at this point later in the evening that things got violent,

OPENING STATEMENT BY MS. MCKENZIE

98

1 and that is what set him off. Because criminal domestic
2 violence is about control, and that is what set him off.
3 And when she persistently told him no --- later than night
4 when they were back at the residence, he took this object
5 that was on a little coffee table if you will, that was in
6 the living room, and hit upside her head with it, and
7 started to hit her and strike her head with this object.

8 Now her mother, Victoria Perkins was home at the time,
9 and she heard what one second was just normal conversation
10 in the living room. They were watching t.v. you know, and
11 a few minutes later she heard, the assault starting to take
12 place. She heard her daughter scream, and she goes and
13 tries to assist her daughter. And at time, he takes that
14 same object, and hit Victoria Perkins in the head with that
15 ceramic figurine object that I just showed you, and hit her
16 upside her head. She will testify, almost knocked
17 unconscious. She went in the front of the house and hid.
18 And the fight between the Defendant Curtis Nealey and
19 Dorothy Perkins continued, and he continued to hit her, and
20 he continued to threaten her. He was trying to get her to
21 go with him on the motorcycle. She kept telling him no,
22 and he pulled a knife. And he made her get on the
23 motorcycle with him. And he told that if she didn't agree
24 to go he was going to kill her mother. And she agreed to
25 go with him on the motorcycle. They drive. They leave

OPENING STATEMENT BY MS. MCKENZIE

99

1 Home Avenue and the City of Hartsville, and ride out to the
2 county, Billy Farrow Highway, which is out in the country.
3 When they get on Billy Farrow Highway at some point on that
4 road, he starts popping wheelie's on the motorcycle. He
5 had been threatening to kill her the whole time while they
6 are riding on the motorcycle. He throws her off the
7 motorcycle. Pops wheelies and eventually she can't hold on
8 any more. Going at high rate of speed, throws her off the
9 motorcycle. She rolls and lands in a ditch. A struggle
10 ensued and continues, and a truck driver --- it's nearly
11 midnight that night on the fourteenth, comes around the
12 curve. He sees in his headlights, they are very bright,
13 and he begins to see what was going on. He pulls up and he
14 stops to assist. She runs to get his attention. Begging
15 for help. Actually crawls up the cab of the eighteen-
16 wheeler truck, bleeding, and injured, and begging for his
17 help. He calls 911. At that point, the Defendant Curtis
18 Nealey takes off on the motorcycle. Dorothy, of course, is
19 taken to the hospital by ambulance. Ms. Victoria, who was
20 left at the residence at Home Avenue had to go next door,
21 or somewhere next door, and shortly all around the same
22 time they called for help for Ms. Victoria and she also
23 headed to the hospital. They both had serious injuries as
24 a result of this incident.

25 So you're here today for a very serious matter. And

OPENING STATEMENT BY MS. MCKENZIE

100

1 as the Judge was saying a few minutes ago, he is the Judge
2 of the law, and how the law applies to the facts, and
3 that's his role.' And my role is to present the case to _
4 you. I work for the Solicitor's Office. I work for Will
5 Rogers. It is our job to present the facts and present the
6 evidence. And of course, Mr. Nealey, has a defense
7 attorney, Ms. Tonya Little, she is also here and has a role
8 to play here in the courtroom. But your role is the most
9 important role here today, because you are the judge of the
10 facts. We put up the testimony, and we may show you
11 pictures and show you evidence, but it is ultimately up to
12 you to decide what happens. It is ultimately up to you who
13 to believe and who not to believe. You come in here with
14 your common sense and your life experiences. And I am
15 confident that after you have heard this case, and after
16 that is said and done, all the witnesses have testified,
17 that you will find Curtis Nealey, the Defendant, sitting
18 over there at that table, is guilty of two counts of
19 assault and battery with intent to kill, criminal domestic
20 violence of a high and aggravated nature, kidnaping, and
21 also possession of a weapon during the commission of a
22 violent crime.

23 Thank you for your attention, and I look forward to
24 being with you here in the next two days. Thank you.

25 THE COURT: For the Defense.

OPENING STATEMENT BY MS. LITTLE

101

1 MS. LITTLE: May it please the Court, Your Honor.

2 THE COURT: Ms. Little.

3 MS. LITTLE: Madam Solicitor.

4 OPENING STATEMENT BY MS. LITTLE

5 MS. LITTLE: Ladies and gentlemen of the jury, good
6 afternoon. This is a case about drinking, drugs, fighting,
7 and when you mix all those together with a motorcycle, it
8 is disastrous. The evidence will show that this is really
9 a domestic dispute that night. However, that dispute was
10 not between Mr. Nealey and Ms. Dorothy Perkins, it was a
11 fight between Dorothy Perkins and her mother. And my
12 client Curtis Nealey, got right in the middle of it. On
13 October 14, 2008, Curtis was working that day. You are
14 going to hear that she called Curtis and asked him to come
15 over. Curtis comes over on his motorcycle. They have a
16 few beers. They cook super together. She hops on the back
17 of that motorcycle, and they head off to Frank's, a Tavern,
18 that use to be The Saloon, over in Hartsville, to have some
19 drinks, some shots. You are going to hear that there was
20 drug use that night, prescription drug use. After all of
21 this drinking and drugging, they went back to Ms. Dorothy's
22 house, where her mother Victoria Perkins lived, and at some
23 point a fight broke out between Dorothy and her mother.
24 Now Curtis Nealey got right in the middle of it, and I am
25 not saying that was the right thing to do, but he was

OPENING STATEMENT BY MS. LITTLE

102

1 there, and he was in the middle of that fight. You will
2 hear more about that whenever we present our case. Later
3 Ms. Dorothy Perkins climbed onto the back of his
4 motorcycle, and they were headed back to Darlington where
5 the Defendant lives to continue their date. These two had
6 a long history together. My client is going to testify
7 that Dorothy Perkins was so drunk she fell off the back of
8 the motorcycle, and that is what caused her injuries. You
9 are going to hear evidence that when she arrived at the
10 hospital, she was intoxicated. The defense also intends to
11 submit evidence that Ms. Dorothy Perkins had lost her
12 children --- custody of her children at the time because of
13 her severe drinking problem. In fact, it was in her best
14 interest not to let anybody know that she was drinking, and
15 drugging, and partying that night. She was trying to get
16 those children back. As known by His Honor in his
17 preliminary remarks, Defendants in a criminal case is
18 presumed innocent. This presumption innocence stays with
19 my client, Curtis Nealey, throughout this entire trial,
20 unless and until you find that The State has proven beyond
21 a reasonable doubt that my client is guilty of any or all
22 of these charges, crimes that he is charged with. Unless
23 they prove to you, you must find him innocent. Consistent
24 with the oath that you all took, I know that you all will
25 listen closely to the evidence. Remember there are two

DOROTHY A. PERKINS - DIRECT EXAMINATION

103

1 sides to every story. You've heard what The State intends
2 to prove, now you are hearing what we intend to prove. I
3 ask you to listen closely to all of the evidence before you
4 make up your mind. Not just The State's evidence, but all
5 the evidence that the Defendant intends to present. And
6 while Curtis, my client, has absolutely no duty or
7 obligation to present any evidence, you will hear from him
8 in this case. He is going to testify and tell you his side
9 of what happened that night. I ask that you keep an open
10 mind throughout the trial, and at the end of this trial you
11 will find my client, Curtis Nealey, not guilty. Thank you.

12 THE COURT: Prosecution, please call your first
13 witness.

14 MS. MCKENZIE: Thank you, Your Honor. The State
15 calls Dorothy Perkins.

16 THE COURT: Please come forward and take the oath of
17 a witness.

18 WHEREUPON, DOROTHY ANN PERKINS

19 BEING DULY SWORN TESTIFIES AS FOLLOWS

20 MS. PERKINS: I do.

21 DIRECT EXAMINATION BY MS. MCKENZIE

22 Q. Please state your full name for the record?

23 A. Dorothy Ann Perkins.

24 Q. Okay. Dorothy, I am going to ask you to speak up just
25 little bit. I am standing back here closest to the

DOROTHY A. PERKINS - DIRECT EXAMINATION

104

1 last juror seated in the jury box. We need to be able
2 to hear you, and the court reporter is going to be
3 taking down everything you say, okay. So make sure
4 you answer my questions, instead of nodding your head
5 or saying uh-uh or huh-uh. Speak clearly so we can
6 hear you, even all the way back here. Okay.

7 A. Okay.

8 Q. Dorothy, how old are you?

9 A. I'm thirty.

10 Q. And where do you live?

11 A. [REDACTED] East Home Avenue in Hartsville.

12 Q. Who lives there with you at that residence?

13 A. Me, my mother, and my three children.

14 Q. And where were you living in October of 2008?

15 A. [REDACTED] East Home Avenue.

16 Q. Tell me about your house there on East Home Avenue?

17 Do have any neighbors?

18 A. My brother lives right beside me, and my sister-in-law
19 and they have four kids that live in that house.

20 There is an elderly lady that stays to the right to
21 me.

22 Q. And what is your brother's name and sister-in-law's
23 name?

24 A. Tommy Perkins and Nancy Nobles.

25 Q. Please tell the jury how you know the Defendant,

1 Curtis Nealey?

2 A. I know Curtis --- we met maybe six or seven years ago.
3 We dated off and on for years. We was boyfriend and
4 girlfriend until maybe a little over a year ago. When
5 I decided to get away and move to Hartsville beside my
6 brother, because of the way he was treating me. We
7 did live together. Then me and my Mom moved in the
8 same trailer park, in a trailer right beside him, and
9 it still continued, so I got a house right beside my
10 brother that come open for rent, and that's when
11 everything happened.

12 Q. Okay. Dorothy, so what point --- Did you ever live
13 with Curtis Nealey?

14 A. Yes, ma'am.

15 Q. And what was that address?

16 A. It was on Peebles Drive, Easy Living Trailer Park in
17 Darlington.

18 Q. What would you say the status of your relationship was
19 in October of 08, around October fourteenth?

20 A. Me and him --- I had broken with him. I mean we would
21 speak, you know, we were friends, and you know, we
22 just decided we was going to be friends and
23 everything, you know, was okay until that day.

24 Q. Now, I'm going to take you back to October 14, 2008.
25 What were you doing that day? Do you remember just

DOROTHY A. PERKINS - DIRECT EXAMINATION

106

1 earlier in the day?

2 A. I was off that --- I was working at Wendy's in
3 Hartsville. I was off. It was on a Tuesday. Just
4 stayed at home all day with my Mom, watched some t.v.,
5 cleaned up.

6 Q. And at what point --- Did you see Curtis that day, on
7 October fourteenth?

8 A. He came over around 5:00, 6:00-o'clock that evening.

9 Q. How did he get there?

10 A. He was on his yellow motorcycle.

11 Q. What did you all do when he got there?

12 A. Me, and my brother, my mother, and my sister-in-law
13 was sitting on the porch, you know, talking. He pulls
14 up and my brother talked to him a little while, my
15 sister-in-law. Then my brother walked home, which
16 stays next day and my sister-in-law. Curtis stayed.
17 We watched a little bit of t.v., you know, we
18 discussed Court. He was asking me was I going to come
19 up with him to talk to the solicitor about the CDV
20 charge, and I told him no, I wasn't. But, I mean, he
21 seemed fine with it, you know, right then. We cooked.
22 Eat supper. Then he wanted to go shoot some pool. We
23 went and shot some pool.

24 Q. Okay, I am going to stop you right there, Dorothy.
25 What did he say about you going to see the Solicitor?

1 A. He asked me would I come up to talk to the Solicitor
2 with him about getting a charged dropped. That he
3 didn't want to go to prison. That he had two kids.
4 He was trying to get his kids from the baby's mamma,
5 and he didn't want to go to prison.

6 Q. Did that charge involve you?

7 A. Yes, ma'am.

8 Q. When did that incident occur? What charge is it that
9 you are talking about?

10 A. It was January 08.

11 Q. All right. You had said you all had supper and he
12 wanted to go to Frank's. What happened when you all
13 got to Frank's?

14 A. We shot some pool, a couple of games. Drunk a couple
15 of beers. We took a couple of shots. Then we left.

16 Q. How long did you stay at Frank's, can you remember?

17 A. Maybe about an hour, a little over an hour.

18 Q. Where did you all go when you left Frank's?

19 A. We were going back to my house, and Curtis pulled on
20 --- there was a dark road, a back road, and he was
21 acting very strange. And he got off his motorcycle
22 and you know, urinated, and he was looking around like
23 he was wanting to jump on me then, and maybe do
24 something with my body, and cars started coming. We
25 got on the motorcycle, and we went back to my home.

DOROTHY A. PERKINS - DIRECT EXAMINATION

108

1 He was just acting real strange, like he was going to
2 hurt me or something.

3 Q. Could you be a little more specific? What was he
4 doing, specifically?

5 A. Well, I mean, he was real short with me, you know, you
6 gonna go up there in the morning. You gonna talk to
7 the Solicitor. I am not going to prison unless it's
8 for a real reason.

9 Q. Okay. After he urinated and got back on the bike,
10 what happened next?

11 A. We went back to [REDACTED] East Home Avenue, my house.
12 Curtis was laying on the couch and I was sitting on
13 the love seat, and my Mom was sitting in the recliner.
14 The t.v. was on. Curtis said, he said, I am going to
15 ask you one more time. Are you going to go up there
16 in the morning for me to talk to the Solicitor? And I
17 told him, no. I wasn't going to go. That is when he
18 stood up and he grabbed a whatnot off the table right
19 beside me, and started beating me in my head with it.

20 Q. Was your mother home when you all returned home from
21 Frank's?

22 A. Yes, ma'am.

23 Q. Okay. What happened after --- Let me backtrack just a
24 minute. Let me show you what has been marked as
25 State's Exhibit 1. Would this be the item you

1 described as a whatnot?

2 A. Yes, ma'am.

3 Q. And where was it located in the room?

4 A. It was right beside me on the little end table.

5 Q. How many times did he hit you?

6 A. At least ten or fifteen times in my head. I was
7 trying to cover my head, and he hit me in my shoulders
8 with it a couple of times, and that's when my Mom
9 stood up, and she said Curtis, you need to go ahead
10 and leave, and he hit her beside the head. And she
11 hit the floor and kind of like crawled into her
12 bedroom. He came back to me and he hit me a couple
13 more times, and that's when he pulled a knife on me.

14 Q. Where did he pull the knife from?

15 A. Out of his pocket.

16 Q. What was he saying at that point?

17 A. He just said that he was going to kill me, then he was
18 going to kill himself. But if I give him any trouble,
19 if I screamed or try to run across the yard to my
20 brother's when we went out the door, that he was going
21 to go ahead and kill my mamma. I was begging him to
22 let me check on my mamma, because I didn't know if she
23 was alive or dead.

24 Q. Do you know where your mother was at this point?

25 Where were you all --- Where were you all located in

DOROTHY A. PERKINS - DIRECT EXAMINATION

110

1 the house?

2 A. Right in front of the love seat.

3 Q. Do you know, and I'm just going to asks you, where
4 were y'all located in the house? I'm sorry.

5 A. I could hear my Mom --- well I moved some stuff around
6 while she was crawling around in the bedroom.

7 Q. Okay. And where is that bedroom located in the house,
8 I guess in relation to the living room?

9 A. Like right here is the front door, and her bedroom is
10 right there, right time you walk in the front door. I
11 mean you could walk into her bedroom.

12 Q. Okay. What happened next after, and I'm talking about
13 with the knife?

14 A. We went out the door and I asked him could I put the
15 helmet on. He told me no. He made me get on the
16 motorcycle, and we went down Billy Farrow. He kept
17 speeding up.

18 Q. I am going to stop you there, Dorothy, and just
19 backtrack. Did you willingly went on the motorcycle
20 with him earlier that evening?

21 A. Yes, ma'am.

22 Q. Now at that point, did you want to go with him?

23 A. No, ma'am.

24 Q. What things did you say to him about that?

25 A. He just told me that --- I told him I didn't want to

DOROTHY A. PERKINS - DIRECT EXAMINATION

111

1 go, and he told me he would go ahead and kill my mamma
2 if I didn't get on the motorcycle. I know The State
3 of mind that he was in, that he would have.

4 Q. Okay. So, when y'all got on the motorcycle, where did
5 you all go next?

6 A. We went down Billy Farrow Road. He kept speeding up
7 and slowing down. He popped one wheeie and I kept
8 telling him to stop, to slow down, cause I couldn't
9 hardly hold on with my right arm, because he broke my
10 wrist at the house. And then he kicked it up one more
11 time reached and shoved me off of it.

12 Q. Okay. Dorothy, I want to go back and talk a minute
13 about you just mentioned your wrist. What happened at
14 the house involving your wrist?

15 A. Between where he was hitting me, he grabbed me, cause
16 I was trying to grab the whatnot from him hitting me
17 in the head, and he was twisting it and twisting it
18 like all the way around.

19 Q. Okay. So what would you say your injuries were at the
20 point you left the house?

21 A. My wrist was hurt --- my right wrist. I was
22 bleeding. I could tell I had cuts in my head where he
23 was hitting me with the whatnot. My shoulder was
24 hurting where he hit me in the shoulder with it. My
25 head was hurt real bad where he struck me in the head,

DOROTHY A. PERKINS - DIRECT EXAMINATION

112

1 you know, a couple of times.

2 Q. When you were on the motorcycle on the bike going down
3 Billy Farrow, about what range of speed would you say
4 he was going prior to him throwing you off the bike?

5 A. It's really hard to say because I don't ride that
6 much. It was going so fast water was coming out my
7 eyes.

8 Q. Did you ever get a look or see the speedometer?

9 A. No.

10 Q. What happened after he shoved you off the bike?

11 A. I remember rolling on the road, and I looked up to see
12 where he was at, and he had pulled off the side of the
13 road and started chasing me, because I was running
14 towards the truck. I got onto the truck and he was
15 trying to snatch me off saying he was going to kill
16 me.

17 Q. Okay. How long would you say from the point when he
18 threw you off, until you saw what you said was the
19 truck --- did any time pass after he pushed you off
20 and you saw the truck?

21 A. No. Right about the time, like I lift my head up, I
22 seen the lights, so I run toward the truck.

23 Q. What did you do when you saw the truck, when the truck
24 got up close?

25 A. I ran up to the truck, and jumped on it, and grabbed

1 onto his mirror. I was trying to get him to let me in
2 the truck.

3 Q. I am going to show you State's Exhibit Number 10. Ms.
4 Dorothy, can you identify that?

5 A. That is the truck I was holding on to.

6 Q. What part specifically on the truck were you holding
7 on to?

8 A. The mirror part --- right here, right there.

9 Q. What did the truck driver do?

10 A. He kept --- He was yelling at Curtis when he was
11 trying to snatch me that he was calling the law, and I
12 was begging him to let me inside the truck. Another
13 car came up, but they never stopped, and I guess it
14 scared Curtis because he got on his bike and left.

15 Q. And did the truck driver actually call the law?

16 A. Yes.

17 Q. How long would you say was it before they arrived?

18 A. Maybe a couple of minutes. I remember the officer
19 laying me on the ground, covering me up with his
20 jacket and wouldn't let me move until the ambulance
21 got there.

22 Q. How did you get down off the truck? Do you remember
23 anything about that?

24 A. I really don't. I don't remember if he helped me down
25 or if I fell.

DOROTHY A. PERKINS - DIRECT EXAMINATION

114

- 1 Q. Now who actually flagged down the truck that got the
2 truck driver's attention? Was that you or Curtis?
- 3 A. I did.
- 4 Q. What happened after law enforcement and the responders
5 began to arrive, do you remember?
- 6 A. They put me on the stretcher, and they was taking me
7 to the hospital. They was asking me did I remember my
8 birthday, or where was I from. Just normal questions.
9 Where was I hurting at?
- 10 Q. At that point Dorothy, how much were you hurting?
- 11 A. It was bad. It was really unbearable.
- 12 Q. And did they take you to a hospital?
- 13 A. Yes.
- 14 Q. Do you remember where you went?
- 15 A. I don't know. They took me in a room, and there were
16 a lot of nurses and doctors in the room.
- 17 Q. Did they take you to a hospital around here?
- 18 A. Yeah, Carolina Pines.
- 19 Q. Say again, I was talking --
- 20 A. Carolina Pines.
- 21 Q. Okay. I apologize. And how long did you stay at
22 Carolina Pines?
- 23 A. Six days.
- 24 Q. While there did you learn anything about your
25 injuries?

1 A. I was kind of in and out of it. I remember one doctor
2 said something that I had a head injury. He told me
3 it broke my temple bone in my face. I remember a bone
4 specialist coming in. Said he had to take me down to
5 put plates and screws in both my arms.

6 Q. Did you have any surgeries during your stay at the
7 hospital?

8 A. I had two.

9 Q. Do you know what those surgeries involved?

10 A. My elbow got screws and a plate in it, and my forearm
11 had to get a screw and a plate in it --- Some screws.

12 Q. Did you have any other injuries?

13 A. Yeah. My face right here where I broke my temple bone
14 was swell and blue and, you know, it hurting. My back
15 and my legs was hurting. It took a hunk out of my
16 right leg. I was really hurting all over. It damaged
17 my liver when I got slung off. I got to --- to see a
18 liver doctor and all.

19 Q. Have you seen a doctor about that yet, about that
20 issue?

21 A. I am waiting on my Medicaid to go through about my
22 liver. I've done had a couple of surgeries on my
23 arms.

24 Q. What kind of long term problems since then, if any,
25 have you had as a result?

DOROTHY A. PERKINS - DIRECT EXAMINATION

116

1 A. Well I can't lift over fifteen pounds with my left
2 arm, and that is far as it will straighten out. I
3 just have constant headaches, you know, from my head
4 injury. I mean, I don't like to ride fast or nothing.
5 If somebody else is driving or anything, I just get
6 nervous. I still have dreams, bad dreams.

7 Q. Okay. I am going to ask you if I could go back a
8 second, when you got to the hospital, when was the
9 first time you got to see your Mom?

10 A. I think it was the next day around 4:00-o'clock.
11 After I got out of my first two surgeries, I think
12 they let me see her.

13 Q. Do you know how long was she in the hospital?

14 A. She was in there six days also.

15 Q. Did you have a roommate or anything like that in your
16 hospital room?

17 A. They put my Mom in the same room as me.

18 Q. Okay. I want to ask you a little bit about your Mom.
19 How old is your Mom?

20 A. She is sixty-four.

21 Q. That is today?

22 A. Today.

23 Q. Describe her health, just in general.

24 A. Well she has an enlarged heart. Has high blood
25 pressure. She has a mental disability. I wouldn't

1 name it healthy, you know.

2 Q. Prior to this incident, she could get around pretty
3 well or not so well?

4 A. Well before this injury she would --- it's hard to
5 explain. She will talk some now to you, like if me
6 and you are talking about something, she will say
7 something totally different. And her head shakes and
8 stuff real bad. She has a lot of headaches too, from
9 getting hit in the head so hard.

10 Q. I am going to show you pictures. State's Exhibit
11 Number 5. Do you recognize those, the person in that
12 photo?

13 A. That's my Mom.

14 Q. Is that after the presentation of her injuries after
15 this incident?

16 A. Right. Yes.

17 Q. Dorothy, I am going to ask you about your children.
18 Do you have any children?

19 A. I have three boys.

20 Q. How old are they?

21 A. Fourteen, ten, and nine.

22 Q. Where they living with you at the time this incident
23 occurred in October of 08?

24 A. No, ma'am.

25 Q. Are they living with you now?

DOROTHY A. PERKINS - DIRECT EXAMINATION

118

1 A. Yes.

2 Q. How long have they been living with you?

3 A. Since July 14th.

4 Q. Who were they with during the time of this incident?

5 A. They were with my middle son, Austin's Grandmother.

6 Q. And that's her name?

7 A. Darlene Jackson.

8 Q. Tell us a little bit about what you did to get custody
9 of your children?

10 A. I went --- I did have a drinking problem. I went to
11 Rehab. I went through parenting classes. ATV classes
12 for six months. Went back to work. Me and my Mom
13 moved back in together --- just straightened up my
14 life to get my kids back.

15 Q. And you just mentioned something about drinking. What
16 all did you have to drink when you all were at Frank's
17 the night of this incident?

18 A. We had a couple of beers and a couple of shots. I
19 can't tell you how many. I'm really not sure.

20 Q. Do you remember what effect that drinking had on you
21 that night as far as being intoxicated? What would
22 you say that had on you?

23 A. I can tell you I wasn't drunk and I remember
24 everything that happened, and I was in complete
25 control of my body and everything. I can tell you

1 that.

2 Q. You ever experienced a night where you wouldn't
3 remember things?

4 A. Yes. I have, experienced times where I drank a lot,
5 and I couldn't remember what I did the next day but at
6 this point --- this night, October fourteenth, I
7 remember everything.

8 Q. This is more or less for comparison, there were times
9 that you would drank more than you would drink on this
10 particular night?

11 A. Yes.

12 Q. Okay. Tell me, the Defendant, did he drink that
13 night?

14 A. Yes.

15 Q. Do you have any knowledge doing anything else?

16 A. I know he takes pills real bad, and smoke marijuana,
17 and occasionally did cocaine.

18 Q. I am going to stop you right there. Stop right there.

19 A. Okay.

20 Q. What you saw and observed this time.

21 A. Okay. Well I saw it. He did take a couple of pills
22 at my house, but I am not sure what they was, and he
23 didn't drink nothing until we got to the bar. He
24 drank a couple of beers and a couple of shots. But he
25 was --- I know he was drinking before he got to my

DOROTHY A. PERKINS - CROSS EXAMINATION

120

1 house that day, because I could smell it on him, but I
2 don't know what he had drank.

3 MS. MCKENZIE: Please answer any questions Ms. Little
4 may have.

5 THE COURT: Cross examination.

6 CROSS EXAMINATION BY MS. LITTLE

7 Q. Ms. Perkins, good afternoon. Ms. Perkins, isn't it
8 true that you called Curtis to come over to see you
9 that day?

10 A. No, I did not. I did not have a phone.

11 Q. Didn't you go to the pay phone down at The Markette
12 and call him?

13 A. No, I did not.

14 Q. Were you expecting him that day?

15 A. No, ma'am.

16 Q. And you mentioned he arrived at 5:00 or 6:00 that day?

17 A. Yes, ma'am. It was somewhere around there.

18 Q. Okay. Isn't it true that you were drinking beer when
19 Curtis arrived?

20 A. No, ma'am.

21 Q. Now you mentioned earlier that you had --- you told
22 this Court had a couple of beers and a couple of shots
23 ---

24 A. Right.

25 Q. -- at the bar?

1 A. Yes.

2 Q. Do you recall back when this incident happened telling
3 the officer that you only had two beers earlier that
4 day?

5 A. No ma'am, I don't.

6 Q. You can remember all this, but you don't remember
7 saying that?

8 A. No, I don't.

9 Q. Now I want to go back to earlier that night when you
10 went to the bar. Now you testified, I believe you
11 said you don't remember how much you drank that night?

12 A. I don't remember exactly how much. We had a couple of
13 beers and a couple of shots.

14 Q. Shot of what?

15 A. I think it was vodka.

16 Q. Straight vodka?

17 A. No. I think it was vodka and orange juice.

18 Q. Okay. Who was paying for the alcohol that night?

19 A. Curtis was.

20 Q. Now, you said something about the Defendant taking
21 some pills, was that --- was that before you all went
22 to the bar?

23 A. Yes.

24 Q. And were you also taking pills that night?

25 A. No, ma'am.

DOROTHY A. PERKINS - CROSS EXAMINATION

122

1 Q. Well isn't it true that you sometimes take your
2 mother's prescription medication?

3 A. She give me something --- yeah, she gives me
4 something to help me sleep.

5 Q. And what would that be?

6 A. Xatarel, (phonetic) it's an antidepressant pill. It's
7 just to help you relax.

8 Q. Okay. And were taking that pill that day?

9 A. No, I was not.

10 Q. Now, you said something about on the way back from the
11 bar, that you thought Curtis was acting kind of
12 strange.

13 A. Yes.

14 Q. Okay. He stopped to use the bathroom?

15 A. Yes.

16 Q. Did he threaten you at that time?

17 A. Not at that time, no.

18 Q. But yet you still felt scared of him?

19 A. Yeah, I felt kind of scared, strange, like I felt like
20 he was going to do something to me.

21 Q. So when you got back to your mother's house, where
22 your brother lives right next door, did you tell your
23 brother or mother, I'm scared he is going to do
24 something to me?

25 A. I sat down beside my mother on the love seat where

DOROTHY A. PERKINS - CROSS EXAMINATION

123

1 right next door, and that's when I figure Curtis
2 should get up and leave, and that's when --

3 Q. -- Okay. Just answer my question. You testified
4 earlier he was laying on the couch and you were
5 sitting on the love seat, correct?

6 A. Right.

7 Q. Okay. And was there anything to prevent you from
8 getting out or getting help at that time?

9 A. No, ma'am.

10 Q. So you weren't scared enough --- You had a strange
11 feeling, but you still let him come and lay down on
12 the couch and hang out with you and your mother?

13 A. Yes, he was just laying there watching t.v.

14 Q. Well earlier when y'all --- when you hopped on the
15 back, on that back of that motorcycle and went to
16 Frank's, did you wear a helmet then?

17 A. No, ma'am.

18 Q. Did you ask Curtis if you could wear a helmet then?

19 A. No, ma'am.

20 Q. But it's your testimony that later when you all left,
21 he refused you to allow you to wear a helmet?

22 A. Yes. When he put the knife to my neck.

23 Q. Let's talk about the knife. You testified that after
24 your mother was in her bedroom, was the door shut?

25 A. No.

DOROTHY A. PERKINS - CROSS EXAMINATION

124

1 Q. So she was in her bedroom with the door open?

2 A. Yes.

3 Q. And so your testimony is that when he pulled out that
4 knife, your mother was already in her bedroom?

5 A. She was stumbling on the floor. We have a couch there
6 right by the door, and she was trying to crawl in her
7 bedroom.

8 Q. Well now you just testified earlier that she was in
9 her bedroom, and then he pulled a knife and asked you
10 to go with him. Is that your testimony?

11 A. Yeah. She was stumbling in her bedroom when he hit me
12 a couple of more times.

13 Q. Is there a lock on your mother's bedroom door?

14 A. No.

15 Q. Will the door shut?

16 A. Yes.

17 Q. Now just one moment. So what you say, this
18 altercation that happened you are saying --- how long
19 was he holding this knife to your neck? Did your
20 mother see the knife?

21 A. She seen it at one point when --

22 Q. -- Okay, now how can she the knife if she was in her
23 bedroom?

24 A. This was after he took me out the door, and she looked
25 through the window.

1 Q. Oh, okay. So she's in her bedroom looking out and at
2 this point, is the door to the house shut or open?

3 A. I don't know. I really don't. I can't remember.

4 Q. But what I am trying to let this jury understand is
5 how you were outside, your mother was in the house,
6 but yet you still felt compelled to do whatever you
7 say he told you do?

8 A. Yes. He had a knife at my throat threatening to kill
9 me, and go in there and kill my mother if I didn't get
10 on the back of the motorcycle with him.

11 Q. Well doesn't your brother live right next door?

12 A. Well, I mean it's not right next door, it's a couple
13 of yards away.

14 Q. Okay. A few yards away. And then you have a neighbor
15 close on the other side?

16 A. Right.

17 Q. At any point did you yell?

18 A. No, I did not.

19 Q. Did you run for help?

20 A. No, he had the knife to my throat.

21 Q. Well I want to ask you --

22 A. -- And if I would have yelled, he would have cut my
23 throat.

24 Q. Okay. While he had the knife to your throat, is it
25 your testimony that he got on the motorcycle, and you

DOROTHY A. PERKINS - CROSS EXAMINATION

126

1 got on the motorcycle, all this time while he was
2 holding a knife to your throat?

3 A. No, he had the knife to my throat and made me get on
4 the back, and then he got on the front of it.

5 Q. Oh, so, he got on the back --

6 A. -- I got on the back. He got on the front.

7 Q. All right. So you're sitting on the back of the
8 motorcycle, and then he has to get on the front?

9 A. Right.

10 Q. Okay. So where was the knife at this time?

11 A. It was still in his hand.

12 Q. Do you remember which hand he was holding it in?

13 A. I don't.

14 Q. Okay. Did you think about jumping off the motorcycle
15 while he was getting on?

16 A. If I did, he would have just chased me, and then do
17 what he had to do then.

18 Q. Well, I mean, you didn't have a phone. Is that
19 correct?

20 A. Right.

21 Q. But you do have a brother that lived within hollering
22 distance; is that correct?

23 A. If I would have hollered, he maybe could have hurt me
24 or maybe not.

25 Q. I want to ask you a little bit about the problems

DOROTHY A. PERKINS - CROSS EXAMINATION

127

1 you've had when you lost custody of your children.

2 Now were you dating Curtis Nealey at the time that
3 happened?

4 A. No. Me and my youngest son's father was together.

5 Q. And can you --- I am not asking you a lot of detail,
6 but why did you loose your children?

7 A. Because me and my son's father had got in an argument
8 that night and the law got called.

9 Q. Okay. And were you intoxicated at the time?

10 A. I wasn't drunk. I was drinking a little bit.

11 Q. Okay. So is it fair to say the drinking had something
12 to do --

13 A. Right.

14 Q. -- with your losing your children?

15 A. Yes.

16 Q. So isn't it true that if DSS found out you were
17 drinking and partying that night that you wouldn't
18 have gotten those children back?

19 A. I do --- I mean --- no, that's not necessarily true.
20 I mean, I could go out with friends and drink as long
21 as my kids weren't there around it.

22 Q. Okay. But you had gone through rehab as a part of
23 your treatment; is that correct?

24 A. Right. Yeah.

25 Q. Did Curtis Nealey come and visit you while you were in

DOROTHY PERKINS - REDIRECT EXAMINATION

128

1 rehab?

2 A. Yes.

3 Q. And how long were you there?

4 A. Twenty-eight days.

5 Q. You were never told by DSS that you shouldn't be
6 drinking?

7 A. Yes.

8 Q. You were?

9 A. Yes.

10 Q. So you knew there would be some consequences if they
11 found out you were drinking?

12 A. Yeah.

13 MS. LITTLE: Beg the Court's indulgence for just one
14 moment, Your Honor.

15 (PAUSE.)

16 MS. LITTLE: No further questions.

17 THE COURT: All right. The witness had direct
18 examination and then cross. Is there redirect Ms.
19 McKenzie?

20 MS. MCKENZIE: Yes, Your Honor, briefly.

21 THE COURT: All right.

22 REDIRECT EXAMINATION BY MS. MCKENZIE

23 Q. Dorothy, you said when you all were out in the yard, a
24 few moments ago that you didn't scream. Is there any
25 particular reason --- were there any threats made to

1 you if you did scream?

2 A. Yes. He told me that he would go ahead and kill my
3 mamma, and he would go ahead and kill me and then kill
4 himself. He knowed if my screamed my brother might
5 have --- would have heard it.

6 Q. How far away is your brother's house? Just using
7 parameters here in the courtroom, if you were a juror,
8 standing on the porch.

9 A. I have a big yard. Maybe like two smalls houses,
10 maybe the size of mine from my house.

11 Q. So it's really not all that close?

12 A. No, ma'am.

13 Q. Dorothy, what is the main reason why you complied and
14 went on the motorcycle that evening, the second time?

15 A. So he wouldn't kill my mamma.

16 Q. Tell the Court, what was he saying about your mamma
17 specifically?

18 A. He was just saying that if I didn't go with him that
19 he would go in there and kill her.

20 Q. At the time, did you think that was a real
21 possibility?

22 A. Yes, I did.

23 Q. Dorothy, how have you been doing over the past year
24 since you got out the hospital, since this incident
25 occurred with respect to your children? How have you

DOROTHY PERKINS - REDIRECT EXAMINATION

130

1 all been doing?

2 A. We have been doing just great. We started off back in
3 church. I don't drink no more. We have a good
4 relationship. They do good in school.

5 Q. You mentioned actually a little bit about DSS a few
6 minutes ago when I was up here, but when Ms. Little
7 was up here, you talked about --- specifically about
8 twenty-eight-day Rehab Program. Where was that at?

9 A. At Palmetto Center in Florence.

10 Q. And when did you complete that program?

11 A. I want to say it was in July --- June or July.

12 Q. Of what year?

13 A. 2008.

14 Q. Did it take you a little while after that still to
15 kind of get some things together with your life?

16 A. Yes, ma'am.

17 Q. Do you admit that maybe you shouldn't have been
18 drinking that night?

19 A. Yes.

20 MS. MCKENZIE: That's all the questions I have for
21 you, Dorothy.

22 THE COURT: All right. Ma'am, you may step down.
23 Watch your step.

24 State, please call your next witness.

25 MS. MCKENZIE: Thank you, Your Honor. At this time

VICTORIA PERKINS - DIRECT EXAMINATION

131

1 The State calls Victoria Perkins.

2 THE COURT: Please come forward and take the oath of
3 a witness.

4 WHEREUPON, VICTORIA PERKINS

5 BEING DULY SWORN TESTIFIES AS FOLLOWS

6 DIRECT EXAMINATION BY MS. MCKENZIE

7 Q. Please state your full name for the record?

8 A. Victoria Perkins.

9 Q. Ms. Perkins, how old are you?

10 A. Sixty-four.

11 Q. And where do you live?

12 A. [REDACTED] East Home Avenue.

13 Q. Where is that located, in Hartsville?

14 A. Hartsville.

15 Q. Who lives there with you?

16 A. My daughter and her kids.

17 Q. Who lives next door?

18 A. My son and his girlfriend.

19 Q. Ms. Perkins, do you work?

20 A. No, ma'am. I draw disability.

21 Q. And how many grandchildren do you have?

22 A. Eleven.

23 Q. And how long have you lived there at that address, [REDACTED]

24 East Home Avenue?

25 A. About a year.

VICTORIA PERKINS - DIRECT EXAMINATION

132

- 1 Q. And, Ms. Dorothy, --
- 2 A. No, it might be longer that.
- 3 Q. Okay. That's all right. Was Dorothy living there
- 4 with you in October of 2008?
- 5 A. Yeah.
- 6 Q. The court reporter has to take down what we say. I
- 7 know sometimes it would be easy to nod your head but
- 8 we need a yes.
- 9 A. Okay.
- 10 Q. So she can take that down, okay?
- 11 A. Okay.
- 12 Q. Where did you all live prior to moving to [REDACTED] East
- 13 Home Avenue?
- 14 A. Easy Living Trailer Park, in Darlington.
- 15 Q. Okay. Now I am going to take you back to October 14,
- 16 2008. Do you remember what you were doing that day?
- 17 A. Usually just sit around and clean up a little bit, you
- 18 know. I was sitting in the chair watching t.v.
- 19 Q. Okay. Do you remember seeing the Defendant, Curtis
- 20 Nealey, on that day?
- 21 A. Yes, ma'am. We was all on the porch when he come up.
- 22 My son, his girlfriend, and Dorothy, and me when he
- 23 come up on his motorcycle.
- 24 Q. When you say your son and his girlfriend, what are
- 25 their names?

1 A. Nancy and Tommy Perkins.

2 Q. Okay. What happened while you all were just standing
3 around on the porch?

4 A. We was just sitting at there. It was cool out there,
5 you know, just talking. There ain't nothing happen.
6 They got up and left cause Tommy, you know, don't like
7 Curtis too much because the way he treats Dorothy.

8 MS. LITTLE: Objection. Relevance, Your Honor.

9 THE COURT: All right. We'll sustain that. Ladies
10 and gentlemen, it's not necessary to this case, please
11 disregard that comment. And please move to your next
12 question.

13 Q. How long would you say you all were out on the porch?

14 A. Before he pulled up?

15 Q. After he pulled up, specifically, how much longer --

16 A. -- Probably about an hour.

17 Q. What happened after all you all were hanging out on
18 the porch?

19 A. Well they went home and we went inside.

20 Q. Who is we?

21 A. Dorothy and Curtis went inside, and they eat
22 something, and they decided they wanted to go shoot
23 pool. They wasn't gone about an hour.

24 Q. Okay. Were you there, did you see them leave?

25 A. Yes, ma'am.

VICTORIA PERKINS - DIRECT EXAMINATION

134

1 Q. And do you know what time they got back or about what
2 time?

3 A. No, ma'am. I didn't look at the clock, but they
4 wasn't gone but about an hour.

5 Q. What did they do when they got back to the house?

6 A. They come back and eat some more, and then we all
7 ended up in the living room. He laid down on the
8 couch. And he all at once he asked is you going up
9 there with me in the morning. She said, no. She told
10 him she wasn't going. And I kept watching Curtis,
11 cause he looked like he was getting mad, you know.

12 Q. Yes, ma'am. What made you think he was getting mad?

13 A. Cause the way, you know, when she said that. All at
14 once he stood up and walked over to her, and went to
15 twisting her hands, you know. Hitting her in the head
16 and twisting her hands. Then he picked up a vase ---
17 he didn't pick up the vase until I went to get up
18 because he knew --- I ask him to leave.

19 Q. What did he say when you ask him to leave?

20 A. He didn't say nothing cause --- then I starting
21 getting up, you know, because he kept beating on her,
22 and I was going to get my son. You know, get up and
23 go get my son. And when I raised up --- stood up, he
24 hit me with the vase. He hit me so hard that he about
25 knocked me out.

1 Q. Okay. I am going to stop you right there, Ms.
2 Perkins. I am going to show you what has been marked
3 as State's Exhibit 1. Do you recognize this?

4 A. Yes, ma'am.

5 Q. And what is this?

6 A. That is the vase he hit me with. That is the vase he
7 picked up off my coffee table.

8 Q. Who did this belong to?

9 A. Me.

10 THE COURT: All right ladies and gentlemen, we are
11 going to take brief break at this time. I am going to let
12 you return to the jury room, and we will presume
13 questioning in just one moment. Let's all remain where we
14 are while our jury exits the courtroom.

15 (Whereupon, the jury exits the courtroom at 4:21
16 p.m.)

17 THE COURT: Ma'am, do you need to take a break or are
18 you fine?

19 MS. PERKINS: (No response.)

20 THE COURT: Well we'll just let you sit right there
21 then. We are going to be in recess for about give minutes.

22 MS. PERKINS: Okay.

23 THE COURT: Counsel, how long do you think the rest
24 of your direct will be? Do you intend to finish with Ms.
25 Perkins this afternoon?

VICTORIA PERKINS - DIRECT EXAMINATION

136

1 MS. MCKENZIE: Oh, yes sir, definitely. I was trying
2 to decide whether it was going to be fifteen or twenty.

3 THE COURT: Is that your last witness for the day?

4 MS. MCKENZIE: I was prepared --- I have witnesses
5 numbered three and four here, just in case. I didn't know
6 how fast things would go and didn't want to waste the
7 jury's time, but they can certainly come back in the
8 morning.

9 THE COURT: We'll probably end about 5:00-o'clock
10 this afternoon. Ladies and gentlemen, we will be in
11 recess. One of our jurors raised their hands to tell me
12 they needed a break, so we will stand down probably about
13 five minutes.

14 (Whereupon, a recess was taken from 4:22 p.m.
15 until 4:30 p.m..)

16 THE COURT: All right, is our jury ready?

17 BAILIFF: Yes, sir.

18 THE COURT: Very good. Let's go ahead and bring the
19 jury in.

20 (Whereupon, the jury enters the courtroom at 4:30
21 p.m.)

22 THE COURT: All right, welcome back, ladies and
23 gentlemen. We are in the middle of direct examination.
24 Ms. McKenzie, you may proceed to the direct.

25 Q. (By Ms. McKenzie) Ms. Perkins, before we took a

1 break I had just shown you a ceramic ornament sitting
2 there on the side table. Tell us, what he did with
3 that?

4 A. He turned around --- he was hitting her with it, then
5 he turned around and popped me up side the head with
6 it when I went to get up to get, you know, to go out
7 you know --- I was gonna go try to get my son. But I
8 ask him to leave first before it got out of hand. I
9 ask him, Curtis leave, and he kept on. He wouldn't
10 leave.

11 Q. What happened after he hit you in the head with that
12 object?

13 A. When he hit me, it knocked me --- I went to pouring
14 blood and it knocked me out you know, it about knocked
15 me out. I staggered over to the couch. Falling on
16 the couch. I was trying to get to the front door and
17 I end up going to the bedroom, you know, right beside
18 the living room in my bedroom. I couldn't, my knees
19 was weak, I lost so much blood. I kept seeing things
20 closing in on me when he hit me. He kept --- I could
21 hear what was said in the living room.

22 Q. Tell me what you heard? Did the Defendant say
23 anything to you when he hit you with the figurine
24 right there?

25 A. No, he didn't say nothing to me, cause he tried to

VICTORIA PERKINS - DIRECT EXAMINATION

138

1 knock me out. He hit me hard enough to knock me out.
2 I just kind of stumbled off to try to get some help,
3 you know. I was so weak. I got sugar diabetes. I
4 lost so much blood, and I was trying to get into ---
5 I thought I was going out the front door. He had me
6 knocked so out, I ended up in the bedroom. He kept
7 telling --- I could hear what was said. You don't go
8 with me, I am going to kill your mamma. I am going to
9 go in there and kill your mamma. He had me so
10 scarred, I wasn't about to go back in there, because I
11 knew if he would have hit me again, it would finish
12 me.

13 Q. So did you stay in that front bedroom?

14 A. Yeah, I stayed in there, begging for my son. Just
15 hoping my son would come over there. You know -- you
16 know --- Come over hear her hollering. Then he put
17 the knife to her throat, cause she said --- in the
18 living room, cause I couldn't see it then. But she
19 said, Curtis, put that -- don't --- get that knife
20 from my throat, you know, I could hear her saying it.
21 He kept hitting her. You going with me, or I am going
22 to kill your mamma. Then he finally made her get up.
23 Kept the knife at her throat and made her get on the
24 motorcycle with him.

25 Q. I am going to stop you right there, Ms. Perkins. At

1 any point did you see the knife, did you observe it?

2 A. Yes, ma'am.

3 Q. What point was that?

4 A. When they pulled out to go up the road. I had.
5 staggered over to the door, and I had kind of got my
6 focus back, and when I eased up to the window and
7 looked out the window, the street light signs on my
8 house was bright, you know, it looks like it is
9 daylight outside.

10 Q. Do you have a porch light?

11 A. Yes, ma'am.

12 Q. Was that on?

13 A. Yeah.

14 Q. Okay. What did you see in the yard when you looked
15 out?

16 A. I seen --- I seen him with the knife in his hand when
17 they pulled out the yard. And she went with him to
18 keep him from coming in there bothering me again. She
19 kept begging him to let her go in there to check on
20 me, you know, and he wouldn't let her come in there.

21 Q. Okay. Now after they left, what kind of condition
22 were you in at that point?

23 A. I was still weak, still seeing dots, losing blood. I
24 staggered out the door, and I was trying to get to my
25 son's house, cause we didn't have no phone. I got

VICTORIA PERKINS - DIRECT EXAMINATION

140

1 half way over there, and I fell and hurt my arm.

2 Q. I want to stop you there and ask you, how far is it
3 from your house to your son's house?

4 A. It's about two houses down, but they ain't no houses
5 there. We just got a big yard.

6 Q. Okay. So it's like an empty lot?

7 A. Yes.

8 Q. Okay. Continue. What happened when you --- you said
9 you were on the way over there?

10 A. Well I got to blanking out kind of when I got to the
11 end of his house, and I couldn't go no further. I
12 kept knocking on the house. His girlfriend was in the
13 kitchen. I knocked so hard she heard me first.

14 Q. How did you know she was in the kitchen?

15 A. I heard her in there moving around. She must have
16 been cleaning up or something. She went and called
17 --- she come out on the porch. I said, get PoJo.
18 Curtis is going to kill Dorothy. He just put her on
19 the motorcycle with a knife at her throat, and made
20 her go with him, and he done this to me.

21 Q. I am going to stop you right there. Who is PoJo?

22 A. My son. His name is Tommy.

23 Q. Okay.

24 A. That's what we call him, his nickname.

25 Q. Yes, ma'am. Okay. What happened after his girlfriend

1 came out?

2 A. PoJo come running out, and he jumped in his car, and
3 tried to, you know, catch them. Well he waited til
4 the ambulance come and got me, and then he jumped in
5 his car and tried to catch them. But by then the cops
6 said they must have been one some near round, near by,
7 because seems like they got in behind him fast, you
8 know.

9 Q. Now did the --

10 A. -- after they left there.

11 Q. Did the police come to your son's house?

12 A. Yes. Two of them.

13 Q. Okay. And what did they do as far --- what did you
14 do after the police got there, and what happened next?

15 A. They seen the shape I was in, they took me to the
16 hospital.

17 Q. And how did you get to the hospital?

18 A. In the ambulance.

19 Q. Which hospital did you go to?

20 A. Carolina in Hartsville.

21 Q. And when you got there, what kind treatment did you
22 have to receive?---

23 A. I don't know. I was still seeing dark and I had
24 gotten weak, you know. They was just concerned about
25 my sugar, losing all that blood. I take a blood

VICTORIA PERKINS - DIRECT EXAMINATION

142

1 thinning medicine.

2 Q. Yes, ma'am.

3 A. And they were concerned about all that and stuff. He
4 give me something you know, to kind of ease me off.
5 My head was hurting so bad.

6 Q. And where was your head hurting?

7 A. Where he hit me.

8 Q. What did they do, if anything, to treat that?

9 A. They put stitches it in. It was sliced open, they had
10 to put stitches in it.

11 Q. And how long in total were you at the hospital?

12 A. I was up there about --- me and her come home the
13 same day, about a week.

14 Q. I want to talk to you a little bit and reverse back to
15 earlier that night and go back with you. When the
16 Defendant --- when Curtis Nealey and Dorothy got back
17 from Frank's, did you notice anything unusual at that
18 point?

19 A. No, ma'am.

20 Q. What was Dorothy's demeanor or what was her behavior
21 like?

22 A. She didn't --- I didn't think she was drinking. Look
23 like she hadn't been drinking.

24 Q. Have you seen her in a drunken condition before?

25 A. Oh, yes. Not --- She's been getting help. She's

VICTORIA PERKINS - CROSS EXAMINATION

143

1 trying to quit, you know. She's been doing real good.
2 She got her kids back now. She's back at work. She's
3 doing good.

4 Q. Okay. I want to ask you about --- are there any long
5 term problems you have as a result of what happened
6 that night with your head?

7 A. Yeah, I constantly have headaches, but they tell me
8 that's natural, getting hit that hard.

9 Q. Okay.

10 MS. MCKENZIE: I beg the Court's indulgence.

11 MS. MCKENZIE: Please answer any questions Ms. Little
12 may have.

13 THE COURT: Cross examination.

14 MS. LITTLE: Thank you.

15 CROSS EXAMINATION BY MS. LITTLE

16 Q. Ms. Perkins, was your daughter Dorothy, living with
17 you at the time she lost the kids?

18 A. No, ma'am.

19 Q. She was not. And your understanding at that time was
20 she had a drinking problem?

21 A. Back then, yeah.

22 Q. Okay. You just testified a while ago that she was
23 trying to quit. Does she still drink now?

24 A. Not hardly ever.

25 Q. Not hardly ever, but she still drinks?

VICTORIA PERKINS - CROSS EXAMINATION

144

- 1 A. Once in awhile.
- 2 Q. Okay. And I believe she testified earlier, and you
- 3 may have heard her, you gave her some of your
- 4 prescription pills sometimes did you not?
- 5 A. Well she asked me for pills to make her rest, and I
- 6 told her I got some that will make you sleep, and she
- 7 got it herself.
- 8 Q. Okay. You gave it to her or she --
- 9 A. -- No, she got it herself out the bottle. I didn't
- 10 give it to her.
- 11 Q. Okay. And is this something that was fairly common?
- 12 A. Yeah, it would make her sleep, make her rest.
- 13 Q. Okay. Now I believe --- Isn't it true that shortly
- 14 before this incident happened --- Well let me back up.
- 15 When Dorothy was in Rehab, did you live with the
- 16 Defendant, Curtis Nealey?
- 17 A. Yes. I moved in with Curtis and was looking after his
- 18 kids, because they were together at that time.
- 19 Q. Okay. And at some point after Dorothy got out of
- 20 Rehab, did Curtis move you and Dorothy back to
- 21 Hartsville?
- 22 A. Yeah, he helped me move back to Hartsville.
- 23 Q. Okay. So you all had a pretty good relationship?
- 24 A. Yes, ma'am.
- 25 Q. And isn't it true that a few weeks before this

VICTORIA PERKINS - CROSS EXAMINATION

145

1 happened, he saved your life didn't he?

2 A. Is he talking about when I fell through the floor?

3 Q. Yes, ma'am.

4 A. Well I fell through the floor. We was staying behind
5 him and I fell through the floor, and I was there five
6 hours you know, and I couldn't move my foot because --

7 Q. -- Who rescued you?

8 A. -- the trailer had a --- it was a weak floor that they
9 was suppose to be done fixed it to start with. He
10 done the work on the trailer in the park. Him and
11 another boy. They put the fence back on it. I
12 wouldn't have fell through it to start with.

13 Q. Who helped you that day when you were --

14 A. I hollered and hollered, and he hear me hollering.

15 Q. He came and got you out?

16 A. No, he come --- he couldn't get me out because my leg
17 had done swoll you know, and he just called the Fire
18 Department.

19 Q. I see. I want to go back about your testimony about
20 what you saw that night after you claim you were hit
21 by Curtis Nealey. Now you testified several times
22 that you were seeing dots?

23 A. Yes, ma'am.

24 Q. You saw dots. And this would have been --- what time
25 of night was this?

VICTORIA PERKINS - CROSS EXAMINATION

146

1 A. I really don't know, because I was watching movies --

2 Q. Was it dark?

3 A. -- watching movies, you know. I was just into
4 watching movies. I didn't even look at the clock.

5 Q. Was it dark outside?

6 A. It was getting dark.

7 Q. It was getting dark. Now let me ask you something, do
8 you have any problems with your vision?

9 A. A little bit. I can't see far off, but up my close I
10 mean, I have trouble about seeing sometimes. It
11 doesn't happen all the time, but then sometimes.

12 Q. Just sometimes. And when you were at the hospital,
13 did you or did you not tell the medical personal that
14 you needed glasses, but you couldn't afford them?

15 A. Yes, ma'am.

16 Q. You did tell them that. So you admit that you needed
17 glasses and your vision wasn't so good that night?

18 A. Yes, ma'am.

19 Q. Also you were still seeing dots, is that correct?

20 A. Not when I got to the door.

21 Q. Okay. Didn't you just testify a few minutes ago that
22 you were still seeing dots when you got to the door?

23 A. I'm saying that when I went to the door and looked
24 out, I could see him with the knife.

25 Q. Was the door closed?

VICTORIA PERKINS - CROSS EXAMINATION

147

1 A. Yeah, but the door was closed, but I got a glass in my
2 door.

3 Q. And did you have the door locked?

4 A. No, it wasn't locked.

5 Q. Well when Curtis and Dorothy left on the motorcycle
6 you were safe inside the house; is that correct?

7 A. Yes, I was still inside the house.

8 Q. But yet you saw --- did you see them actually get on
9 the motorcycle?

10 A. No, I didn't see them actually get on it, because when
11 I got --- by the time I got up to the door, they was
12 pulling out in the road.

13 Q. Okay.

14 A. And I could seen him with the knife.

15 Q. You saw him pulling away from the house in the dark
16 with a knife in his hand?

17 A. Now it was not dark.

18 Q. Okay.

19 A. Because I got a street light up there and a porch
20 light. It looks daylight outside my house.

21 Q. Well, ma'am, do you remember which hand he was holding
22 the knife in?

23 A. Well he's turned back this a way, it would have been
24 in the right hand.

25 Q. His right hand. And did he also have his hand --- was

VICTORIA PERKINS - CROSS EXAMINATION

148

- 1 he driving? Did he have his hand on the --
- 2 A. Yeah. He still had the knife in his hand.
- 3 Q. Okay. So how big was the knife?
- 4 A. They took off in a hurry. I didn't have time to get
- 5 the measurements of the knife.
- 6 Q. Okay. But ---
- 7 A. They took off so fast.
- 8 Q. But you never saw the knife in the house, is that
- 9 correct?
- 10 A. No, ma'am, because I was in the next room --
- 11 Q. -- Right --
- 12 A. -- when he pulled the knife on her.
- 13 Q. Now you and Dorothy live together now, is that
- 14 correct?
- 15 A. She lives with me.
- 16 Q. Right.
- 17 A. And her kids.
- 18 Q. And her children. And you love those grandchildren
- 19 don't you?
- 20 A. Yes, I do.
- 21 Q. And I bet you were happy when she got those kids back
- 22 from DSS?
- 23 A. Yes, I was.
- 24 Q. Now you and Dorothy have lived together ever since
- 25 this incident happened?

1 A. Yeah.

2 Q. And have you two talked about what your testimony
3 would be in here today?

4 A. Not really. I just told her I am going to tell the
5 truth.

6 MS. LITTLE: All right. Just one moment, Your Honor.

7 (PAUSE.)

8 MS. LITTLE: I don't have any further questions,
9 thank you.

10 THE COURT: Is there redirect?

11 MS. MCKENZIE: Yes, Your Honor, briefly.

12 REDIRECT EXAMINATION BY MS. MCKENZIE

13 Q. Ms. Perkins, you testified about you have a little bit
14 of trouble with your vision. Will you explain what
15 that trouble is?

16 A. Well see, I am a diabetic and it effects my eyes
17 sometimes being a diabetic.

18 Q. Can you see things close up or far away?

19 A. Close up. And they was close up.

20 Q. Okay. I am going to show you what has been marked
21 State's Exhibit Number 3. Do you recognize that?

22 A. Yes, that's my house.

23 Q. Okay. And what does this picture show towards the
24 left-hand corner --- in the left-hand corner of that
25 picture, what do you see?

VICTORIA PERKINS - REDIRECT EXAMINATION

150

1 A. That is the street light. A telephone pole.

2 Q. And where is the street light at in that picture?

3 A. Up on the pole. That's my house.

4 Q. How far is your front porch from the road? How much
5 front yard do you have?

6 A. I don't have much front yard, but I got a lot on the
7 side.

8 Q. And when you say a lot on the side --

9 A. And the back.

10 Q. Who lives on that side of your yard where there is a
11 lot of space, and then the next house?

12 A. My son.

13 Q. Okay. Now on cross examination you told Ms. Little
14 that you saw the knife. They were already outside
15 when you first saw the knife. But what did you hear
16 about the knife, and what did you hear the Defendant
17 say while they were still in the house?

18 A. She was begging him to get it off of her throat, and
19 he wouldn't take it off, you know. He had it at her
20 throat. I could hear him telling her that in the
21 living room.

22 Q. Was there any statement made about you that you heard
23 from that front bedroom while they were in the living
24 room?

25 A. Yeah. He threatened to kill me three or four times

1 if she didn't go with him. Had her scared you know,
2 and she was hurting. He had me scared to death. I
3 was scared to go back in there to help her, you know,
4 afraid he would hit me again, or cut me, or something.

5 **MS. MCKENZIE:** Yes, ma'am. That's all. No further
6 questions.

7 **THE COURT:** All right. Ma'am, you can step down.
8 Ladies and gentlemen, we are going to stop for the day.
9 And let me just ask you tonight when you go home --- here
10 is what is going to happen. Your love ones are going to
11 say, what happened in Court today. And rather than discuss
12 any of the facts you heard, any testimony you heard, just
13 tell them the Judge has instructed you not discuss the
14 facts of the case until it is over. When it's over, then
15 you can fully discuss it with them, and I am going to tell
16 why. I don't want someone of influence in your life saying
17 something that may influence how you see this case. The
18 testimony in this case, which is here under examination,
19 cross and direct, and under oath, is what you should decide
20 on this case. Not what some person who is an influence in
21 your life. So with that understanding, please just tell
22 your love ones the Judge has asked you not to discuss it.
23 I will ask you in the morning when we begin whether anyone
24 has attempted to discuss the case with you, or whether you
25 had a discussion with anyone.

THE STATE V CURTIS RAY NEALEY

152

1 Now tomorrow morning, and quite often we have to set
2 things sort of far in advance, the Court has a hearing set
3 at 9:00-o'clock in another matter which is going to take
4 approximately one hour. So we will start at 10:00-o'clock
5 tomorrow morning. So if you could, just be in the jury
6 room at 10:00-o'clock tomorrow morning, that is when we
7 will be ready to start the trial. All right, no need to
8 check the jury information line tonight. There won't be
9 anything on there for you. If you would, just be back at
10 10:00-o'clock tomorrow morning. Any questions now about
11 scheduling or my jury. So we will see you at 10:00-o'clock
12 tomorrow morning. Let's all remain where we are out of
13 respect of the jury who is leaving for the day. Have a
14 nice evening, ladies and gentlemen.

15 (Whereupon, the jury exits the courtroom at 4:52
16 p.m.)

17 THE COURT: All right, anything for the record before
18 we close the record for the day?

19 MS. MCKENZIE: No, Your Honor.

20 MS. LITTLE: No, Your Honor.

21 THE COURT: All right, then this case will be in
22 recess until 10:00-o'clock tomorrow morning. With the
23 staff, ladies and gentlemen, we will reconvene Court at
24 9:00-o'clock tomorrow morning for a hearing in another
25 matter. Court is in recess.

1 (Whereupon, the Court concludes its business for
2 the day at 4:54 p.m. on Monday, November 9, 2009.)

3 -- END OF DAY ONE --

THE STATE V CURTIS RAY NEALEY

154

1 (Whereupon, the Court comes to order at 10:03
2 a.m. on Tuesday, November 10, 2010.)

-- DAY TWO OF TRIAL --

3
4 THE COURT: All right, we are told all the jury is
5 here. Are there any motions or issues for the record
6 before we bring in the jury. First from The State?

7 MS. MCKENZIE: No, sir, Your Honor, none from the
8 State.

9 THE COURT: And from the Defense?

10 MS. LITTLE: No, Your Honor.

11 THE COURT: All right, very good. Please bring in
12 the jury.

13 BAILIFF: All right, sir.

14 (Whereupon, the jury enters the courtroom at
15 10:04 a.m.)

16 THE COURT: All right, ladies and gentlemen, welcome
17 back to the courtroom. I trust you had a nice evening.
18 Let me ask, since we were last together; is there any
19 member of the jury panel who has had discussion about the
20 facts of this case with anyone, or been contacted by anyone
21 about this case, if you have, please raise your hand?
22 Let's let the record reflect no one has raised their hands.
23 Thank you for complying with the Court's instructions. And
24 I didn't think someone would be contacting you but would
25 certainly wish to know that if they did.

NANCY A. NOBLES - DIRECT EXAMINATION

155

1 You will recall at the end of the day yesterday we
2 were in The State's and we remain there. Madam Solicitor,
3 please call your next witness.

4 **MS. MCKENZIE:** Thank you, Your Honor. At this time,
5 The State calls Nancy Nobles.

6 **THE COURT:** Please come forward and take the oath of
7 a witness. While our witness is coming forward let me tell
8 you we are privilege to have with us a business law class
9 today from the Darlington County Schools. These are the
10 individuals, the young people you see in the courtroom with
11 us today. Welcome again, ladies and gentlemen to our
12 courtroom.

13 **WHEREUPON, NANCY NOBLES**

14 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

15 **MS. NOBLES:** I do.

16 **DIRECT EXAMINATION BY MS. MCKENZIE**

17 **Q.** Ma'am, please state your full name for the Court's
18 record?

19 **A.** Nancy Ann Nobles.

20 **Q.** And where do you reside?

21 **A.** [REDACTED] East Home Avenue.

22 **Q.** Okay. And who lives there at that residence with you?

23 **A.** Me, Tommy Perkins, and my four children.

24 **Q.** And what is your relationship to Tommy Perkins?

25 **A.** He is my fiancé.

NANCY A. NOBLES - DIRECT EXAMINATION 156

1 THE COURT: All right Ma'am; I am going to get you to
2 lean forward just a little more and speak in the microphone
3 so we can all hear you. Thank you.

4 A. He is my fiancé.

5 Q. Okay. Thank you, Nancy. And how do you know ---

6 First of all, do you know Victoria Perkins and Dorothy
7 Perkins?

8 A. Yes.

9 Q. And who are they?

10 A. Sister-in-law and mother-in-law.

11 Q. And where do they live?

12 A. [REDACTED] East Home Avenue.

13 Q. And where is that in relation to your house?

14 A. Right next door.

15 Q. When you indicate right next door, how close is your
16 house to their house?

17 A. Ten feet.

18 Q. Okay. And how long have they lived at that residence
19 next door?

20 A. A year and two months.

21 Q. Now do you remember some events that transpired on
22 October 14, 2008?

23 A. Yes.

24 Q. Okay. Tell us what you were doing on that day,
25 earlier that day?

1 A. Earlier that day I took Victoria Perkins to the
2 doctor, and then we come back. At 5:30 Curtis come
3 over. We was all sitting on the porch. Then me and
4 Tommy left and went home.

5 Q. Okay. I am going to stop you right there. You all
6 were sitting on the porch. Who all was on porch?

7 A. Me, Tommy, Victoria, Dorothy, and then Curtis pulled
8 up.

9 Q. What was Curtis driving?

10 A. His motorcycle.

11 Q. Okay. How long would you say you were on the porch --
12 - you just indicated you all --- you were talking at
13 your house, how long were you on the porch with them?

14 A. About twenty minutes.

15 Q. And how would you say that twenty minutes --- describe
16 that twenty minutes, what was going on?

17 A. Curtis pulled up and he said he had a new tire on his
18 motorcycle.

19 MS. LITTLE: Objection. Hearsay.

20 THE COURT: What say you to that, counsel?

21 MS. MCKENZIE: Your Honor, that is a statement of a
22 Defendant, a party.

23 THE COURT: All right, ladies and gentlemen, hearsay
24 is what --- The objection is hearsay, which is an out of
25 Court statement by a third party, who is not the one

NANCY A. NOBLES - DIRECT EXAMINATION

158

1 speaking obviously, it is someone saying what they heard
2 someone say. The best evidence of that is to ask the
3 person themselves what they may or may not have said. I am
4 going to sustain the objection, counsel. I don't believe
5 that to be relevant to the case anyway, so please move
6 forward to the next issue.

7 Q. Ms. Nobles, I wasn't trying to get you repeating what
8 people were saying, but what was the overall tone of
9 what was going on --- Just describe what you all were
10 doing on the porch, and what was it like, overall
11 tone.

12 A. Just talking.

13 Q. And what did you do once you got home? You indicated
14 you left the porch and went home. About what time
15 would you say that was?

16 A. Six.

17 Q. And what did you do when you got home?

18 A. Cooked.

19 Q. Now did you hear anything going on --- did you hear
20 anything that evening when you went home later that
21 evening?

22 A. No.

23 Q. Did you see Ms. Victoria Perkins later that evening?

24 A. Yes.

25 Q. And please explain the circumstances and how it was

1 you came to see her earlier that evening. What
2 happened?

3 A. What do you mean?

4 Q. You said you saw Ms. Victoria Perkins later that
5 evening, where was she?

6 A. On my back porch.

7 Q. And what did she look like? What observations ---
8 what condition was she in at that time?

9 A. She was real weak, covered in blood. And she was
10 beating on the back door and holding on to my back
11 door to get it.

12 Q. Okay. And did she tell you anything about why she was
13 bleeding?

14 A. She said, Curtis hit her in the head --- struck her in
15 the head when she stood up to go get help to get him
16 off of Dorothy. She said she stumbled into the
17 bedroom. Then when they left on the motorcycle, she
18 come in. She got out the house. She come to my
19 house. She called for help. I called the ambulance.

20 Q. Okay. And what kind of --- Was she complaining of
21 anything in particular in respect to her injuries?

22 A. Weakness, dizziness, seeing stars.

23 Q. And who actually called for help?

24 A. I did.

25 Q. And what type of response did you get after calling

NANCY A. NOBLES - CROSS EXAMINATION

160

1 911? Who showed up after you called 911?

2 A. The police.

3 Q. Did anyone else show up?

4 A. Ambulance a few minutes later.

5 Q. And who was at the house with you later that evening
6 when you heard something at the backdoor and you said
7 you saw Ms. Victoria Perkins in this condition. Who
8 was at the residence with you at that point and time?

9 A. Me, Tommy, and my four children.

10 Q. And what did Tommy Perkins do if anything, in response
11 to what was going on?

12 A. He got up. He run out the backdoor to see if he could
13 see Dorothy and Curtis. He couldn't. Law told him
14 not to go no where, so he come back in the house.

15 MS. MCKENZIE: Okay. Please answer any questions Ms.
16 Little may have for you.

17 THE COURT: Cross examination.

18 CROSS EXAMINATION BY MS. LITTLE

19 Q. Ms. Nobles, good morning.

20 A. Good morning.

21 Q. You mentioned that you all were on the porch together
22 for about twenty minutes or so, just talking, hanging
23 out?

24 A. Uh-huh.

25 Q. Was anybody drinking at that time?

1 A. No.

2 Q. You didn't see any alcohol in anybody's hand?

3 A. No, ma'am.

4 Q. Did you smell alcohol on anybody?

5 A. No.

6 Q. Now you didn't see anything that happened inside that
7 house that night did you?

8 A. No.

9 Q. So your only knowledge about what happened is what you
10 were told?

11 A. No. What I seen when Victoria come to my door.

12 Q. Right. You saw that Ms. Victoria was injured, but you
13 didn't see any of the events leading up to that or how
14 she was injured?

15 A. No.

16 Q. Now isn't it true that --- I believe there was
17 testimony earlier that Mr. Tommy Perkins left. Did he
18 not leave?

19 A. Yeah.

20 Q. He went outside, but he didn't leave the property?

21 A. Not that I know of.

22 Q. And you mentioned that Ms. Victoria was saying that
23 she was seeing stars at the time?

24 A. Yes.

25 MS. LITTLE: I don't have any further questions.

JAMES C. BALVICH - VOIR DIRE EXAMINATION

162

1 Thank you.

2 THE COURT: Is there redirect?

3 MS. MCKENZIE: None, Your Honor.

4 THE COURT: All right, ma'am, you may step down.

5 Please call your next witness.

6 MS. MCKENZIE: Your Honor, at this time The State
7 calls Dr. Jim Balvich.

8 THE COURT: Please come forward and take the oath of a
9 witness.

10 WHEREUPON, JAMES C. BALVICH, M.D.

11 BEING DULY SWORN TESTIFIES AS FOLLOWS

12 DR. BALVICH: Yes, sir.

13 THE COURT: And, Dr. Balvich, if you wouldn't mind
14 stating your full name, and spelling your last for us.

15 DR. BALVICH: Sure. James Christopher Balvich. B-as
16 in boy, A-L-V as in Victor -I-C-H.

17 THE COURT: Thank you. You may proceed, counsel.

18 MS. MCKENZIE: Thank you

19 VOIR DIRE EXAMINATION BY MS. MCKENZIE

20 Q. Dr. Balvich, what is your profession?

21 A. I am a medical doctor, M.D.

22 Q. And where do you work?

23 A. Carolina Pines Regional Medical Center.

24 Q. And what is your possession there at Carolina Pines?

25 A. I work in the Emergency Department. I am the Director

1 of the ER.

2 Q. And how long have you held that position?

3 A. Since 1997.

4 Q. How long have you been licensed by the Medical Board
5 here in South Carolina?

6 A. Since 1997.

7 Q. Tell us a little bit about your education background.
8 Where did you go to medical school?

9 A. I attended Pritzker School of Medicine in Chicago,
10 Illinois. Did my residency, Internal Medicine, Board
11 Certified in Milwaukee, Wisconsin. Practiced in
12 Indiana, and then moved to South Carolina.

13 Q. And would you describe for the Court what basic duties
14 --- I guess your basic job description of a doctor
15 working in the ER.

16 A. We basically assess a patient in acute distress or
17 acute illness, and determine whether --- what
18 illnesses they may or may not have, and stabilized
19 them. And determine if they need to be seen by
20 specialists or hospitalized.

21 Q. Did you have an occasion --- I am going to take you
22 back to October 14th of 2008. Did you have an occasion
23 to see and treat a Ms. Dorothy Perkins?

24 A. Yes, I did.

25 Q. About what time did she arrive at the emergency room

JAMES C. BALVICH - VOIR DIRE EXAMINATION

164

1 that night?

2 A. I have that she arrived on October 15th at thirty
3 minutes after midnight.

4 Q. And would you please describe for the Court what kind
5 of condition, physically and also emotionally --- what
6 kind of condition she was in at that time?

7 A. She arrived by the ambulance in full spinal
8 precautions, which means she was on a backboard. She
9 had a neck brace. Immobilized for her own safety.
10 Emotional but awake and alert at that time.

11 Q. And did she indicate to you, if at all, what kind of
12 pain she was experiencing?

13 A. She was fairly uncomfortable. Again, emotional state.

14 Q. For purposes of treating her, did you have a chance to
15 ask Dorothy what had happened to her?

16 A. Yes. She said that she had been involved in an
17 altercation and that she was forced to get on a
18 motorcycle, and was thrown off that motorcycle, and
19 sustained injuries from that.

20 Q. I want to talk to you and ask you a few questions
21 about her injuries. What injuries did she have there
22 in the ER that night?

23 **THE COURT:** All right, before you answer. Counsel,
24 you are asking a question that calls for a medical opinion.
25 Are you offering the witness as an expert?

1 MS. MCKENZIE: Yes sir, I would. Yes, sir.

2 THE COURT: All right. Let's just talk a little bit
3 about that for a moment so our record will be clear.
4 Ladies and gentlemen, the witnesses who have appeared
5 previously in this case have been lay witnesses. Lay
6 witnesses come in and they are able to testify about what
7 they saw, or heard, or did. An expert witness is someone
8 who is offered that can, because they have experience, or
9 knowledge or training in a particular scientific area, may
10 come in and testify about what they saw, or heard, or did.
11 But what also --- what opinion they derive from that. That
12 is a difference between a lay witness and an expert
13 witness. When an expert witness is offered and asked an
14 opinion question, we stop right there, we go to the other
15 side to see if there is any objection to, or question about
16 the expertise of the witness, and the party is able to ask
17 questions on the issue of expertise at this point. Any
18 objections to the witness's qualifications as an expert in
19 the area of Emergency Medicine?

20 MS. LITTLE: None, Your Honor. I've spoken with Dr.
21 Balvich and is well aware of his expertise.

22 THE COURT: All right, then. Without objection the
23 witness is admitted as an expert in the area of emergency
24 medicine.

25 Now ladies and gentlemen, again this evidence is not

JAMES C. BALVICH - DIRECT EXAMINATION

166

1 given for the purpose of controlling your judgment but for
2 the purposes of assisting you in finding matters of fact
3 which may be within the purview of that expert. You should
4 give the expert's testimony what weight you deem it
5 entitled to, if any, because that is your decision.

6 You may proceed.

7 MS. MCKENZIE: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MS. MCKENZIE

9 Q. Dr. Balvich, I believe I just asked you what injuries
10 did you observe that Dorothy Perkins had upon arrival
11 to the ER.

12 A. The obvious injuries when she presented were ones of
13 facial abrasions, and she also had injuries to both
14 upper extremities, and some other minor abrasions to
15 her lower extremities.

16 Q. Okay. And what did you do to treat Ms. Perkins that
17 night, or I guess to assist you in diagnosing exactly
18 what her injuries were. What did you do or have
19 ordered?

20 A. Okay. So after doing a physical examination, we
21 ordered appropriate x-rays including a CAT-scan of her
22 head, and her of neck, and plain x-rays of the areas
23 that she was complaining of pain, mainly the upper
24 extremities.

25 Q. And what did those x-rays, if anything show?

JAMES C. BALVICH - DIRECT EXAMINATION

167

1 A. The x-ray of her head showed a possible basilar
2 fracture. It wasn't definitive. Required some
3 further x-rays done too later on--- showed a nasal
4 fracture. Showed a left elbow fracture and a right
5 forearm fracture.

6 Q. Okay.

7 MS. MCKENZIE: Your Honor, permission to approach the
8 witness?

9 THE COURT: You may.

10 Q. Dr. Balvich, if you don't mind stepping down, and I
11 am going to show you State's Exhibit Number 26. I
12 would ask before the Court, if you can on this model
13 mark where she had fractures on her body.

14 A. She had an abrasion to her face in this area. Her
15 fracture was in the back --- the fracture was in back
16 of the skull back here. She had fractures in this
17 area, and this area. Abrasions to her knees. These
18 were fractures. These were abrasions. She had
19 fractured toes, and maybe a fracture at the base of
20 her skull.

21 Q. Okay.

22 A. That help?

23 Q. Yes, Dr. Balvich, thank you very much.

24 THE COURT: All right, 26, any objection to the
25 State's 26?

JAMES C. BALVICH - DIRECT EXAMINATION

168

1 MS. LITTLE: No objection.

2 THE COURT: All right. In evidence as marked,
3 without objection.

4 WHEREUPON, STATE'S EXHIBIT

5 NUMBER 26 WAS MARKED AND

6 ADMITTED INTO THE RECORD.

7 MS. MCKENZIE: Thank you, Your Honor.

8 Q. Now you mentioned a possible skull fracture. Where
9 would that be located?

10 A. In the back of her head.

11 Q. Now as far as assessing her injuries, what type of
12 referrals or arrangements did you make to further
13 treat those injuries as an ER doctor?

14 A. Yes, after the initial assessment and x-rays were
15 accomplished, I called our surgeon who was on call,
16 Dr. Banister, who deals with our trauma injuries, and
17 I also called Dr. Wylie, who is our orthopaedic
18 surgeon regarding the fractures.

19 Q. And was Dorothy Perkins, in your opinion, in need of
20 surgery due to those fractures?

21 A. Yes.

22 Q. And I guess I should have asked that question more
23 specifically. Specifically, what fractures are you
24 talking about that were needing surgery?

25 A. The upper extremity forearm, the elbow, and a forearm

1 fracture.

2 Q. And do you know --- and do you have information in
3 your records when she was actually discharged from
4 Carolina Pines, how many days later?

5 A. I will look it up. It says here discharged on October
6 20, 2008.

7 Q. Okay. Now Dr. Balvich, on that same night, did you
8 have an opportunity to treat Ms. Victoria Perkins?

9 A. Yes, I did.

10 Q. And what was her condition upon arrival into the ER?

11 A. I actually saw Ms. Victoria first, twelve minutes
12 after midnight on the 15th of October. She came in
13 with a history of having an altercation and suffering
14 some facial trauma, which suffered three lacerations
15 to her forehead from the altercation.

16 Q. And what type of emotion condition was she in when you
17 first saw her that night?

18 A. She was pretty distraught and emotional, yes.

19 Q. Did she tell you specifically what had happened to
20 her?

21 A. Yes. She said that she was attempting to stop an
22 altercation between her daughter and her daughter's
23 boyfriend, when he then turned on her and caused those
24 injuries.

25 Q. And what did you do to treat, if anything, those

JAMES C. BALVICH - DIRECT EXAMINATION

170

1 lacerations? Where were they located? I will start
2 there. Where were those lacerations located that you
3 just described?

4 A. There were three lacerations and they are all to the
5 forehead area on the left side.

6 Q. What did you do to treat those?

7 A. Each one was sutured and closed.

8 Q. And did you order any kind of tests to assess any
9 other possible injuries she may have?

10 A. Yes. We ordered a CAT-Scan or an x-ray of her brain
11 to make sure there wasn't any injury there, and some
12 ansulary blood tests because of her other health
13 conditions. Let me make sure. That's it. X-ray of
14 her head. We did a chest x-ray. Some blood tests,
15 and an EKG.

16 Q. What information did you have about some of her prior
17 medical history?

18 A. She had a history of hypertension, high blood
19 pressure, diabetes, had a past history of a mini
20 stroke, and had some heart problems.

21 Q. And what was Ms. Victoria Perkins' blood pressure when
22 she first arrived?

23 A. 202/116, which is elevated.

24 Q. Now, you mentioned that you did some CAT-scans and
25 some scans of the brain. Did you find any additional

1 injuries? How did those tests come out?

2 A. No, those was all basically within normal limits.

3 Q. And do you have in her record what date she was
4 discharged from the hospital?

5 A. I should. Discharged on October 20th.

6 MS. MCKENZIE: Okay. With the Court's permission,
7 Your Honor, can I ask Dr. Balvich to step down and show
8 some pictures to the jury at this time.

9 THE COURT: You may.

10 MS. MCKENZIE: And, I'll call those numbers.

11 Q. Dr. Balvich, I am showing you State's Exhibit 24,
12 that has already been entered into evidence. What
13 does that photograph depict?

14 A. This is her in the emergency room. She still has the
15 collar on for her protection. It shows the abrasion
16 to the left side of her face.

17 Q. And was this Dorothy or Victoria?

18 A. This is the daughter.

19 Q. The daughter, okay. Thank you. State's Exhibit
20 Number 6.

21 A. Again, it is of her right arm and showing bruising,
22 contusions of her right upper extremity.

23 Q. State's Exhibit Number 7.

24 A. Same patient, showing the abrasions to both of her
25 knees, the patella area.

JAMES C. BALVICH - CROSS EXAMINATION

172

1 Q. State's Exhibit Number 22.

2 A. Showing her right arm right forearm. It may be
3 difficult, but you can see the abrasions, and probably
4 road-rash associated with her fall.

5 Q. And State's Exhibit Number 23.

6 A. This is Mom, and this shows the swelling, and there
7 are three different lacerations suffered from the
8 altercation. It's a difficult to visualize, but that
9 location.

10 Q. Do the lacerations go into the scalp area of Ms.
11 Perkins?

12 A. It was in the forehead.

13 MS. MCKENZIE: Thank you, Dr. Balvich. Those are
14 all the questions I have for you at this time. Please
15 answer any questions Ms. Little may have.

16 THE COURT: Cross examination.

17 CROSS EXAMINATION BY MS. LITTLE

18 Q. Good morning, Dr. Balvich.

19 A. Morning.

20 Q. Dr. Balvich, I am going to ask you if you could look
21 back on your medical records. Did you make a note
22 that Ms. Dorothy Perkins was intoxicated when she
23 arrived at the hospital?

24 A. Yes, ma'am.

25 Q. Did you also make a note that the history she gave you

JAMES C. BALVICH - CROSS EXAMINATION

173

1 might be limited by her intoxication?

2 A. Yes, ma'am. What that refers to is the fact that
3 limited in the ability to sense pain, or give an
4 accurate determination of what area may or may not
5 hurt.

6 Q. Okay. So intoxication would have an effect on the
7 history that she would give you?

8 A. Yes, correct.

9 Q. And can you also check --- did Ms. Dorothy Perkins
10 admit to you at the time, she was taking some
11 prescription medication?

12 A. No, ma'am.

13 Q. Now, when you got a history for medical purposes about
14 what happened, Ms. Perkins told you that she was
15 thrown out --- off the motorcycle?

16 A. Yes, ma'am.

17 Q. Did she ever say anything about being pushed off?

18 A. Well, in all honesty, I know that she --- I'm not
19 sure of the difference in the terms.

20 Q. Your report said that she was thrown off?

21 A. Yes, ma'am.

22 Q. Now, did anywhere in the history that Ms. Dorothy
23 Perkins or Ms. Victoria Perkins gave you, was there
24 any mention of a knife being held to Dorothy's throat
25 or any possible injuries from that?

JAMES C. BALVICH - REDIRECT EXAMINATION

174

1 A. No, ma'am.

2 Q. And are you aware of any cuts or lacerations on her
3 throat that could have been caused by a knife?

4 A. Not to my knowledge.

5 MS. LITTLE: No further questions, thank you, Doctor.

6 THE COURT: Is there redirect?

7 MS. MCKENZIE: Briefly, Your Honor.

8 REDIRECT EXAMINATION BY MS. MCKENZIE

9 Q. Dr. Balvich, on your notes you indicated that Ms.
10 Dorothy Perkins was intoxicated. Was that for your
11 medical purposes in that initial assessment?

12 A. Yes ma'am, it's for mine and for hers, in the sense
13 that if somebody is impaired, whether it is from
14 chemicals, alcohol, or whatever reason, from the
15 trauma, then we would treat them differently, and
16 protect them better or more securely than if somebody
17 is without chemical alteration.

18 Q. And you indicated in your report that she was thrown
19 off the motorcycle. Do you recall Ms. Dorothy Perkins
20 telling you that night in the ER how she was thrown
21 off the motorcycle?

22 A. No, ma'am. I don't recall.

23 MS. MCKENZIE: Thank you.

24 THE COURT: Any objection to the release of the
25 witness?

1 MS. MCKENZIE: No, Your Honor.

2 THE COURT: You are free to leave.

3 MS. LITTLE: Your Honor. I'm sorry, Your Honor. I
4 just wanted to follow up on one thing that she ask in her
5 redirect.

6 THE COURT: All right, what would be the new matter
7 that came up in redirect?

8 MS. LITTLE: It would have been that she was --- he
9 said that she was thrown off the motorcycle. I just wanted
10 to ask him if her injuries would be consistent with a
11 motorcycle fall.

12 THE COURT: I tell you what. If you don't mind
13 answering a further question go ahead. And you may repose
14 it.

15 RECROSS EXAMINATION BY MS. LITTLE

16 Q. In your medical opinion, would Ms. Dorothy Perkins
17 injuries be consistent with a fall from a motorcycle?

18 A. It is consistent with somebody --- Yes, ma'am. It is
19 consistent with somebody being thrown or fallen from a
20 motorcycle.

21 MS. LITTLE: Thank you, Doctor.

22 DR. BALVICH: Yes, ma'am.

23 THE COURT: Do you wish to follow on that Ms.
24 McKenzie, this is your witness? Anything further.

25 MS. MCKENZIE: The Court's indulgence.

CEDRIC R. GIBSON - DIRECT EXAMINATION

176

1 (PAUSE.)

2 MS. MCKENZIE: Nothing further, Your Honor.

3 THE COURT: This time, you are free to leave. Have a
4 good day.

5 Please call your next witness.

6 MS. MCKENZIE: Your Honor, at this time The State
7 calls Cedric Gibson.

8 THE COURT: Please come forward and take the oath of
9 a witness.

10 WHEREUPON, CEDRIC RANDALL GIBSON

11 BEING DULY SWORN TESTIFIES AS FOLLOWS

12 MR. GIBSON: I do.

13 THE COURT: Please give us your full name, sir?

14 MR. GIBSON: Cedric Randall Gibson.

15 THE COURT: All right, Mr. Gibson, will you pull a
16 little closer to the microphone so we can all hear you.

17 DIRECT EXAMINATION BY MS. MCKENZIE

18 Q. Mr. Gibson, where do you live?

19 A. I live on 944 West Billy Farrow in Hartsville.

20 Q. And that's on Billy Farrow Highway, is that closer to
21 Hartsville or closer to Darlington?

22 A. Closer to Hartsville.

23 Q. And how old are you?

24 A. Thirty-six.

25 Q. What do you do for a living?

1 A. I drive trucks. I haul cars, automobiles.

2 Q. And what were you doing --- what was your profession
3 back in October of 2008?

4 A. The same. I was hauling cars, driving trucks.

5 Q. And do you own your own truck?

6 A. Yes.

7 Q. And when did you get that truck?

8 A. I bought that truck in 07. I brought it in late 06
9 and I got it in 07.

10 Q. And explain the nature of your job. In other words
11 what I am asking, do you have normal business hours
12 like Monday through Friday, 9:00 to 5:00?

13 A. No. I do --- I drive --- I work whenever my business
14 calls, whenever somebody calls me, I go to work.
15 Could be any time of the hour, and I work until the
16 job gets done.

17 Q. Does that involve you being on the highways late at
18 night?

19 A. Yeah, sometimes. Yeah, anytime. I could be out at
20 midnight. I could be leaving at twelve o'clock at
21 night. I could be leaving out at 6:00-o'clock in the
22 morning. I could be gone for a couple of days at a
23 time. A week at a time.

24 Q. I am going to take you back to the evening of October
25 14th. Do you remember if you were on the route or

CEDRIC R. GIBSON - DIRECT EXAMINATION

178

1 working that day?

2 A. Yes, I was working that day. I was coming in from a
3 run, going home to take a shower to go back out again.

4 Q. And did you observe anything unusual on your way home
5 that night?

6 A. Yes. About a few miles before I got to my house, I
7 ran up on some kind of dispute or something. It
8 appeared to be like, some kind of accident at first.
9 But as I got closer, it looked like some kind of
10 dispute.

11 Q. And please describe for the Court what you saw ---
12 what you first came up on, and what your initial
13 observations were, and about what time is this?

14 A. Well, it was about a little bit till 11:00. It was
15 somewhere around --- if I can remember, somewhere
16 around 10:30 --- between 10:30 and 11:00-o'clock. It
17 was somewhere around there, because I know that time
18 frame how long I was there because when I got home ---
19 I got home like, right at 12:00-o'clock. I only
20 stayed like, a couple of miles away from where I had
21 stopped.

22 Q. Okay. And explain to the Court what you saw when you
23 stopped.

24 A. Well when I stopped, I saw a motorcycle in the road in
25 my path of the road, and I saw somebody on the ground,

1 and somebody standing over them. Look like some kind
2 of altercation or something. At that time I don't
3 know if it was somebody. When I first approached it,
4 I thought that somebody had just had an accident, but
5 as I got closer it looked like some kind of
6 altercation, or something was going on there.

7 Q. And could you make out as far as your visibility at
8 that point, if it was a male or female that was
9 standing over the other person?

10 A. Not until the --- Not until the person that was on the
11 ground got up.

12 Q. Okay. And who was it on the ground that got up? Was
13 it a male or female?

14 A. It was a female.

15 Q. And describe physically what she looked like.

16 A. Well she just --- I just see a lot of hair. I seen a
17 black jacket that she had on, and she had on some
18 jeans. That's about, you know, what I observed from
19 that point.

20 Q. And what did the female do when she got up?

21 A. When she got up, she ran towards the truck.

22 Q. At this point was the truck moving or had ---

23 A. Yes.

24 Q. -- or had you come to a stop?

25 A. I hadn't come to a stop yet. That is what had me so

CEDRIC R. GIBSON - DIRECT EXAMINATION

180

1 nervous that she was running towards the truck.

2 Q. Was she making any gestures or body movements as she
3 ran towards the truck?

4 A. Yeah, she was flagging the truck, and she was yelling
5 something that I couldn't determine right then, but
6 she was yelling. I could hear a bunch of noise going
7 on.

8 Q. What did the male --- What was the male doing while
9 the female was running flagging down the truck?

10 A. Well he went for the motorcycle at first, then he left
11 the motorcycle, and then went and chased her down. He
12 caught her before she got to the truck, and before I
13 could come to a stop.

14 Q. Okay. And then what did he do when he caught her?

15 A. He grabbed her, and like he hugged her and tried to
16 kiss her, or to me when I got closer, I noticed what
17 he was doing. He was actually trying to shut her up.
18 He was trying to keep her from getting my attention,
19 you know, letting me hear what she trying to say.

20 Q. Well what was she trying to tell you? What was she
21 saying?

22 A. She was yelling help, help, he's trying to kill me.
23 Help, he's trying to kill me. She was just saying
24 those words over, and over, and over again.

25 Q. And how much volume was she using with her voice? Was

1 she screaming?

2 A. She was pretty loud. She was in --- to me in a
3 hysterical state. She was just --- she was really,
4 really excited.

5 Q. Explain what she looked like when she got closer to
6 the truck?

7 A. Well she just --- she just looked like her hair was
8 in a mess. She had blood all over her face,
9 everywhere. I mean, I --- I --- she really looked
10 scary. She looked like -- I was scared. I didn't
11 know what was going on. You know, I drive trucks for
12 a living all the time, and I see all kind of stuff on
13 the road, and I know, you know, you just don't ---
14 you just don't help every scene. You just don't help
15 everything you run up on, because it could be
16 something that, you know, that somebody is stagging to
17 hurt you, you know.

18 Q. Describe what happened next after you got to a
19 complete stop?

20 A. Well once I got to a complete stop they were still
21 standing like, in front of my truck, about as far as
22 from me to you is apart. And I say, you know, I have
23 somebody else in the truck with me, and he, you know,
24 he's a friend of mine, and he said, just call the
25 police, just call the police, or drive off, drive off,

CEDRIC R. GIBSON - DIRECT EXAMINATION

182

1 because you don't know what this could be. I said
2 well I am going to call the police. So I called the
3 police, and I rolled down my window a little bit, and
4 I said I've called the police. I've called the
5 police. But, she's still yelling, she still trying to
6 yell and trying to get away from him. I reckon it
7 wasn't but a couple of seconds after I said I was
8 calling the police, he left. He went towards the
9 motorcycle, and she immediately shot to the truck.
10 She jumped on the side of my truck. Threw her hand
11 over the rear view mirror, and she tried to actually
12 get in the truck, but I rolled the window up enough
13 where she couldn't climb in, because I didn't know
14 what was going on.

15 Q. Okay. You just described that she climbed up your
16 truck. What was the Defendant doing, or what was he
17 doing shortly thereafter when she climbed up the
18 truck?

19 A. He ran back towards the motorcycle. He got on the
20 motorcycle, and he came up right up beside my truck,
21 and he tried to pull her off of it.

22 Q. At this point what was she hanging on to?

23 A. She was hanging onto my rear view mirror on the side
24 of my truck.

25 Q. And how --- I am going to show you a picture marked

1 State's Exhibit Number 10. Do you recognize that?

2 A. Yes. That is my truck.

3 Q. Okay. And could you indicate and maybe step down with
4 the Court's permission?

5 THE COURT: Speak up so we can hear you, sir.

6 A. Yes, sir.

7 Q. Would you please show the jury what she would have
8 been --- Well I am going to ask you first of all, is
9 your truck the same on both the passenger and the
10 driver side?

11 A. Yes, the very same, identical. Tanks and all.
12 Everything is identical. That is the only thing that
13 is not identical on the other side.

14 Q. Now what she --- Will you indicate on the picture what
15 she was hanging on to?

16 A. She was hanging onto that rail right there.

17 Q. And how high up is that rail? How many feet
18 approximately?

19 A. It's probably about --- I'm right at six, so it's
20 probably --- it's about my height. It's about my
21 height.

22 Q. Thank you.

23 A. I could hit my head on it when I'm walking through
24 there. But there is steps there that when you get up
25 to there, I mean you --- it would probably be about

CEDRIC R. GIBSON - DIRECT EXAMINATION

184

1 your body length then.

2 Q. Thank you. So she was hanging onto the truck by the
3 rear view mirror. What happened next?

4 A. Well like I say, he pulled up --- he pulled up to the
5 side of the car. I am still on the phone with, you
6 know, with the police, and trying to tell them exactly
7 where I was, and all that stuff. When he pulled up
8 beside her, he was trying to pull her off the
9 guardrail, and I said I done call the police, now
10 they're on the way. They will be here in just a
11 second. You better leave her alone like that. She
12 kept yelling, help me, let me in, let me in, let me
13 in. I was like, just hold on, just hold on. You are
14 bleeding a lot. I can't let you in the truck like
15 that, you know. And, it wasn't nothing but like ---
16 as soon as I said it, good --- telling her the police
17 would be there in just a second, he shot, he left off.

18 Q. And was your window still rolled down at this point?

19 A. It was cracked. It was cracked about half way. Just
20 enough I could see her face, but I she couldn't climb
21 in.

22 Q. And who responded to that call you made for help?

23 A. A police officer.

24 Q. Did any other agencies respond?

25 A. Yes, paramedics.

1 Q. Okay. And how long was Dorothy hanging there on the
2 rear view mirror of your truck?

3 A. Well, for me at that time, you know, it seemed like a
4 while, but I reckon it was only, you know, maybe ten
5 minutes at the most. It seemed like a long time
6 because it took a police officer a while to come. He
7 actually passed by the truck, then backed up, because
8 he didn't know what was going on. I reckon he didn't
9 know that that was the truck. He passed by the truck,
10 he backed up. And then it wasn't until another police
11 officer came, that is when they tried to help her get
12 off the truck. She kept, you know, complaining about
13 her shoulder, her shoulder, her shoulder, she couldn't
14 move. When she latched onto the rear view mirror, she
15 didn't have the strength or the ability to get back
16 off the mirror.

17 Q. Were you able --- Did the female that was there
18 hanging on your truck, did she have an opportunity or
19 did she tell you anything about what had happened to
20 her?

21 A. She said that he was going about a hundred miles an
22 hour. I said from where. She said from the stop sign
23 to there, and he threw her off the motorcycle. I
24 said, why would he throw you, and she said, he was
25 trying to kill me. He just left my Mom's house and

CEDRIC R. GIBSON - DIRECT EXAMINATION

186

1 all that stuff. She was going through this whole
2 thing about what happened, you know, at her Mom's
3 house and stuff, you know. I was really telling her,
4 you know, just calm down, calm down, you know, that
5 they was police on the way, and all the stuff, so.

6 Q. Can you remember, or could you make out what she was
7 telling you about her Mom's house?

8 A. Yeah. She said that he had just left her Mom's house.
9 He beat up her Mom. That he made her leave the house
10 with a knife and all that stuff, and the police is
11 still looking for him for something from that earlier.
12 And that she only left her Mom's house, because she
13 was thinking about, you know, that he made her leave
14 from her Mom's house so he won't hurt her mother no
15 more.

16 Q. And, Mr. Gibson, do you personally know the Defendant
17 in this case, or the victim?

18 A. No, I don't, neither one of them. I've seen her
19 before, you know, from going through the Wendy's, but
20 honestly until yesterday, I didn't know who she was.
21 I didn't put two and two together, because that night
22 I couldn't tell. I didn't know who she was.

23 Q. Now you're saying you recognized her as working at
24 Wendy's in the past?

25 A. When she said it yesterday that she worked at Wendy's,

1 now I remember who she was. But I didn't know it
2 until she got up on the stand yesterday, that that was
3 her. But that night I didn't know who she was. I
4 mean I didn't know nothing about her.

5 Q. And how about the male that was there that night, do
6 you know him?

7 A. No.

8 Q. Or anything about him?

9 A. No.

10 **MS. MCKENZIE:** Court's indulgence just a moment.

11 **(PAUSE.)**

12 Q. Cedric --- Mr. Gibson, on Billy Farrow Highway, would
13 you tell the jury which way you were traveling ---
14 which way you were traveling that night, and what
15 direction back towards Darlington, or towards
16 Hartsville.

17 A. I was traveling towards Hartsville about not even a
18 mile past Center Road.

19 Q. In which direction when the male took off on the
20 motorcycle, after you had made the statement about
21 calling 911, which direction did he take off in?

22 A. Towards Darlington.

23 **MS. MCKENZIE:** Okay. Thank you. Please answer any
24 questions Ms. Little may have at this time.

25 **THE COURT:** Cross examination.

CEDRIC R. GIBSON - CROSS EXAMINATION

188

CROSS EXAMINATION BY MS. LITTLE

Q. Mr. Gibson, did you see anything that happened before -- did you actually see the motorcycle accident that happened?

A. No.

Q. Okay. And you mentioned that at one point Mr. Nealey appeared to be hugging and kissing the victim, Ms. Dorothy. Could you hear anything he was saying at the time?

A. No, he was saying come --- he was saying --- he was just mumbling. All I could hear was mumbling. I can hear what she is saying because she was way louder than him.

Q. Could you see pretty good over there what was going on?

A. I could see very good.

Q. Okay. And did you ever see a knife in Mr. Nealey's hand?

A. No.

MS. LITTLE: No further questions.

THE COURT: Is there redirect?

MS. MCKENZIE: None, Your Honor.

THE COURT: Any objection to the release of the witness?

MS. MCKENZIE: Not objection to releasing him, Your

1 Honor.

2 THE COURT: Hearing none, you are not required to
3 leave, but you are free to leave if you wish to.

4 All right, ladies and gentlemen, let's take our
5 morning break at this time. We will be in recess
6 approximately fifteen minutes or so.

7 Please don't discuss the case, but enjoy your break.
8 Let's all remain where we are while our jury departs the
9 courtroom.

10 (Whereupon, the jury exits the courtroom at 10:50
11 a.m.)

12 THE COURT: All right, Court is in recess now for
13 fifteen minutes.

14 (Whereupon, a recess was taken from 10:50 a.m.
15 until 11:08 a.m..)

16 THE COURT: All right, welcome back everyone. Let's
17 bring in the jury, please.

18 BAILIFF: All right, sir.

19 (Whereupon, the jury enters the courtroom at
20 11:08 a.m.)

21 THE COURT: Welcome back everyone. Madam Solicitor,
22 please call your next witness.

23 MS. MCKENZIE: At this time, The State calls Rodney
24 Hopkins.

25 THE COURT: Please come forward and take the oath of

RODNEY B. HOPKINS - DIRECT EXAMINATION

190

1 a witness.

2 WHEREUPON, RODNEY B. HOPKINS

3 BEING DULY SWORN TESTIFIES AS FOLLOWS

4 MR. HOPKINS: I do.

5 DIRECT EXAMINATION BY MS. MCKENZIE

6 Q. Please state your full name for the record?

7 A. Rodney Brock Hopkins.

8 Q. And where are you currently employed?

9 A. Hartsville Police Department.

10 Q. And where were employed in October of 2008?

11 A. Darlington County Sheriff's Department.

12 Q. What was your position with the Sheriff's Office?

13 A. Lance Corporal.

14 Q. What were your duties at a Lance Corporal?

15 A. To patrol the county. Detect and deter in crime.

16 Awaiting 911 calls.

17 Q. How long have you worked in law enforcement?

18 A. Seven years.

19 Q. And Officer Hopkins, do you recall working on the
20 night of October 14th, 2008?

21 A. Yes, ma'am.

22 Q. On that particular day, do you recall, where you
23 working day-shift or night-shift?

24 A. Night-shift.

25 Q. Tell the Court, did you respond to a call later that

1 evening to the Billy Farrow Highway area?

2 A. Yes, ma'am.

3 Q. What time did you receive that call?

4 A. It was 23.47 hours which is 11:47 p.m.

5 Q. Tell us exactly where you responded at on Billy Farrow
6 Highway, what area of the highway?

7 A. The two hundred block of West Billy Farrow Highway,
8 approximately about a mile from North Center Road.

9 Q. And is that in Darlington County?

10 A. Yes, ma'am.

11 Q. Once you got to Billy Farrow Highway --- let me
12 backtrack for a second. You responded to a call you
13 received over dispatch. What information did you have
14 at that point about the call?

15 A. At that point it was a possible wreck involving a
16 motorcycle. We were dispatched to that area involving
17 the wreck. While in route, dispatch advised us that
18 Hartsville City had an assault take place, and a
19 possible kidnaping on East Home Avenue with a
20 motorcycle fitting the description of the wreck
21 suspect is motorcycle leaving the area, heading toward
22 Billy Farrow Highway.

23 Q. Do you remember approximately about what time you
24 received or heard that call over dispatch about what
25 had occurred in the city?

RODNEY B. HOPKINS - DIRECT EXAMINATION 192

- 1 A. It was actually prior to being dispatched. I have a
2 Hartsville City radio, and I was listening in on their
3 transmission, and where they were wanted us directed.
4 It takes a little while for our dispatches to
5 coordinate with dispatching us out after Hartsville
6 City receives their information. So I was already in
7 route to that location prior to being dispatched.
- 8 Q. When you say in route to that location, which location
9 are you referring to?
- 10 A. East Home Avenue. We were going to help out the city.
- 11 Q. Okay. But instead you received a call about Billy
12 Farrow Highway and went to that location?
- 13 A. Yes, ma'am.
- 14 Q. Now tell us about what you observed when you got on
15 the scene there at Billy Farrow Highway?
- 16 A. Standing in the middle of the roadway was a white
17 female covered in blood. She was covered in blood on
18 her head and her clothing, her face, and she was very
19 distraught, and hysterical, and she was screaming and
20 crying.
- 21 Q. At that time, was she complaining of any physical
22 injuries, or having any complaints about physical
23 pain?
- 24 A. Yes, ma'am. She was complaining that her back was
25 hurting. Both of her arms are hurting. Her head was

1 hurting. She was complaining she could not hear out
2 of her left ear, both legs hurting basically all over.

3 Q. What was she doing when you arrived on the scene?

4 Where was she located?

5 A. She was standing near an eighteen-wheeler truck. It
6 was still in the roadway.

7 Q. Was the driver of the eighteen-wheeler still on the
8 scene when you got there?

9 A. Yes, ma'am. He was still inside the truck.

10 Q. And is that individual --- do you remember that he
11 just testified a few moments ago?

12 A. That is correct.

13 Q. Now what type of emotional condition was Dorothy
14 Perkins in when you first got there and saw her
15 standing in the roadway?

16 A. She was hysterical. She was crying. She was visibly
17 shaken up. Very visibly. Excuse me.

18 Q. Were you able to gather any information or get
19 information from her about what had happened to her?

20 MS. LITTLE: Objection. Hearsay.

21 THE COURT: Overruled.

22 MS. MCKENZIE: Thank you, Your Honor.

23 A. Yes, ma'am. She was --- during excited utterance she
24 was saying she had gotten thrown off the back of a
25 motorcycle. She basically didn't go into much detail

RODNEY B. HOPKINS - DIRECT EXAMINATION

194

1 at that time. She was just wondering about her
2 mother. She was saying there was an altercation in
3 the City of Hartsville, and she was forced onto
4 motorcycle by her ex-boyfriend. And at that point, I
5 had her lay down and kind of quite down, because I
6 could tell she was in a lot of pain, and I was worried
7 more about her injuries at that time.

8 Q. Did EMS respond to the scene?

9 A. Yes, ma'am.

10 Q. Now, when you got to the scene, did you see a
11 motorcycle there?

12 A. No, ma'am.

13 Q. Tell us what happened after EMS responded?

14 A. Once EMS got there, they were packaging the
15 patient/victim for transport to the hospital. I went
16 and talk to the truck driver, who was Cedric Gibson,
17 and I got a verbal statement from him telling me what
18 he had observed, and what she had told him.

19 Q. Did you have an opportunity to go up to the hospital
20 later that night?

21 A. Yes, ma'am.

22 Q. What hospital was the victim located at?

23 A. Carolina Pines Regional Medical Center.

24 Q. Did you have an opportunity to speak with her there?

25 A. Yes, ma'am.

1 Q. I am going to ask you about, as far as your job duties
2 go, in responding to these types of calls, is it
3 common to get a written statement from the victim in
4 this type of situation?

5 A. Yes ma'am, very common.

6 Q. Were you able to get a written statement from Ms.
7 Dorothy Perkins that night?

8 A. No, ma'am.

9 Q. And why not?

10 A. Both of her arms --- she couldn't move her arms. She
11 was not in a good frame of mind to get a written
12 statement from at that time. Once I got to the
13 hospital, they had already started giving her some
14 medication for her pain.

15 Q. I am going to show you what has been marked as State's
16 Exhibit Number 24. Do you recognize that picture?

17 A. Yes, ma'am.

18 Q. And who took that picture?

19 A. I did.

20 Q. Where was that picture taken?

21 A. Carolina Pines Hospital.

22 Q. Now State's Exhibit Number 22.

23 A. Yes, ma'am. I took that photo also.

24 Q. Who is that photo of?

25 A. It's Dorothy Perkins' right extremity, her arm.

1 Q. State's Exhibit Number 7. Do you recognize that
2 photo?

3 A. Yes, ma'am.

4 Q. Who took that photo?

5 A. I did.

6 Q. What does that photograph depicting?

7 A. It is, both of her knees, her lower extremities.

8 Q. State's Exhibit Number 6.

9 A. Yes, ma'am. I took that photo also.

10 Q. And who is that photo of?

11 A. That is Dorothy Perkins.

12 Q. Now, as part of your duties, at what point would your
13 job end in a situation like this?

14 A. Our job detail, once we try to get a written
15 statement, and take photographs, we contact the on-
16 call investigator.

17 Q. Was an on-call investigator contacted in reference to
18 this case?

19 A. Yes, ma'am..

20 Q. Who was that?

21 A. Investigator Chad McInville.

22 MS. MCKENZIE: Please answer any questions Ms. Little
23 may have at this time.

24 MR. HOPKINS: Yes, ma'am.

25 THE COURT: Cross examination.

CROSS EXAMINATION BY MS. LITTLE

Q. Officer Hopkins, did you witness any of the events that happened that night other than what happened after you got to the scene?

A. No, ma'am.

Q. So your knowledge of this would be based on what you were told by other people?

A. Correct.

MS. LITTLE: No further questions.

THE COURT: Is there redirect?

MS. MCKENZIE: No, Your Honor.

THE COURT: You may step down. Call your next witness.

MS. MCKENZIE: At this time The State calls Office Jackie Catoe.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, JACKIE RYAN CATOE

BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. CATOE: I do.

DIRECT EXAMINATION BY MS. MCKENZIE

Q. Please state your full name for the record.

A. Jackie Ryan Catoe.

Q. Where are you currently employed?

A. Darlington County Sheriff's Office.

JACKIE RYAN CATOE - DIRECT EXAMINATION

198

1 Q. What is your position with the Sheriff's Office?

2 A. Just a road deputy.

3 Q. Where were you employed in October of 2008?

4 A. Hartsville Police Department.

5 Q. What was your position with the Hartsville Police
6 Department?

7 A. Patrol Officer.

8 Q. In October of 2008, how long had you been a patrol
9 officer?

10 A. Two years.

11 Q. Okay. Were you working on the night of October 14,
12 2008?

13 A. I was.

14 Q. What time did you receive a call to go to East Home
15 Avenue?

16 A. Around 11:30 p.m. I don't know the exact time.

17 Q. Okay. Please describe what you observed when you
18 responded to that location.

19 A. Responded to the location. Went inside the house. I
20 saw Ms. Victoria Perkins sitting in a chair. She had
21 blood all over the side of her face. She had a towel
22 held up to her head. I asked her what happened. She
23 said that her daughter --

24 **MS. LITTLE:** Objection. Hearsay.

25 **THE COURT:** Counsel, ask the question about how long

1 after the incident the officer arrived.

2 MS. MCKENZIE: I will backtrack and lay a foundation.

3 THE COURT: Lay a foundation.

4 MS. MCKENZIE: Yes, sir.

5 Q. Do you recall who the complaining witness was when you
6 received the call from dispatch?

7 A. It was --- I cannot remember her name. It was
8 Nobles.

9 Q. And approximately what time did you receive that call?

10 A. Around 11:30.

11 Q. And how long did it take you to get to house?

12 A. Just few minutes.

13 Q. And whose residence did you first arrive at? Who was
14 the owner of that residence?

15 A. Tommy Perkins.

16 Q. When you first saw Ms. Victoria Perkins, what type of
17 emotional or state of mind --- emotional condition or
18 state of mind was she in at that time?

19 A. Extremely upset. You could tell she was --- she was
20 in tears. She was very distraught, upset. She was
21 just talking, saying her head hurt.

22 Q. Okay. Were you able to gather any information about
23 what happened?

24 A. Yes, ma'am.

25 Q. What did she tell you?

JACKIE RYAN CATOE - DIRECT EXAMINATION

200

1 A. She said that she --

2 THE COURT: Ms. Little, are you going to object?

3 MS. LITTLE: I do object, Your Honor.

4 THE COURT: All right, let me just take moment before
5 you answer. Let me talk to the jury about this. We've
6 mentioned this a little earlier. You know, we were all
7 children and we played a game I suspect where you sit in a
8 circle and whispered something, and it started around the
9 circle. And by the time it got back to the other side of
10 the circle it was completely different. The hearsay rule
11 protects out of Court statements from third parties being
12 brought into evidence through another witness. Obviously,
13 the best evidence of what someone says is to bring that
14 person in and let him say what they said rather than
15 someone saying what they heard someone said, if that makes
16 sense to you. But, there are certain exceptions to the
17 hearsay rule, and the hearsay rule can get a little bit
18 complicated with the exceptions. But the Court finds, that
19 this applies to an exception that it is either an excited
20 utterance, or it expressing an existing mental, emotional,
21 or physical condition of declarant. Therefore, I am
22 overruling any objections that are made that this is
23 hearsay, and permit the question to be answered. So, why
24 don't you just phrase the question again, so our witness
25 can flow, go ahead and respond.

1 MS. MCKENZIE: Yes, Your Honor.

2 Q. What did Ms. Victoria Perkins tell you had happened to
3 her?

4 A. She said that her daughter and her boyfriend --- ex-
5 boyfriend had gotten in a confrontation and starting
6 fighting, and that she tried to break it up, and that
7 the Defendant struck her with an object. She couldn't
8 tell me what it was. I found out later what it was,
9 but she said it was something in the house.

10 Q. Okay. Did she say where her daughter was at that
11 time?

12 A. She did. She said that he forced her onto his
13 motorcycle and took her off towards Darlington.

14 Q. Okay. Did you have an opportunity to go to the home
15 of Ms. Victoria Perkins?

16 A. I did.

17 Q. And where was that home located?

18 A. Right next door.

19 Q. When you went next door, explain to the Court what you
20 found inside that residence?

21 A. When you walk in the front door there is a living
22 room. We walk in, and there was blood on the floors,
23 pooled in certain areas. There is a bedroom straight
24 to the left. You can see blood on the wall,
25 doorframe, and more blood pooled into the floor of the

JACKIE RYAN CATOE - DIRECT EXAMINATION

202

1 bedroom, and some on the bed itself. On the couch
2 inside the living room, there was a little statue that
3 was a porcelain whatnot. The only think I know to
4 call it, one of those that come out around Christmas
5 time that plays music that is what it appeared to be.
6 It was covered in blood also. It had parts chipped
7 off of it and broken.

8 Q. Okay.

9 MS. MCKENZIE: Your Honor, permission to approach the
10 witness.

11 THE COURT: You may.

12 Q. Officer Catoe, I am going to show you a few
13 photographs if you don't mind. Step down so the jury
14 can see. But you are going to have to speak up as we
15 step away from the court reporter's microphone, so
16 just be sure you still try to project your voice. I
17 am going to show you what has been marked State's
18 Exhibit Number 14. What does that photograph depict?

19 A. That was inside the bedroom beside the living room,
20 next to a chest of drawers, right when you went inside
21 the bedroom.

22 Q. What did the substance on the floor appear to be?

23 A. It was blood. It had a footprint in the blood.

24 Q. State's Exhibit Number 11.

25 A. This was on the bed in the same bedroom. This is the

1 quilt, because it had blood on it.

2 Q. State's Exhibit Number 16.

3 A. This here was beside the chest of drawers in the same
4 bedroom. Blood on the wall, which earlier was the
5 blood pool down here.

6 Q. Fifteen.

7 A. This here is the doorframe in between the living and
8 the bedroom, or blood smeared on the frame of the door
9 itself.

10 Q. State's Exhibit Number 17.

11 A. This is the chest of drawers with the pool of blood at
12 the bottom. There is blood around the top and on the
13 corner of the chest of drawers.

14 Q. Where was the chest of drawers located?

15 A. It was when you first walked into the bedroom, it was
16 against the wall on the left.

17 Q. Okay. State's Exhibit Number 19.

18 A. Again, this is on the door. Part of the doorframe and
19 inside the bedroom leading to back out into another
20 room away from the living room.

21 Q. Number 18.

22 A. This is the couch in the living room itself. It has
23 blood on the couch, and bit and pieces of a little
24 glass from the ornament thing.

25 Q. State's Exhibit Number 13.

JACKIE RYAN CATOE - DIRECT EXAMINATION

204

- 1 A. This is the ornament whatnot that had parts missing.
2 It is also covered in blood.
- 3 Q. Where was this located in the residence?
- 4 A. That was laying on the couch.
- 5 Q. Was it there --- that was the condition you found it
6 in?
- 7 A. Exactly.
- 8 Q. State's Exhibit Number 21. Where was that located?
- 9 A. This was located beside the couch on the floor, and
10 blood caked all in through the quilt. It was folded
11 up like someone had their head laying on it.
- 12 Q. I am going to show you State's Exhibit Number 1. Do
13 you recognize this object?
- 14 A. I do. That is what I retrieved off the couch.
- 15 Q. What did you do with it after you retrieved it off the
16 couch?
- 17 A. I placed it into evidence.
- 18 Q. Were there any others --- Did you observe or see any
19 other broken pieces of the ornament in the residence?
- 20 A. There were little small fragments of it laying on the
21 couch, and some on the floor.
- 22 Q. After you went to the residence next door, to [REDACTED]
23 what did you do after you looked at the scene, and did
24 your work there? What did you do next?
- 25 A. Went to Carolina Pines to check on Ms. Victoria.

JACKIE RYAN CATOE - CROSS EXAMINATION

205

1 Q. Okay. And did you see her there?

2 A. I did.

3 Q. What kind of condition was she in when you go there?

4 A. Still very distraught. Medical personnel were tending
5 to her, so I was trying not to get in their way, since
6 her health was more important at the time trying to
7 her stabilized.

8 Q. I need you to speak up just a little bit. You faded
9 out at that little part. I didn't hear you.

10 A. Medical personnel were taking care of her, so I wasn't
11 trying to get to close to her. Since her health was
12 very important, I was trying to stay back at that
13 time, until she got stabilized.

14 MS. MCKENZIE: Okay. Please answer any questions Ms.
15 Little may have.

16 THE COURT: Cross examination.

17 CROSS EXAMINATION BY MS. LITTLE

18 Q. Good morning, officer?

19 A. Good morning.

20 Q. When you arrived at East Home Avenue, all these events
21 that you are talking about had already taken place is
22 that correct?

23 A. Correct.

24 Q. So your knowledge of those events would have come from
25 what you were told by other people?

JACKIE RYAN CATOE - CROSS EXAMINATION

206

1 A. Correct.

2 Q. And what you observed at the scene?

3 A. Correct.

4 Q. Now, I want to ask you about --- in your report you
5 mentioned that there --- you testified earlier there
6 was blood, and you mentioned there were some
7 footprints in the blood?

8 A. Yes, ma'am.

9 Q. Did anybody take any evidence, or measurements, or try
10 to determine whose footprints those people belonged
11 to?

12 A. Not to my knowledge.

13 Q. Okay. Would that have been your job to do?

14 A. No, ma'am.

15 Q. Okay. Whose job would that have been?

16 A. An investigator.

17 Q. The investigator who followed up on the case?

18 A. Yes, ma'am.

19 Q. Who was that?

20 A. I believe it was Lieutenant Spect.

21 Q. So as far as --- You mentioned that there was blood on
22 the ornament or whatnot?

23 A. Yes, ma'am.

24 Q. Do you know whose blood that was? Was there any
25 testing done to see whose blood that was?

1 A. Not to my knowledge.

2 Q. Do you know whether the ornament was ever tested to
3 see if there were fingerprints on it?

4 A. Not to my knowledge.

5 Q. But that would not have been your job, your
6 responsibility?

7 A. No, ma'am.

8 MS. LITTLE: No further questions.

9 THE COURT: Is there redirect?

10 MS. MCKENZIE: Briefly, Your Honor.

11 REDIRECT EXAMINATION BY MS. MCKENZIE

12 Q. Officer Catoe, what types of services is it common in
13 your work as an officer to find fingerprints on?

14 A. Mostly burglaries, but any type of aggravated assaults
15 or murders or such.

16 Q. What types of services?

17 A. Services. I'm not understanding what you are asking.
18 I've never took fingerprints personally, if that is
19 what you are asking. I wasn't even assigned a
20 fingerprint kit.

21 MS. MCKENZIE: Okay. No further questions.

22 THE COURT: All right, sir, you may step down.
23 Please call your next witness.

24 MS. MCKENZIE: The State calls Neal Flowers.

25 THE COURT: Please come forward and take the oath of

WILBUR MCNEALEY FLOWERS - DIRECT EXAMINATION

208

1 a witness.

2 WHEREUPON, WILBUR MCNEALEY FLOWERS

3 BEING DULY SWORN TESTIFIES AS FOLLOWS

4 MR. FLOWERS: I do.

5 THE COURT: Please state your full name for us?

6 MR. FLOWERS: Wilbur McNealey Flowers.

7 THE COURT: Thank you, Madam Solicitor.

8 MS. MCKENZIE: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MS. MCKENZIE

10 Q. Officer Flowers, where are you employed?

11 A. Darlington County Sheriff's Office.

12 Q. What is your position there?

13 A. Now I am a narcotic sergeant.

14 Q. What was your position in October of 2008?

15 A. Lance Corporal on patrol.

16 Q. And did you have an opportunity to have any
17 involvement in this case?

18 A. Yes, I did.

19 Q. And please explain what it is that you did?

20 A. When it came into shift at 6:00-o'clock that morning,
21 we had gained information from investigators. They
22 were looking for a suspect and possible motorcycle
23 involved in the incident.

24 Q. What would be the date of that morning you came in?

25 A. October 15th.

1 Q. Who is the suspect that they were looking for?

2 A. Curtis Bradley --- Curtis Nealey. Excuse me.

3 Q. I interrupted you. Continue with what you were doing
4 that morning when you came in.

5 A. Once we got the information about who we were looking
6 for, and the motorcycle we were looking for, we
7 checked several possible locations. We've had contact
8 with Nealey before. We went to Easy Living Trailer
9 Park which is on [REDACTED]. Checked the residence where he
10 supposedly resided at. Didn't find anyone there.
11 Checked the whole mobile home area in that trailer
12 park. Ended up locating the motorcycle they were
13 looking for on Peeble Drive, or on Tulip Drive, which
14 is a street over from Peeble Drive, which is where his
15 residence was listed as being. It was parked behind a
16 mobile home. Directly behind the mobile at the very.
17 end of Tulip Drive.

18 Q. Were you able to determine whose mobile home the
19 motorcycle was parked behind?

20 A. It ended up being the maintenance man for the mobile
21 home park. Talked to the subjects inside the
22 residence. They said they didn't even know the
23 motorcycle was there.

24 MS. LITTLE: Objection. Hearsay.

25 THE COURT: I'm going to sustain.

NEAL FLOWERS - CROSS EXAMINATION

210

1 MS. MCKENZIE: I'll rephrase, redirect him.

2 Q. Was this where the motorcycle was found, behind that
3 particular building or structure? Where was that
4 located in reference in or in comparison to Mr.
5 Nealey's residence?

6 A. It was a road over to the right if you going into the
7 trailer park.

8 Q. How many trailers in between would you say in that
9 distance?

10 A. Maybe eight or ten.

11 MS. MCKENZIE: No further questions. Please answer
12 anything Ms. Little may have.

13 THE COURT: Cross Examination.

14 CROSS EXAMINATION BY MS. LITTLE

15 Q. Officer Flowers, did you take any photos of the
16 motorcycle when you located it that morning?

17 A. No, I didn't.

18 Q. Could you tell by touch or feel whether the motorcycle
19 had recently been driven?

20 A. I did touch --- I put the back of my hand up to the
21 motor to see if it was warm. It was cold to the
22 touch, which maybe indicated it had been there for
23 several hours or so.

24 Q. Did you happen to note whether or not there was any
25 blood on the motorcycle?

1 A. I did not see any.

2 MS. LITTLE: No further questions.

3 THE COURT: Is there further redirect?

4 MS. MCKENZIE: No, Your Honor.

5 THE COURT: All right, sir, you may step down.

6 Please call your next witness.

7 MS. MCKENZIE: Your Honor, The State calls Chad
8 McInville.

9 THE COURT: Please come forward and take the oath of
10 a witness.

11 WHEREUPON, MICHAEL CHAD MCINVILLE,
12 BEING DULY SWORN TESTIFIES AS FOLLOWS
13 DIRECT EXAMINATION BY MS. MCKENZIE:

14 Q. Please state your full name for the record?

15 A. Michael Chad McInville.

16 Q. Who are you employed with?

17 A. Darlington County Sheriff's Office.

18 Q. What is your position there?

19 A. Now I am a first sergeant in investigations.

20 Q. What was your position in October of 2008?

21 A. Criminal Investigator in Investigations.

22 Q. Were you assigned to work on this case?

23 A. Yes, ma'am.

24 Q. Tell us about how it was that you got involved and
25 assigned to this case.

MICHAEL CHAD MCINVILLE - DIRECT EXAMINATION

212

- 1 A. I received a call through our dispatch that they had
2 an altercation and I needed to respond to the hospital
3 to meet with the deputies. I did respond to the
4 hospital. I got there roughly 1:00 a.m.
- 5 Q. Which deputies did you meet with when you got to the
6 hospital? Who were they?
- 7 A. The main one that I spoke to Deputy Hopkins.
- 8 Q. Okay. And what was going on when you got to the
9 hospital?
- 10 A. Deputy Hopkins advised me of what information he had
11 at that time. The victim at that time they were ---
12 the medical staff was working on her.
- 13 Q. Okay. And would it be as a part or in the course of
14 --- your investigation, did you attempt to get a
15 statement from the victim?
- 16 A. There was no way to get one that night due to the fact
17 that they were working on her, and I was told that she
18 would have to be in x-rays, and just no way that
19 night.
- 20 Q. All right. Did you make any other attempts?
- 21 A. Yes. I actually called the next day, and I was
22 advised that --- and of course, they wouldn't tell me
23 much on the phone, I was just advised that she
24 wouldn't be able to give a statement that day. I did
25 follow up the following day. Went back that morning

1 and advised that she was still was not able. I
2 believe she was in surgery. I think that was on the
3 sixteenth. Yeah, advised that she was in surgery, and
4 then I checked back on the seventeenth, that morning,
5 and later on that day I was actually able to speak
6 with her.

7 Q. Okay. When you spoke to her, did you get a statement
8 from her?

9 A. Yes, I did.

10 MS. MCKENZIE: Beg the Court's indulgence.

11 (PAUSE.)

12 Q. Investigator McInville, as part of your duties with
13 the Sheriff's Office do you commonly take
14 fingerprints?

15 A. Yes.

16 Q. What types of surfaces are fingerprints commonly found
17 on?

18 A. Mainly your smoother type of surfaces, nonridged type
19 surfaces are the easier ones to lift.

20 MS. MCKENZIE: Thank you. Please answer any
21 questions Ms. Little may have at this time.

22 THE COURT: Is there cross examination?

23 MS. LITTLE: None, Your Honor.

24 THE COURT: All right, sir, you may step down. Thank
25 you.

1 Please call your next witness.

2 MS. MCKENZIE: Your Honor, that would conclude the
3 witnesses that The State would be called. That would
4 include our testimony.

5 THE COURT: The State rests?

6 MS. MCKENZIE: Yes, sir. I did want to make sure
7 that Exhibits One through 26 were in evidence. Twenty-Six
8 was the last one, added today.

9 THE COURT: Very good. There was an agreement
10 previously that 1 through 26 in evidence, any comment on
11 that, counsel?

12 MS. LITTLE: Your Honor, I just believe you had
13 already ruled those were in admissible over my objection.

14 THE COURT: Very good. One through 26 in evidence
15 for The State which means you will have Exhibits 1 through
16 26 with you in the jury room when you retire to deliberate.

17 All right ladies and gentlemen, at this point at the
18 conclusion of any party's case in a criminal prosecution,
19 the Court stops. And I have certain matters I need to take
20 up with the parties. I am going to let you go back to the
21 jury room for a moment. We will get a better sense of
22 whether there are further proceedings in this matter, and
23 to what extent. We will be able to tell you that shortly,
24 so just enjoy your break. Please don't discuss the case.
25 We will let you go back to the jury room for a few moments.

1 (Whereupon, the jury exits the courtroom at 11:43
2 a.m..)

3 THE COURT: All right, before we go into any further
4 proceedings, Mr. Sanford, I know you said earlier that your
5 class will be leaving. Has the time arrived to leave?

6 MR. SANFORD: We have until about 12:30.

7 THE COURT: All right, very good. We are going to
8 have a hearing now and actually talk with the Defendant
9 about his constitutional rights, and then we will proceed
10 into the Defendant's case, if the Defendant wishes to put
11 up a case. So what I would ask you all to do is, we will
12 probably break for lunch around that time, I'm thinking but
13 I am not certain of that, but if you need to leave before
14 we break --- if you will just wait until either the end of
15 witness, or if we break between direct and cross
16 examination, then feel free to leave. If I don't get to
17 speak with you, ladies and gentlemen, again, we were glad
18 to have you here in the courtroom with us.

19 MOTIONS

20 THE COURT: All right, at this point let me speak
21 with the Defense counsel and first ask, at the close of the
22 State's case, are there any motions from the Defendant?

23 MS. LITTLE: Yes, Your Honor. The Defendant moves
24 for a directive verdict in all charges. Specifically, Your
25 Honor, as to the charge of possession of a weapon during

THE STATE V CURTIS RAY NEALEY

216

1 the commission of a violent crime with the victim, Ms.
2 Victoria Perkins. There was no testimony in this courtroom
3 that Ms. Victoria Perkins even saw a knife, until she
4 claims she saw a knife outside while she was inside her
5 house peering outside, and the Defendant was leaving.

6 THE COURT: All right, just one moment, please.

7 (PAUSE.)

8 THE COURT: Counsel, it appears to me, that the two
9 possession of a weapon charges during a violent crime, one
10 is with regard to assault and battery with intent to kill,
11 and the other is for criminal domestic violence of a high
12 and aggravated nature, both of those against the Defendant.
13 All right. Just one moment, please.

14 (PAUSE.)

15 THE COURT: You are right. What do you say to that,
16 Madam Solicitor, that there is a charge against the
17 Defendant with regard to both victims, and that he
18 possessed a knife during the commission of a violent crime
19 against both victims, what do you say to that?

20 MS. MCKENZIE: Your Honor, Ms. Victoria Perkins did
21 testify yesterday that she --- after she was hit over the
22 head with the object did go into the front bedroom. It was
23 just a few feet away from the living room. She heard
24 conversation about the knife, and heard statements and
25 commotion going on, and her daughter saying for him to put

1 up the knife. And then after they left the residence and
2 went out the front door she looked out the window and saw
3 the knife, and then that was her testimony.

4 THE COURT: All right.

5 MS. MCKENZIE: We would --- We would argue that she
6 was still in fear that the knife was going to be used
7 against her. She had heard conversation about the knife
8 and her being threatened against her life and was just a
9 few feet away in that front bedroom.. Because at that time
10 he was telling Dorothy Perkins that he was going to kill
11 her mother too, if she did comply and go with him.

12 THE COURT: And do you have a reply to that?

13 MS. LITTLE: Well, Your Honor, based on what they are
14 alleging in the Indictment, it specifically says, he did
15 visibility display a knife while committing an assault and
16 battery with intent to kill on Ms. Victoria Perkins.

17 Again, no testimony from that victim that he was using
18 a knife when she was assaulted with the whatnot.

19 THE COURT: All right, very good. I am going to
20 grant the dismissal of that one particular charge. I find
21 that there is no evidence that the knife was displayed
22 during the commission of the crime against the victim,
23 Victoria Perkins, which is an element of that crime. The
24 fact that she saw a knife later after her crime was
25 completed, the crime against her allegedly was complete,

THE STATE V CURTIS RAY NEALEY

218

1 does not satisfy the elements of the charge as defined by
2 South Carolina Statutes. Thus, the Court dismisses the
3 charge of possession of a weapon during the commission of a
4 violent crime with regard to the victim, Ms. Victoria
5 Perkins.

6 All right, now is there anything further. Let's just
7 make sure we've got the correct Indictment Number. That
8 would be indictment number 09-16-871. The Court dismisses
9 in favor of the Defendant.

10 All right, that leaves five remaining charges. What
11 say you with regard to any further arguments at the close
12 of The State's case?

13 **MS. LITTLE:** Your Honor, just argue as to the
14 remaining charges that we move for Directed Verdict. We
15 believe The State has failed to present any competent
16 evidence tending to suggest the client's guilt on those
17 charges.

18 **THE COURT:** All right, without taking argument from
19 The State, the Court is going to deny those issues. The
20 issue before the Court is whether there is any evidence
21 that against --- any competent evidence that tends to prove
22 the guilt of the accused at this juncture.

23 I find that there is sufficient evidence in the record
24 for the other five remaining charges to go forward, and
25 deny that motion.

1 Anything further, now from Defendant at this juncture?

2 MS. LITTLE: No, Your Honor. The Defendant request
3 just a five minute break before you talk to him about his
4 right to testify.

5 THE COURT: All right. Very good. We will take ---
6 Actually we'll just wait right here while you take that
7 break. We will let you step out for a moment.

8 (PAUSE.)

9 THE COURT: All right, ladies and gentlemen, when the
10 Defendant comes back in, I am going to talk with the
11 Defendant about his right to remain silent, as well as his
12 right to testify in this proceeding if he wishes to. I am
13 going to explain those rights to him in detail. I am going
14 to assure that he understands those rights, and then I am
15 going to ask him an election as to whether or not he
16 intends to appear as a witness in this case. All these are
17 constitutional rights that the Defendant is afforded that
18 you will hear me discussing with him.

19 Counsel, let me ask you to step up a moment while we
20 are waiting for Mr. Nealey to come back in the courtroom.
21 Let's talk about scheduling.

22 (Whereupon, a bench conference was held.)

23 THE COURT: All right, let me ask Mr. Nealey, would
24 you stand, please sir, and just stand where you are, we are
25 going to place you under oath. Please follow our Clerk's

CURTIS RAY NEALEY - EXAMINATION BY THE COURT

220

1 instructions.

2 WHEREUPON, CURTIS RAY NEALEY

3 BEING DULY SWORN TESTIFIES AS FOLLOWS

4 MR. NEALEY: Yes, I do.

5 THE COURT: All right, Mr. Nealey, have you had an
6 opportunity to --- and I want you to stand while I talk
7 with you, sir. Have you had an opportunity to talk with
8 your lawyer about your right to remain silent in this
9 proceeding, as well as your right to testify in this
10 proceeding?

11 MR. NEALEY: Yes, sir.

12 THE COURT: All right, let me talk with you about
13 your right to remain silent first. Are you aware --- and
14 of course, we are now at the close of The State's case, and
15 thus it is time for the Defendant to put up a case, if you
16 wish to do so. Do you understand that?

17 MR. NEALEY: Yes, sir.

18 THE COURT: In this proceeding, because you have no
19 burden of proof, because you are not required to prove
20 yourself innocent, you are not required to testify, and you
21 have the right to remain silent in this proceeding. Do you
22 understand that?

23 MR. NEALEY: Yes, sir.

24 THE COURT: And if you elect not to testify, this
25 Court will tell the jurors that they may take no inference

1 against you from that, because you have a right to remain
2 silent, because you have no burden in this trial. Do you
3 understand?

4 MR. NEALEY: Yes, sir.

5 THE COURT: And is what I've just explained to you
6 about your right to remain silent is the same thing your
7 lawyer has told you about your right to remain silent?

8 MR. NEALEY: Yes, sir.

9 THE COURT: All right. Do you understand your right
10 to remain silent as I have explained it to you?

11 MR. NEALEY: Yes, sir.

12 THE COURT: Do you have any questions about your
13 right to remain silent?

14 MR. NEALEY: No, sir.

15 THE COURT: By the same token, you also have the
16 right to testify, and the choice is yours. If you do
17 choose to testify of course, you will not only be subject
18 to direct examination under oath by your own attorney, but
19 you will be subject to cross examination by The State's
20 attorney in the presence of a jury, and whatever you say
21 may be used against you or for you as they determine the
22 evidence to be. Do you understand that, sir?

23 MR. NEALEY: Yes, sir.

24 THE COURT: And is what I've just told you about your
25 right to testify the same as your lawyer has told you about

CURTIS RAY NEALEY - EXAMINATION BY THE COURT

222

1 your right to testify?

2 MR. NEALEY: Yes, sir.

3 THE COURT: Do you also understand that if you take
4 the stand as a witness, and you have prior criminal
5 convictions, those may come into evidence on the issue of
6 credibility and believability of you as a witness? Do you
7 understand that?

8 MR. NEALEY: What do you mean by criminal --- like
9 misdemeanors?

10 THE COURT: Well, I haven't discussed whether you
11 have a prior criminal record or not, but if you do anything
12 on your rap sheet that may come into evidence against you
13 on the issue of whether you are believable or credible as a
14 witness, and thus the jury will hear it for that limited
15 purpose. Do you understand that?

16 MR. NEALEY: Yes, sir.

17 THE COURT: All right. Now is what I've just
18 explained to you the same about your right to testify the
19 same is what your lawyers told you?

20 MR. NEALEY: Yes, sir.

21 THE COURT: Do you have any questions about your
22 right to testify?

23 MR. NEALEY: No, sir.

24 THE COURT: Do you understand what I have explained
25 to you about your right to testify?

1 MR. NEALEY: Yes, sir.

2 THE COURT: All right, sir, have you had an
3 opportunity to speak with your attorney about whether you
4 intend to testify or not?

5 MR. NEALEY: Yes, sir.

6 THE COURT: And what is your intention?

7 MR. NEALEY: I am going to testify.

8 THE COURT: All right, sir. And that decision to
9 testify, have you made that decision, or has someone make
10 it for you?

11 MR. NEALEY: I made the decision, because it happened
12 a different way, and if I don't put my point or whatever,
13 you know, I have no defense.

14 THE COURT: All right, sir. Has anybody tried to
15 force, or require you, or push you to do this?

16 MR. NEALEY: No, sir.

17 THE COURT: So you are telling me this is your
18 voluntary decision you have made to testify?

19 MR. NEALEY: Yes, sir.

20 THE COURT: Very good. Is there anything further the
21 Defense counsel would have me ask Mr. Nealey at this point,
22 about his right to remain silent or his right to testify?

23 MS. LITTLE: No, sir.

24 THE COURT: Very good. Are you ready to go forward,
25 Mr. Nealey?

THE STATE VERSUS CURTIS RAY NEALEY

224

1 MR. NEALEY: Yes, sir.

2 THE COURT: All right. Is there anything The State
3 would have me ask Mr. Nealey about his right to remain
4 silent or his right to testify?

5 MS. MCKENZIE: Nothing, Your Honor.

6 THE COURT: All right, very good. Ladies and
7 gentlemen, it will be our intention to go ahead and take
8 Mr. Nealey's testimony prior to the lunch break. We will
9 do that at this time. Please bring in the jury.

10 (Whereupon, the jury enters the courtroom at
11 11:55 a.m.)

12 THE COURT: All right, welcome back ladies and
13 gentlemen. I want to tell you that in the course of
14 Motions made at the close of The State's case, the Court
15 has dismissed one of the charges against Mr. Curtis Ray
16 Nealey. He had two charges of possession of a weapon
17 during the commission of a violent crime. And it is
18 alleged in the Indictment that the Defendant did visibly
19 display a knife during the commission of an assault and
20 battery with intent to kill against the victim, Victoria
21 Perkins.

22 The Court finds that there is no evidence during the
23 commission of an alleged crime against Ms. Perkins that
24 there was a knife displayed or brandished at her or against
25 her. There is testimony in the evidence about a knife, but

1 it was not during the commission of a crime against Ms.
2 Perkins, that is Ms. Victoria Perkins and for that reason
3 one of the charges is dismissed. We now have five
4 remaining charges.

5 We've talked with the Defendant. They are ready to
6 proceed at this time. Please call your first witness.

7 MS. LITTLE: Thank you, Your Honor, Defense calls Mr.
8 Curtis Nealey.

9 THE COURT: Please come forward and take the oath of
10 a witness.

11 WHEREUPON, CURTIS RAY NEALEY

12 BEING DULY SWORN TESTIFIES AS FOLLOWS

13 MR. NEALEY: Yes, I do.

14 THE COURT: Sir, please your full name for us, and
15 spell your last.

16 MR. NEALEY: Curtis Ray Nealey. N-E-A-L-E-Y.

17 THE COURT: Thank you. Counsel.

18 DIRECT EXAMINATION BY MS. LITTLE

19 Q. Good morning, Curtis.

20 A. How are you?

21 Q. Curtis, how old are you?

22 A. Thirty-five.

23 Q. Where are you from?

24 A. Florence.

25 Q. And on October 14, 2008, where were you living?

CURTIS RAY NEALEY - DIRECT EXAMINATION

226

1 A. [REDACTED] Peeble Lane.

2 Q. What town was that?

3 A. Darlington.

4 Q. Do you recall the day of October 14, 2008?

5 A. Yes, ma'am.

6 Q. At some point during that day, did you receive a call
7 from Ms. Dorothy Perkins?

8 A. Yes, ma'am. She was off that day.

9 Q. Okay. And as a result of that call did you go get --

10 MS. MCKENZIE: Objection, Your Honor. She is leading
11 the witness.

12 THE COURT: I'm going to sustain that objection.
13 Ladies and gentlemen, while the witness is under oath, you
14 can't ask a question that suggest the answer. I'll give
15 you an example. If it was car wreck case, which this is
16 not a car wreck case, but if you said the car was blue on
17 direct that is inappropriate because the answer is
18 contained within the question. If you said what color was
19 the car, that would be appropriate on direct. Now you can
20 ask leading questions on cross, but not on direct. Don't
21 lead your witness, counsel.

22 MS. LITTLE: Thank you, Your Honor. I apologize for
23 that.

24 Q. Did you go visit Ms. Dorothy Perkins that day?

25 A. Yes, ma'am.

1 Q. Okay. About what time of day was it?

2 A. About 5:30, 6:00-o'clock.

3 Q. How were you traveling?

4 A. Motorcycle.

5 Q. All right. Tell us what happened when you got to
6 Dorothy's house. Who was there?

7 A. I got there. Nancy Nobles, Tommy Perkins, and Nancy
8 Nobles was putting up Halloween stuff in the yard.
9 Ms. Perkins was sitting in a chair on the porch and
10 Dorothy was sitting on the steps drinking beer.

11 Q. Okay. Did you spend some time there at the house that
12 afternoon?

13 A. Yes, ma'am.

14 Q. Approximately how long were you there? And tell the
15 jury what did you all do while you were there.

16 A. You talking about before or after we left originally.
17 The whole time we were -

18 Q. When you first got there.

19 A. When I first got there, probably sitting around.

20 Q. Okay. Were you all drinking during that time?

21 A. Yes, ma'am.

22 Q. Did you all do anything else? Did you all eat?

23 A. Yes, ma'am.

24 Q. Who cooked? Who cooked the meal?

25 A. Me and Dorothy cooked for her mother.

CURTIS RAY NEALEY - DIRECT EXAMINATION

228

1 Q. All right. After you all got through eating, what did
2 you do next?

3 A. After we got done eating or whatever, I had been
4 working on a house all day. My legs and stuff were
5 hurting, whatever and asked if they had any kind of
6 pills I could take, any kind of Tylenol or anything
7 like that. Ms. Perkins sold me four pain killers.
8 What you call like morphine pills. Five dollars a
9 piece.

10 Q. All right, so you purchased the medication from Ms.
11 Victoria Perkins?

12 A. Yes, ma'am.

13 Q. Do you know whether or not Ms. Dorothy Perkins took
14 any of that medication?

15 A. That particular one I don't know, but she did take
16 some other ones.

17 Q. Okay. Do you know what she was taking?

18 A. I'm not a doctor, I don't know exactly what, you know
19 what I am saying. I mean what she told me --- the
20 ones I bought was morphine pills, because my legs were
21 hurting, because I was working on a roof, putting on a
22 roof in a pretty big house or whatever, slinging
23 plywood all day, so I was sore, that is the reason she
24 sold them to me.

25 Q. Do you have any idea how many drinks Dorothy Perkins

1 had before you all left to go to the bar?

2 A. When I got there she had two forty-ounce King Cobras
3 in the refrigerator, whatever, that was drank. We
4 went back --- Me and her went back to The Markette,
5 which is right through the backyard. We got four more
6 forty-ounce King Cobras. We drank those, and she had
7 a bottle of liquor, which we was drinking shots.
8 Straight shots of vodka.

9 Q. Whose idea was it to go to the bar that night?

10 A. I think it was hers. I mean she was the one who
11 wanted to go shoot some pool. I am not exactly sure.

12 Q. All right. And when you and Dorothy left to go to the
13 bar was she wearing a motorcycle helmet?

14 A. No, ma'am.

15 Q. Did she normally wear a helmet when you all rode
16 together?

17 A. No, ma'am.

18 Q. Once you got to the bar, describe how long you stayed
19 there and what you all had to drink, please.

20 A. We stayed there probably an hour and a half or so. I
21 think they had two dollar drinks or whatever, which
22 was vodka drinks whatever, and they had draft beers
23 you could buy I think, like a dollar fifty drafts. We
24 shot pool. Played some music. Danced. Back there by
25 ourselves pretty much the whole time. Actually had a

CURTIS RAY NEALEY - DIRECT EXAMINATION

230

1 great time. I left and come back through town.

2 Q. All right. When you went back --- where did you all
3 go when you left the bar?

4 A. Straight back to her house.

5 Q. Okay. And tell me what happened next?

6 A. We just started watching --- she was watching some
7 movies whatever, relaxed and sit back whatever, and I
8 laid back on the couch, and things went from there.

9 Q. Okay. Things went from there.

10 A. Yes, ma'am.

11 Q. Tell the jury in your own words the events that
12 happened. Start from when you were laying on the
13 couch, and tell us what happened.

14 A. I was laying on the couch whatever, just relaxing
15 because I had been at work all day. I worked from
16 about you know, daylight or whatever, trying to finish
17 a quote on a house or whatever. I was behind.
18 Victoria was sitting in the chair. Dorothy was
19 sitting on a little love seat kind of one long ways,
20 and a little chair right here, and the t.v. was right
21 here and the couch was on the other side. Victoria
22 asked Dorothy, had she taken any of her medication,
23 and Dorothy told her no, that she hadn't taken it.
24 She told her that she had stole some of her
25 medication. And it just progressed along from there

CURTIS RAY NEALEY - DIRECT EXAMINATION

231

1 and whatever. They the ones that started arguing.
2 And Ms. Perkins got up and started assaulting Dorothy.

3 Q. Okay. Ms. Victoria Perkins was hitting Dorothy
4 Perkins?

5 A. Yes, ma'am.

6 Q. What was she hitting her with?

7 A. Her hands.

8 Q. Okay. Was Dorothy fighting back?

9 A. Not at first. She was sitting on the couch but
10 eventually she did.

11 Q. All right.

12 A. She stood up.

13 Q. Okay. What happened next?

14 A. She stood up and they was actually fighting. I tried
15 to get in between both of them and separate them.
16 And Ms. Perkins, once I separated them or whatever,
17 Ms. Perkins said she was calling the law on Dorothy,
18 because she was tired of her drinking and doing the
19 things she was doing. And Ms. Perkins went towards
20 the door and whatever, and Dorothy picked up a
21 whatnot and throwed it a Ms. Perkins.

22 Q. So ---

23 MS. LITTLE: May I approach the witness?

24 THE COURT: You may.

CURTIS RAY NEALEY - DIRECT EXAMINATION

232

1 Q. I am going to show you what is marked as --- this is
2 State's Exhibit Number 1. Is this object that you saw
3 Dorothy Perkins, throw at Victoria Perkins?

4 A. Yes, ma'am.

5 Q. Now could you tell if Ms. Victoria Perkins was
6 injured?

7 A. At that time, no, I didn't, because she was still --
8 Dorothy was still fussing and raising Cain. Ms.
9 Perkins said she was going to call the law or
10 whatever, so me and Dorothy left.

11 Q. Okay. While you were there at the house, did you ever
12 assault Ms. Victoria Perkins while you were at her
13 house that night?

14 A. No, ma'am.

15 Q. Did you assault Dorothy Perkins while you were at the
16 house that night?

17 A. No, ma'am. I just broke the fight up between them
18 two.

19 Q. Whose idea was it to leave?

20 A. Dorothy's.

21 Q. All right. At any time that night did you have a
22 knife in your hands?

23 A. No, ma'am.

24 Q. Do you recall --- Let me backtrack a minute. When you
25 came back from the bar, where did you park your

1 motorcycle?

2 A. In the backyard.

3 Q. Okay. So where you were parked would that be visible
4 from front-door of the house?

5 A. No, ma'am. There's a solid back door.

6 Q. Okay.

7 A. There is no way to see it from the front of the house.
8 It's impossible.

9 Q. Okay. And do you recall the circumstances involving
10 getting on your motorcycle and all that?

11 A. Yes. I got on, and she got on right behind me and we
12 left.

13 Q. Okay. Now I am going to ask you.

14 MS. LITTLE: Your Honor, may the witness step down
15 for a moment?

16 THE COURT: You may.

17 Q. I want you to show to the jury, if you are standing
18 right here and here is the motorcycle. What steps do
19 you have to take to get on the motorcycle? Is there a
20 kickstand?

21 A. Yes, ma'am.

22 Q. Okay. So can you demonstrate to the jury how you
23 would --

24 A. Of course. On a motorcycle or whatever, whenever you
25 put a kickstand on there, it automatically leans over

CURTIS RAY NEALEY - DIRECT EXAMINATION

234

1 to the side.

2 Q. Okay.

3 A. In order for someone to get on that motorcycle, you
4 got to stand that motorcycle up straight. Somebody
5 has to hold it in order for her or the other person to
6 get on the back, because the backseat is much higher
7 than the front seat on a motorcycle. It raises up to
8 about there.

9 Q. Okay.

10 A. So the person in driving the motorcycle has to
11 initially get on the motorcycle first in order for
12 someone to get on the back. If not, the motorcycle
13 will flip over.

14 Q. Okay. All right. You can sit back down. So is it
15 your testimony --- is it your testimony that you got
16 on the motorcycle first and she voluntarily got on the
17 back?

18 A. Yes, ma'am.

19 Q. And was she holding on?

20 A. Yes, ma'am.

21 Q. All right. And where did you all head toward?

22 A. Towards Billy Farrow Highway.

23 Q. And where were you planning to go?

24 A. Back to my house.

25 Q. Now tell us what happened next.

1 A. We was probably, maybe five miles past the cross roads
2 or whatever, just running about fifty-five-miles per
3 hour and she had her hands around me or whatever.
4 Next thing I know her hands just released beside me
5 and her feet fell off the foot pegs whatever, and her
6 head fell towards my back, and she just slid off the
7 side of the motorcycle.

8 Q. So it is your testimony that she fell off the
9 motorcycle?

10 A. Yes, ma'am.

11 Q. Was she drunk?

12 A. Yes, ma'am.

13 Q. She fell off the motorcycle, what did you do?

14 A. Stopped.

15 Q. Okay. And did you go back to the --

16 A. -- Yes, ma'am. I went back. Tried to help her get up
17 out the road. She seemed fine. I was trying to calm
18 her down. She was screaming, you know what I'm saying
19 like, she took a pretty hard hit. I mean, cause you
20 can see on the side of her face.

21 Q. Okay. The actions that you did at that time what were
22 they? I mean, you said you were trying to help her.
23 What did you do?

24 A. Just tried to calm her down. Kiss her and hugged her.
25 Try to get her to calm down.

CURTIS RAY NEALEY - DIRECT EXAMINATION

236

1 Q. Were you able to calm her down?

2 A. No, ma'am.

3 Q. All right. And what happened next.

4 A. Actually, a truck come up. And my motorcycle was in
5 the road or whatever and the truck was coming I
6 reckon, at regular speed or whatever. And I seen the
7 lights whatever, so I went to try to get the
8 motorcycle and get it out the yard --- I mean out the
9 road and then I seen her running towards the head
10 lights. So I turned around and tried to catch her,
11 because I didn't know if she was delirious, because
12 she hit her head that hard, and try to stop her from
13 running into ongoing traffic, you know. Which I tried
14 to grab her and stop her, or whatever. She was
15 hysterical. I don't know exactly what she was saying
16 and all. But then we got up to the side of the truck,
17 and she was hollering and screaming where you couldn't
18 hardly hear nothing, because that was a big diesel
19 truck. Then I seen a guy crack the window about this
20 far or whatever, and which I was scared at that time.
21 I didn't know, because he said he was calling the law
22 and he stuck something out the window whatever, which
23 I didn't know what it was. He said, I called the law
24 or whatever, so I left.

25 Q. Okay. You didn't have any idea what he had in his

1 hands that he was sticking out the window?

2 A. No, ma'am. Possibly it could have been a weapon. I
3 don't know.

4 Q. All right. At that point you left on your motorcycle?

5 A. Yes, ma'am.

6 MS. LITTLE: I don't have any further questions.

7 THE COURT: Cross examination.

8 MS. MCKENZIE: Yes, Your Honor.

9 CROSS EXAMINATION BY MS. MCKENZIE

10 Q. Good afternoon. So, you say that Dorothy is the one
11 that called you to go over that day. Is that right?

12 A. Yes, ma'am.

13 Q. And you pulled up and everybody was hanging out on the
14 front porch, you parked your motorcycle right there at
15 the front porch didn't you?

16 A. Originally I did, yes. She took my helmet and jacket
17 inside, and I moved the motorcycle around back.

18 Q. Okay. Originally --

19 A. -- So it wasn't sitting in the driveway.

20 Q. So originally, did you park in front of Ms. Perkins'
21 house right there at the road?

22 A. Yes. I pulled in front where everybody was sitting
23 at.

24 Q. And you did have a helmet?

25 A. Yes.

CURTIS RAY NEALEY - CROSS EXAMINATION

238

1 Q. Dorothy put it in the house?

2 A. Yes. I had a helmet on.

3 Q. You said you had a helmet, okay.

4 A. Yes.

5 Q. Well you say that your legs were hurting because you
6 had been doing some work that day. What kind of work
7 do you do?

8 A. I build houses.

9 Q. Okay. Well your legs must have been hurting real bad,
10 I mean, do you commonly take morphine?

11 A. No, ma'am, I don't.

12 Q. Did you ask Ms. Perkins if she had a Tylenol, or
13 Advil, or Aleve, because your legs were hurting?

14 A. I ask them, did they have any Tylenol, or Advil, or
15 whatever, and she said she had some pain pills, which
16 she had got when she had broken her leg.

17 Q. So morphine was just handed out, for your legs
18 hurting?

19 A. No, ma'am, it wasn't handed out I purchased it from
20 her.

21 Q. Do you commonly take those kinds of heavy prescription
22 drugs?

23 A. No, ma'am. I've never actually taken --

24 Q. It is your testimony that you took several that night?

25 A. Yes, I did. I took one.

1 Q. And was drinking at Frank's, is that right?

2 A. Yes, ma'am.

3 Q. Now is it your testimony that Dorothy -- that when you
4 all got back from Frank's, Dorothy was the one ---
5 Dorothy and her mother was the ones arguing, is that
6 correct?

7 A. Yes, ma'am.

8 Q. So it is your testimony that you and Dorothy never got
9 into any type of argument that evening about her
10 coming up to the courthouse with you to drop some
11 charges?

12 A. No, ma'am. She didn't have no reason to go with me to
13 the courtroom.

14 Q. Well, isn't it true that you have some pending
15 criminal domestic violent charges up here, and that
16 were pending at the time?

17 A. Yes, but that wasn't why I was going to Court for.

18 Q. So it is true that you had to go to Court the next
19 day?

20 A. I had to have a roll call to verify that I had a
21 lawyer. That is all I had to do.

22 Q. Okay. Now, so it is your testimony that the two of
23 them started arguing, and then she's the one that hit
24 her mother over the head with this object. Is that
25 correct?

CURTIS RAY NEALEY - CROSS EXAMINATION

240

1 A. Yes, ma'am.

2 Q. So, it is your testimony in this Court here this
3 afternoon --- did you see this picture?

4 A. Yes, I've seen it.

5 Q. You had no idea Ms. Perkins was injured. Is that your
6 testimony?

7 A. I had idea she was injured that bad.

8 Q. You had no idea she was bleeding?

9 A. No, ma'am. That was actually in her bedroom. I never
10 entered her bedroom.

11 Q. How about the living room, did you go to the living
12 room? There was blood in the living room was the
13 testimony earlier today, there was blood --

14 A. -- I never seen that.

15 Q. Were you aware of blood in the living room?

16 A. I never seen none.

17 Q. The couch is in the living room, is that correct?

18 A. Yeah. That's where the picture they showed me of the
19 whatnot was sitting.

20 Q. There is blood there on the couch. Wouldn't you
21 agree?

22 A. Yes. That it possibly could have come off the whatnot
23 or something.

24 Q. So it's your testimony that Dorothy hit her mother,
25 and then when law enforcement arrived a short time

CURTIS RAY NEALEY - CROSS EXAMINATION

241

1 later, there is all this blood in the house, but you
2 had no idea that this sixty-three-year-old woman had
3 been injured at all?

4 A. No, I didn't see no blood anywhere.

5 Q. You didn't see no blood at all. Is that your
6 testimony?

7 A. No, ma'am. That looks to be on the couch, but I mean,
8 you would have to look at that real closely, it being
9 a dark color to see it.

10 Q. You had no idea that she was injured, so that's why
11 you didn't call?

12 A. I had no idea she was injured like that.

13 Q. You stated that Dorothy and her mother was fussing,
14 and that Dorothy's mother, Ms. Perkins, threatened she
15 was going to call the law on Dorothy. Isn't it true
16 that Ms. Perkins doesn't have a phone in that
17 residence?

18 A. She was going to go to the door to go to Tommy's
19 house.

20 Q. Okay. So you agree that the phone was all the way
21 next door at Tommy's house. Is that correct?

22 A. Yes, ma'am.

23 Q. All right, and so it is your testimony that Dorothy
24 hit her mother in the head, and then she wants to
25 leave, and that you have no idea her mother was

CURTIS RAY NEALEY - CROSS EXAMINATION

242

1 bleeding, and you all left on the motorcycle?

2 A. Yes, ma'am.

3 Q. And you all insisted on going to your house, which is
4 at [REDACTED] Peeble Drive at that time. Is that correct?

5 A. Yes, ma'am. Yes, ma'am.

6 Q. Now when you all went to --- Did y'all --- What route
7 did you all travel to get back to Darlington?

8 A. Billy Farrow Highway.

9 Q. Now when you all were on Billy Farrow Highway, is it
10 your testimony that you begin to feel her slip? In
11 any way did you try to catch her?

12 A. It happened so quick or whatever, there was no way I
13 could catch her, whatever possibly. You have to have
14 two hands to drive a motorcycle or whatever. There
15 was no way I could catch her, whatsoever. Time she
16 slid against my back, she slid off the side of the
17 motorcycle, and that was all I could do. It's not
18 like I could turn around --

19 Q. You didn't reach an arm around to try to help her or
20 pull her, is that correct?

21 A. No, ma'am.

22 Q. You didn't try to help her?

23 A. It happened to quick. There was no way I could help
24 her.

25 Q. She fell off the motorcycle, and after that, did you

1 notice all the blood and how injured she was?

2 A. After a few minutes of us being there or whatever,
3 yes, I did see blood on the side of her face where she
4 had road rash. Yes, where she --

5 Q. -- Is that what you are referring to all that blood?

6 A. Yes, ma'am.

7 Q. Where she hit the road.

8 A. That's actual road rash.

9 Q. Okay. So would you say she was bleeding pretty bad?

10 A. Yeah. I would say she had some pretty deep gashes
11 right there on the side --

12 Q. And at that time, would you also agree that she had
13 some trouble with her arms?

14 A. No, I wouldn't say she had anything on her arms or
15 whatever, which I really didn't notice or whatever.
16 We were actually in the dark. I mean, there's no ---
17 I mean, back there on them roads it's pretty dark.

18 Q. So your testimony was that you tried to help her up,
19 so she never complained to you, in that effort trying
20 to help her up, about her arms being broke, is that
21 correct?

22 A. No, ma'am. The only thing that she complained about
23 was her back hurting.

24 Q. So were you present early this morning when the ER
25 doctor testified that both arms were broken. Did you

CURTIS RAY NEALEY - CROSS EXAMINATION

244

1 hear that testimony?

2 A. They were fractured. He said fractured, not broken.

3 Broken means severed in to. Fractures means like
4 fracts.

5 Q. So, when you reached down to pick her up --

6 THE COURT: Court will come to order.

7 Q. Please explain how you helped her up.

8 A. She actually stood up herself pretty much or whatever.

9 Q. So you didn't even have to offer a hand to help her
10 get up?

11 A. Well I mean, I did attempt to try to help. I mean, I
12 don't know exactly how I helped her, or how many
13 fingers I touched with, or anything like that, but I
14 did attempt to try to help her up.

15 Q. But you don't recall her grabbing onto you to get some
16 assistance for some leverage to be able to --

17 A. -- Exactly. At that point and time, I do not
18 remember. It was scaring me to death or whatever.
19 Seeing her, you know, the way that happened.

20 Q. Okay. So you were scared to death and upset to see
21 her that way, is that correct?

22 A. Well pretty scared at that time, yes.

23 Q. So it was your testimony that when the truck driver
24 came up, just a minute ago when Ms. Little was asking
25 you the question, it is your testimony that when the

1 truck driver came up, the first thing you did was move
2 your motorcycle out the road. Is that correct?

3 A. Whenever the truck started coming or whatever, I seen
4 the truck or whatever, she was already standing by
5 then whatever. She actually started running towards
6 the truck. So I went towards the motorcycle; and then
7 once I seen her running towards the truck, I turned
8 around and tried to stop her from standing in oncoming
9 traffic.

10 Q. So you saw the truck driver coming. Had you already
11 called 911 to get some help for Dorothy --

12 A. -- No, ma'am, I didn't.

13 Q. -- because she fell off the motorcycle?

14 A. No ma'am, I didn't. My phone was under the seat of my
15 motorcycle. It takes a key to unlock the seat.

16 Q. Okay. So you hadn't had chance to get your phone out
17 to call 911 at this point?

18 A. No, ma'am.

19 Q. Since 911 hadn't been called yet, you didn't think it
20 would be important to try to flag down the truck and
21 get him to stop, so Dorothy could get some help?

22 A. The truck was stopped anyway. She was in the middle
23 of the road and so was my motorcycle.

24 Q. So if the truck was stopped anyway, why would you need
25 to get your motorcycle out of the middle of the road?

CURTIS RAY NEALEY - CROSS EXAMINATION

246

1 A. It wasn't stopped actually or whatever. It had to
2 stop.

3 Q. You just said the truck --

4 A. -- There was no way --- go ahead.

5 Q. You just stated that the truck was stopped. Less than
6 thirty seconds ago. Your testimony was, you were
7 trying to keep Dorothy from walking into ongoing
8 traffic?

9 A. Okay, I was mistaken to say that the truck was
10 completely stopped or whatever. It was actually
11 moving whenever she was coming towards the truck. He
12 had to stop the truck. He had to stop the truck
13 anyway, because the motorcycle was in the road and she
14 was in the road. He had to stop. There is no reason
15 to have to flag a truck down if you're in the way of
16 it.

17 Q. Yeah, but it was your first reaction to get the
18 motorcycle out the way before you were at Dorothy,
19 isn't that what you said happened?

20 A. I did not --- I didn't see her run towards the truck.
21 I seen the truck coming. All right, that is when I
22 went towards the motorcycle. I didn't think she was
23 going to run in front of truck.

24 Q. But you said it was almost to a complete stop. Why
25 would it be necessary to grab her and pull her from

CURTIS RAY NEALEY - CROSS EXAMINATION

247

1 the danger of that oncoming truck?

2 A. The truck wasn't almost at a complete stop.

3 Q. So once the truck driver came to a complete stop,
4 isn't it true that you didn't ask him to call 911 to
5 get Dorothy help?

6 A. The truck was high up off the ground whatever. She
7 was screaming. I was trying to call her down. There
8 was so much adrenaline going I --- he was in the truck
9 or whatever, so I don't know if he --- I guess he
10 should have automatically knew to call the law, or
11 call emergency or something.

12 Q. But isn't it true that as soon as he indicated to you
13 that he called the law, you left, isn't that true?

14 A. After he stuck his hand --- his hand with what he had
15 in hand or whatever, and said he called the law or
16 whatever, I thought it might have been a weapon or
17 whatever. I was in fear, so I left.

18 Q. You were in fear that he was going to hurt you, is
19 that correct?

20 A. Yes, I didn't know whether he had a weapon or not.

21 Q. But you just said that you were assuming that he was
22 going to call the law and help Dorothy, so wouldn't
23 you agree that this was a nice man that stopped to
24 help?

25 A. Not necessarily. I didn't know him. I have no idea

CURTIS RAY NEALEY - CROSS EXAMINATION

248

1 who he was.

2 Q. So it's your testimony that you never tried to pull
3 Dorothy Perkins off the side of the truck? That never
4 happened.

5 A. I tried to get her down off the side of the truck,
6 yes.

7 Q. Oh, okay. So you tried to pull her down off the side
8 of the truck. I didn't hear you testify about that
9 earlier. Why were you trying to pull her down?

10 A. I knew she was hurt, but I never assaulted her or
11 anything. He never seen me assault her, hurt her, or
12 harm her, or do anything except to try to kiss and
13 caress her, that's all that I done.

14 Q. So after you got your motorcycle out from the middle
15 of the road and got it up, you got on your motorcycle
16 and drove around to the side of an eighteen-wheeler
17 truck and pull Dorothy -- and tried to pull her to try
18 to get her to go with you. Is that correct?

19 A. What you mean by drive around to the other side?

20 Q. Were you on your motorcycle at the point, where you
21 were trying to pull her down?

22 A. I did pull up beside the truck again, whatever, you
23 know what I am saying, and tried to get her down, yes.

24 Q. You pulled up beside the truck on your motorcycle and
25 tried to pull her down?

1 A. No, I was not actually --- I could not actually touch
2 her while I was on the motorcycle, no.

3 Q. You just said you tried to pull her down. Explain
4 what you are doing? You said that you couldn't touch
5 her.

6 A. Exactly at that point or whatever, I don't know
7 exactly what I was doing.

8 MS. MCKENZIE: Beg the Court's indulgence.

9 (PAUSE.)

10 Q. So you don't know exactly what you were doing at that
11 point when you were trying to pull her down. Is that
12 what you are saying? Is that your testimony here this
13 afternoon?

14 A. I was not trying to harm her or anything. I was
15 trying, you know, to help her, still.

16 Q. Wouldn't you say that a possible base skull fracture,
17 a fracture to the nose, and two fractured arms,
18 wouldn't you consider those serious injuries?

19 A. Yeah, pretty much trauma.

20 Q. What could possibly at that point, that kind of trauma
21 as you just called it, what could possibly benefit
22 Dorothy by you pulling on her? What benefit did that
23 have to her physical well being?

24 A. At that point, I did not actually think or comprehend
25 what it was causing or whatever, because I was scared.

CURTIS RAY NEALEY - CROSS EXAMINATION

250

1 Q. You were scarred?

2 A. Yes, ma'am.

3 Q. She is the one that had just fallen off the
4 motorcycle, but you were scared?

5 A. Yes, ma'am.

6 Q. That truck --- Did he really just shake you up. You
7 were really scared?

8 A. Not necessarily the truck driver. The whole incident
9 and all. Her fallen off and all.

10 Q. But all this went on and your cell phone was still
11 locked under your seat in your motorcycle, is that
12 correct?

13 A. Yes, ma'am.

14 Q. So at some point when you got back on your motorcycle
15 and you said you drove up beside the eighteen-wheeler
16 rig, had you gotten your cell phone out at that point
17 and called for help?

18 A. No, ma'am.

19 Q. You never attempted to call for help for Dorothy is
20 that correct?

21 A. I never thought about the cell phone. At the given
22 time whatever, under the circumstances I never thought
23 about picking it up.

24 Q. But Dorothy was a passenger on your motorcycle, isn't

CURTIS RAY NEALEY - CROSS EXAMINATION

251

1 that correct?

2 A. Yes, ma'am.

3 Q. And you thought enough of her --- your testimony is
4 that you all were going back to your place to hang
5 out?

6 A. Uh-huh.

7 Q. But it is your testimony that she fell off the
8 motorcycle, yet you didn't even think to call for
9 help?

10 A. At that specific second in time, no, I didn't.
11 Everything happened so fast or whatever it never
12 crossed my mind.

13 Q. Okay.

14 (PAUSE.)

15 THE COURT: Anything further?

16 MS. MCKENZIE: Briefly, Your Honor.

17 Q. So after you left, and you took off on the motorcycle,
18 and left Dorothy there, who was injured with a
19 stranger, where did you go?

20 A. Home.

21 Q. You didn't think about going up to the hospital to see
22 Dorothy?

23 A. No, I didn't think about it. I had drank quit a good
24 bit whatever, and had taken some medication. I just
25 remember waking up the next day.

CURTIS RAY NEALEY - CROSS EXAMINATION

252

1 Q. So you had to sleep that off. And when you woke up
2 the next day, do you think about going up to the
3 hospital --

4 MS. LITTLE: Objection. Relevance.

5 THE COURT: Overruled.

6 Q. Did you think about going to visit her at the
7 hospital?

8 A. No, ma'am.

9 Q. Did you ever go visit Dorothy at the hospital?

10 A. No, ma'am.

11 Q. You were going to hang out with her the previous
12 night, isn't that what your testimony --

13 A. -- Yes, ma'am.

14 Q. And this is a quote, is that y'all had a real nice
15 time that night, is that right, at Frank's. Danced
16 and shot pool.

17 A. Uh-huh.

18 Q. You at least hold her in some regard as friends, isn't
19 that true at that time?

20 A. That's my girlfriend, yes.

21 Q. But it is your testimony today that you didn't go to
22 the hospital to see her?

23 A. No, ma'am, I did not.

24 Q. What did you do the following day that was so
25 important that you couldn't go to the hospital to see

1 her?

2 A. I absolutely did nothing. I stayed at home whatever.

3 Q. Well law enforcement earlier talked about your
4 motorcycle. Did you commonly park your motorcycle
5 about ten or twelve trailers away from the trailer you
6 stay in, is that common?

7 A. I commonly park my motorcycle two roads over, because
8 of her ex-husband whatever, and vandalized and kicked
9 it up beside my house prior to this. I do not park it
10 in my yard. I park it behind Chuckie Bines' house,
11 which is the headman over the trailer park.

12 Q. Okay.

13 A. And I had authority to park there any given time or
14 whatever, because I done maintenance work at the
15 trailer park.

16 Q. And you were just at home the next day. Is that what
17 your testimony is?

18 A. Yes, ma'am.

19 MS. MCKENZIE: Nothing further, Your Honor.

20 THE COURT: Redirect?

21 MS. LITTLE: No, Your Honor.

22 THE COURT: All right, sir, you may step down.

23 MR. NEALEY: Thank you, sir.

24 THE COURT: Are there further witnesses for the
25 Defense?

THE STATE VERSUS CURTIS RAY NEALEY

254

1 MS. LITTLE: No, Your Honor, Defense rests.

2 THE COURT: Is there reply testimony?

3 MS. MCKENZIE: None, Your Honor.

4 THE COURT: All right, very good. Counsel, come up
5 and let's talk about scheduling for just a moment.

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the jury.)

8 THE COURT: All right, ladies and gentlemen, we are
9 going to take our lunch break at this time. As you have
10 heard, all of the testimony is concluded in the case, which
11 means we will go to lunch, and you will come back, and you
12 will argue, and charge, and give you the case for
13 deliberations. Lawyers need a little bit of time to get
14 their closing arguments ready and everything prepared for
15 you, so let's take a lunch break until two o'clock today,
16 if you are back at two-o'clock, and we will be ready to
17 proceed at that time. Please do not discuss the case with
18 whomever you have lunch. Lunch is on your own. Keep an
19 open mind. You have not heard the lawyers arguments nor
20 the charge from the Court. Have a good lunch and we will
21 see you back at two. Let's everyone else remain where we
22 are out of respect for this jury. Have a nice lunch,
23 ladies and gentlemen.

24 (Whereupon, the jury exits the courtroom at 12:33
25 p.m.)

1 **THE COURT:** All right, ladies and gentlemen, let's a
2 wait a moment and give the jury a moment to clear the
3 elevators and go on out, then we will dismiss everyone as
4 well. Counsel, we are giving you a copy of what we believe
5 the charge will be. How about review it and we will have a
6 charge conference before we leave for lunch today.

7 All right, ladies and gentlemen, we are going to let
8 you go at this time. We have enjoyed having you with us
9 today. I hope it's been an interesting experience for you.
10 Have a good day and we will see you soon.

11 The rest of us, ladies and gentlemen, we are recess
12 now until 2:00-o'clock. Counsel, when you finish if you
13 will come on back.

14 **MS. LITTLE:** Thank you, Your Honor.

15 **THE COURT:** Court is in recess.

16 (Whereupon, a lunch recess was taken from 12:35
17 p.m. until 2:00 p.m..)

18 **THE COURT:** Ladies and gentlemen, I am told the jury
19 is here. Let's please bring in the jury.

20 **BAILIFF:** All right, sir.

21 (Whereupon, the jury enters the courtroom at 2:00
22 p.m.)

23 **THE COURT:** Ladies and gentlemen, I am going to
24 appoint Dr. Clark as the foreperson of the jury.

25 **THE COURT:** All right, welcome back, ladies and

THE STATE VERSUS CURTIS RAY NEALEY

256

1 gentlemen. I trust you had a nice lunch break. Welcome
2 back to the courtroom. I am going to ask Dr. Clark, you
3 happened to be seated in the foreperson's seat. I will ask
4 you to serve as the foreperson, of this jury. I will talk
5 with you a little bit more in my charge on the law about
6 your role as foreperson, but let must say in advance, thank
7 you for your willingness to serve in that important
8 capacity. All right, very good.

9 You will recall, as I said when we began the case as
10 the way we would end it is, both lawyers come before you in
11 closing statements, then the Court gives you the charge on
12 the law, and you retire to deliberate, so that is where we
13 find ourselves.

14 Please remember what the lawyers say to you is not
15 evidence. They are going to be commenting on what the
16 evidence has shown or they believe it has or has not shown.
17 Of course, you are the judges of the facts, and the finders
18 of the evidence. So ultimately, you make the determination
19 of what it has or has not shown.

20 The Court at this point recognizes the Defendant for
21 closing statement. We will begin with the Defendant and
22 close with The State. The State has the burden of proof.
23 They get to go last. You may proceed.

24 MS. LITTLE: May it please the Court?

25 THE COURT: Thank you.

CLOSING STATEMENT BY MS. LITTLE

257

CLOSING STATEMENT BY MS. LITTLE

1
2 Ladies and gentlemen, I have prepared a few notes for
3 myself to make sure I get all of the points that I want to
4 get across to you in my closing argument.

5 First, I want to thank you for being here today.
6 Thank you for your attention. I've noticed --- I was
7 watching from other there. I saw you listening carefully
8 to the evidence, and I thank you for keeping an open mind.
9 And remember at this point, my client, Curtis Nealey, still
10 has the presumption of innocence in defending this case.
11 And Judge Baxley is going to instruct you on the law. That
12 is not my job. I am going to leave that to Judge Baxley.

13 What my job is at that point, is to summarize the
14 evidence that Defense feels we have presented, or the
15 problems we believe that are existing in The State's case.
16 I want to start with the issue of credibility. Judge
17 Baxley will give you a charge on credibility, and you using
18 your common sense, are going to use the same tools that you
19 use every day in judging credibility of these witnesses.
20 But one thing I want to make sure you don't forget and that
21 is that Dorothy Perkins and her mother, Ms. Victoria
22 Perkins, had a very powerful motive to lie about what
23 happened that night. There was testimony that Ms. Dorothy
24 Perkins had lost her children. They were currently in DSS
25 custody, and she was trying at that point to get them back.

CLOSING STATEMENT BY MS. LITTLE

258

1 There was also testimony that the reason she lost her
2 children was because of drinking problem. She testified
3 that she went through Rehab at the request of Department of
4 Social Services, and also that she went to an ATV class,
5 which is an Alternative to Violence, or what is commonly
6 called anger treatment. Another issue about credibility is
7 the fact that, mother and daughter do live in the same
8 household. They have lived together for the past year
9 since this incident happened, and have had plenty of
10 opportunity to discuss the case and make sure that their
11 stories matched up in Court. As to Ms. Dorothy Perkins,
12 you will recall Dr. Balvich testifying that she told him
13 she did not take any prescription medication. There was
14 testimony from her mother and from her however that she did
15 at times take her mother's prescription medication. She
16 told you on the stand that she had turned her life around
17 and she had quit drinking. Then when Ms. Victoria Perkins
18 testified, she said that, yes, Dorothy was still drinking
19 on occasion.

20 Another issue about credibility I would say, is the
21 ability to see what you say that you saw. There was some
22 testimony from Ms. Victoria Perkins that after Curtis and
23 Dorothy left, she saw a knife from her door, from the
24 inside of her house. She did testify that it was dark
25 outside and there were street lights. She also testified,

CLOSING STATEMENT BY MS. LITTLE

259

1 and we heard this through another witness, that she was
2 weak, seeing dots or darts, I believe she called it and
3 that she needed glasses and she didn't have those. All of
4 these things that I am talking to you about right now, we
5 feel are reasons that you could find reasonable doubt in
6 this case.

7 One of the first things I want to talk about is the
8 fact that the truck driver said that he clearly saw them
9 that night in the roadway, and that Curtis Nealey did not
10 have a knife. Also, the officer testified that when he got
11 to the motorcycle, there was blood on it. Also there was
12 testimony that Curtis Nealey held a knife to her throat,
13 but there was no neck, or evidence, or testimony that there
14 were any injuries from a knife blade to Ms. Dorothy
15 Perkins' throat.

16 Let's talk about the kidnaping, and you heard
17 testimony, and you can use your common sense about the
18 difficulty --- it does take some effort to get on a
19 motorcycle. Someone has to hold the motorcycle steady,
20 while the other person gets on. We believe that that takes
21 a voluntary effort to get on the back of a motorcycle.
22 There was testimony that her brother lived within yelling
23 distance or running distance, and she never tried to yell,
24 or run to her brother's house or to any close neighbor's
25 house. There was also testimony that when Dorothy left on

CLOSING STATEMENT BY MS. LITTLE

260

1 the motorcycle, the Mom was safely inside the house at the
2 time with the door closed. You heard Ms. Dorothy Perkins
3 testify that after they left the bar, she started feeling
4 afraid of Curtis. She never really mentions any reason
5 why, but yet she said she was afraid, and still let him
6 come back to her house and lay on her couch. There was
7 testimony that he was there laying on the couch.

8 I want to remind you, a little bit about the Defense's
9 theory in this case. You heard Curtis Nealey take the
10 stand and testify. He testified that Dorothy's Mom sold
11 him pills and gave him pills that night. He testified that
12 Dorothy was drunk when she fell off the back of the
13 motorcycle, and there was testimony from Dr. Balvich that
14 those injuries she had, the road rash, were consistent from
15 a fall off the back of a motorcycle. She admitted that
16 night that she was drinking and doing shots. There was
17 testimony that at times she took Mom's med --- I don't know
18 if she ever said she took any that night, but Dr. Balvich
19 did confirm that when she got to the hospital that night,
20 she was intoxicated. Curtis Nealey testified that she was
21 fighting that night with her Mom over some pills. He said
22 that Dorothy threw the vase at her Mom. He also testified
23 that Dorothy was drunk and that she wanted to leave because
24 her Mom was threatening to contact the police.

25 Another point that I would like for you to think about

CLOSING STATEMENT BY MS. LITTLE

261

1 when you go back to the jury room, is the lack of some
2 other evidence in this case, that the Defense feels would
3 either confirm or deny what these people said happened that
4 night. There was testimony that there was blood on the
5 vase. There was no testing or testimony of any testing
6 done to see whose blood was on that vase. There was no
7 testimony that there was ever an attempt to get
8 fingerprints off of the vase. We heard testimony that
9 sometimes it is hard to get fingerprints if it is not a
10 smooth surface. There is no testimony that they even tried
11 to get fingerprints in this case. Also you heard testimony
12 that there were bloody footprints in the house; however,
13 there is no documentation of that, or they brought you
14 nothing to show you whose footprints were in that blood.
15 Did they belong to Ms. Victoria, or Ms. Dorothy? The
16 answer to that question, if you believe what Mr. Curtis
17 Nealey said, he was not even in the house when all of that
18 blood was on the floor. He said the blood was in the
19 bedroom. He said he never went in the bedroom that night.
20 I do not believe there was ever any testimony from Ms.
21 Dorothy Perkins that he was in the bedroom that night. So
22 these are just few things I want you to think about. I
23 know that when you get back to the jury room --- Well
24 first, you are going to hear from Ms. Patti McKenzie, and
25 she is going tell you what The State feels they have proven

CLOSING STATEMENT BY MS. MCKENZIE

262

1 in this case. I want to remind you to look at each and
2 every charge, and remember that State has the burden of
3 proof to prove unanimously to you, beyond a reasonable
4 doubt, that each and every element of each crime has been
5 met in order for you to find my client, Curtis Nealey,
6 guilty. And we believe that after you truly deliberate and
7 consider all of the evidence, you are going to have some
8 reasonable doubt. We would ask you per the Judge's
9 instructions, to resolve those doubts in favor of my
10 client, Curtis Nealey, who is presumed innocent.

11 Thank you.

12 **THE COURT:** And cross examination.

CLOSING STATEMENT BY MS. MCKENZIE

13
14 **MS. MCKENZIE:** Thank you, Your Honor. May it, please
15 the Court, ladies and gentlemen of the jury, Defense
16 counsel.

17 Good afternoon. I would like to thank you for your
18 attention throughout the duration of the --- of this trial.
19 Like Ms. Little, often we are in here and sometimes, you
20 know, we have it boiling or the temperature in the
21 courtroom may not be just right, and people will nod off.
22 But I have noticed that the jury has been very attentive,
23 and I believe that you take this matter seriously, because
24 it is a serious matter. And every Defendant is entitled to
25 his or her constitutional right. And Curtis Nealey is

CLOSING STATEMENT BY MS. MCKENZIE

263

1 entitled to every right owed to him by the constitution.
2 And I am thankful for that because that is what makes our
3 country and our system a great system, and that is what
4 separates us from other countries in the world where kings
5 or leaders of government can overrule the people, and
6 people don't have any rights. So it is my job and my duty,
7 to present to you the evidence, and to convince you of the
8 case that I am trying to prove, beyond a reasonable doubt.
9 And he is entitled to that fair trial and I am grateful
10 that y'all have listening with attentive throughout the
11 direction of this case. And like I said, I know that you
12 have taken this matter serious, because criminal domestic
13 violence in our society is a serious matter, and that is
14 what the case is about. I told you yesterday that criminal
15 domestic violence is about control. And this Defendant's
16 testimony was admitted, and you heard testimony about how
17 this Defendant had a prior criminal domestic violence
18 charge pending that involved Dorothy Perkins, at the time
19 that this incident occurred. He went over there that
20 afternoon and was trying to, you know, to butter her up.
21 Spending some time with her. Asking her, would you go up
22 to the courtroom tomorrow. Will you talk to the solicitor,
23 to see about dropping that charge. He asked her
24 repeatedly, and when she wouldn't give in to his request,
25 and his demand for her to come up here and try to get that

CLOSING STATEMENT BY MS. MCKENZIE

264

1 charge dropped, that is what set him off. This is a crime
2 about control. He meant that she was going to come up
3 here, and do what he wanted her to do. And when she did
4 not cooperate is what set him off in that house that night,
5 in the City of Hartsville, at [REDACTED] East Home Avenue.

6 Now the Judge told you yesterday, and the Judge is
7 going to tell you in a few minutes, that you are the judge
8 of the facts. He is the Judge of the law and how the law
9 applies to the facts. But you are the judge of the facts.
10 And you determine what really happened in this case when
11 you hear all the testimony, and you take everything into
12 consideration, and you bring it into this courtroom your
13 common sense, and you use that common sense as you assess
14 the witnesses and their credibility. And with all the
15 evidence and everything you have seen, and everything into
16 consideration, you decide what you believe the truth is and
17 render a verdict. The word verdict actually comes from a
18 Latin word that means to speak the truth. I believe that
19 at the conclusion of all this today that you will render a
20 verdict that speaks the truth.

21 Now, I want to talk to you a little about what the
22 Defendant is charged within this case. He is charged with
23 assault and battery with intent to kill. He is charged
24 with two counts of assault and battery with intent to kill.
25 One of those accounts being for Ms. Victoria Perkins. Now

CLOSING STATEMENT BY MS. MCKENZIE

265

1 at the time of this incident, she was sixty-three. She
2 testified yesterday that she is now sixty-four. And he is
3 charged for --- the basis of this charge is for hitting
4 her in the head with this object on that night. When he
5 struck that blow up beside her head there in her own home,
6 and she was trying to intervene with what he was doing to
7 her daughter. He was also threatening her life. He
8 threatened to kill her. She heard him threaten to kill
9 her. After he struck her with this object, she testified
10 that she went into the front room there in the house, and
11 was hiding and was afraid for her life. But she could
12 still hear the altercation and everything, literally just a
13 few feet away in the living room. She heard her daughter
14 scream and she heard her daughter tell him, no, to put the
15 knife away. Begging him to put the knife away, yet he
16 continue to beat and hit her daughter, and then told her
17 daughter that if she did not comply, that if she did not go
18 with him, he would kill her mother. She heard those
19 threats against her life. She also suffered a blow to her
20 head with this object. The elements of assault and battery
21 with intent to kill are, is that it has to be an unlawful
22 act of a violent nature to the person of another, with
23 malice aforethought. Malice aforethought is a term of art,
24 and it's --- there is a lot of case law of South Carolina
25 that defines what malice aforethought means, and the Judge

CLOSING STATEMENT BY MS. MCKENZIE

266

1 is going to instruct you in a few minutes about what malice
2 aforethought means. But first you have to determine that
3 there was an assault and a battery. And an assault can
4 simply be, you putting someone in fear that you may do
5 something to them. So I can raise my hand, but I didn't
6 slap you, I just raise my hand, and you are just afraid I
7 am going to slap you, even though I didn't slap you, that
8 would be an assault. Battery is the actual touch and the
9 actual contact. So you have to find if there was an
10 assault and a battery with the intent to kill, implies that
11 malice aforethought, and what malice and forethought means.
12 And Malice is ill will and the hostility, basically the bad
13 intent, the intent to inflict injury. Aforethought means
14 that the Defendant had to possess that intention to inflict
15 that harm at the time he struck the blow, or just the
16 moment before he struck the blow. He doesn't have to
17 possess aforethought. We can think of the term of
18 premeditation. Doesn't have to be a design or a plans to
19 carry out, the Defendant has to think about for a week, or
20 a day, or plan something out over a long period of time.
21 As long as he possessed that malice, and just the motive
22 before the blow was struck, is to have malice and
23 forethought.

24 In this case, you know, this object could be a deadly
25 weapon, or a lady of her age struck with force up against

CLOSING STATEMENT BY MS. MCKENZIE

267

1 the head, near the temple area. You've seen the pictures
2 about where her injuries were, you know, she was lucky.
3 The doctor testified they had to sew her up. She had some
4 lacerations. She stayed in the hospital a couple of days.
5 But the bodily injury didn't end up being serious, but
6 there was that intention to inflict that serious injury.
7 It was still substantial hospital stay there, only a couple
8 of days.

9 The Judge is going to instruct you that assault and
10 battery with the intent to kill, but a specific attempt is
11 not the prior element. It is just there in general intent
12 to cause greatly bodily harm. He's going to tell you about
13 that in a few minutes. I just want you to think about that
14 charge the Defendant has with respect to Ms. Victoria
15 Perkins, and consider the evidence, blood all in the house
16 and her testimony that she was bleeding, then about what we
17 presented on that point.

18 Now the Defendant is also charged with criminal
19 domestic violence of a high and aggravated nature. This is
20 for the events that occurred at the residence, in the City
21 of Hartsville, for his assault, his attack on the daughter.
22 There is testimony and evidence that you've heard from
23 Dorothy and Ms. Victoria that he hit Dorothy in the head,
24 that he threatened her with a knife, he was threatening her
25 with her life, and hit her in the head with this same

CLOSING STATEMENT BY MS. MCKENZIE

268

1 object. Criminal domestic violence of a high and
2 aggravated nature, like I was talking about criminal
3 domestic violence earlier, is a different animal. It is a
4 special provision in the law, because one requirement you
5 have to find is, that that victim and the Defendant are
6 household members, and that Dorothy Perkins would be a
7 household member. But the law defines a household member
8 as a current household member, or a former household
9 member. There has been testimony in the record that they
10 did use to live together. They resided on [REDACTED] Peeble
11 Drive, and she lived with the Defendant, Curtis Nealey, for
12 some time. You also to have that there is physical harm or
13 injury to the member of a household, or someone who is
14 formerly a household member, and that there are aggravated
15 circumstances. In this case there are several aggravated
16 circumstances that occurred, just in the house. The fact
17 that he pulled a knife and threatened her, the fact that he
18 hit her with this object, and the fact that he caused great
19 bodily harm to her there at the house. The Court has
20 charged him with criminal domestic violence of a high and
21 aggravated nature. He is also charged with kidnaping. And
22 you have heard that testimony about how he made her go with
23 him on the motorcycle, and he had a knife, threatened that
24 if she didn't go with him, he would go back in there and
25 finish the job on her mother. And she did comply to that

CLOSING STATEMENT BY MS. MCKENZIE

269

1 and go with him. But that is a kidnaping, because that is
2 an unlawful abduction, when a person is carried away
3 against their will, and direct force used to make her
4 comply.

5 Now, Ms. Little has talked a little bit about, you
6 know, the dynamics of that, how she would have to have to
7 willingly gotten on the motorcycle. Think about what a
8 person in that situation would do. You don't know how you
9 would react in that kind of situation. Think about the
10 injuries Dorothy Perkins already had at that point. At
11 that point, she had already sustained a beating. He had
12 already hit her in the head with this. But there is
13 testimony that he had already twisted one of her arms.
14 There was testimony that he had a knife, and he was
15 threatening her mother just a few feet away. There is not
16 much front yard at all there at [REDACTED] Home Avenue. Just a
17 little bit of front yard and porch. So even if they were
18 right in front of the house they were still only a few feet
19 away when Ms. Victoria Perkins with all those threats and
20 with all those circumstances, you know, you don't know what
21 a person would do. In fact that she complied let alone she
22 was afraid of him, and how she was scared. She knew what
23 he was capable of. She even testified on the stand on
24 cross examination, if I would have run he would have caught
25 me. Well he told me if I screamed he was going to cut my

CLOSING STATEMENT BY MS. MCKENZIE

270

1 throat. She never testified that he actually cut her, and
2 that is why Dr. Balvich earlier this morning didn't have
3 an elaborate testimony to tell you about lacerations or
4 cuts with a knife, because there wasn't a cut with the
5 knife. The knife was used simply to force her to make her
6 submit and it created that fear. Now about what happened
7 at the house earlier when the Defendant testified. He
8 testified that he did not know Ms. Victoria Perkins was
9 injured. If you believe his story, you would have to
10 believe that Dorothy is the one who threw or hit Ms.
11 Victoria in the head with this object, and you would have
12 to believe that all this blood in the residence was a
13 result of that injury, and believe that he never saw any
14 blood. He didn't even know she was bleeding. If that were
15 a likely scenario why wouldn't he get her help. But he
16 saying that he never even saw that she was injured, but yet
17 the officer testified there was blood all in the residence,
18 all in the front area of the house. Most of the blood, if
19 you think about it, and the officer testified and explained
20 each picture, the big pool of blood that is represented in
21 the picture I am holding up, was in the front bedroom.
22 That is the very place Ms. Dorothy Perkins said she took
23 refuge. That is where she ran to. When he hit her in the
24 head with this object, Ms. Victoria went to that front
25 room, and that is where she was. That explains the blood

CLOSING STATEMENT BY MS. MCKENZIE

271

1 that was on floor in that room. The blood was on the
2 bedspread in that room. The blood that was on the chest or
3 the chest of drawers in that room, and that is consistent
4 with her story. Yet the Defendant says that Dorothy is the
5 one that --- Dorothy is the one that hit her in the head,
6 and that he didn't see any blood at all. He didn't even
7 know she was hurt. There was that much blood left at the
8 house. Someone was very hurt indeed, because there was a
9 lot of blood there. I want you to think a little bit about
10 what Ms. Little was saying earlier. If you look at the
11 front page that she used about going to credibility. In
12 her very line she said, there is a powerful motive to lie.
13 Powerful motive to lie. All that came in about what
14 Dorothy was going through at the time, and not having
15 custody of her kids, and all that came through. But there
16 is one thing with the law in that argument about the
17 powerful motive to lie. I want you to think about the
18 testimony you heard earlier today and how it all matches
19 up. Now conceivably, you know, Victoria and Dorothy could
20 have discussed their testimony. If you want to believe
21 that theory, that all of this was concocted. They could
22 have had it down to the science. They've had a year. They
23 could have practiced with each other or whatever. Think
24 about what their stories were the night of the incident.
25 What did Ms. Victoria say had happened to her when she went

CLOSING STATEMENT BY MS. MCKENZIE

272

1 next door to her son's house and spoke to her son's fiancé,
2 her future daughter-in-law. What did she tell Nancy Nobles
3 had happened to her? And at that moment and time, where
4 was Dorothy Perkins. She was just somewhere just miles
5 away off of Billy Farrow Road. What was Dorothy telling
6 the truck driver that happened? What was Dorothy telling
7 the law enforcement officers about what happened? What was
8 Dorothy telling the ER doctor, and at the hospital, what
9 was she saying happened? What was Ms. Victoria saying
10 happened around the same moment of time? So it would be
11 impossible, for them to concoct a story. Their stories
12 matched up. You heard Nancy testify that she found Ms.
13 Victoria on the back step. She was bleeding. When she was
14 finally able to get out of her what happened, she said that
15 Curtis had hit up side the head. And that Curtis had took
16 off with Dorothy and she was concerned about Dorothy's
17 well-being, and they called 911. When Dorothy was off of
18 Billy Farrow Highway after she had been thrown off that
19 motorcycle, and the truck driver came up, what did Dorothy
20 tell the truck driver that had happened. She even
21 mentioned --- she mentioned to the truck driver the
22 altercation that had occurred back in Hartsville, and was
23 concerned about her mother. And she said that he had hit
24 her mother, and then forced her on the bike, and then on
25 Billy Farrow Highway pushed off the bike. Dorothy in the

CLOSING STATEMENT BY MS. MCKENZIE

273

1 State that she was in also told that to Rodney Hopkins,
2 that she was pushed off the bike. Also expressed to Rodney
3 a concern for her mother and told Rodney what had happened
4 back at the residence with her mother. The Judge
5 instructed you --- when I got into all that earlier, the
6 Judge instructed you about hearsay, and about the best
7 evidence, and the best testimony comes from the person who
8 has direct knowledge. That is why I put Victoria and
9 Dorothy up yesterday, because I wanted them to tell you
10 from their mouth what happened. But the reason why I asked
11 Nancy Nobles, and Officer Rodney Hopkins, and Officer
12 Jackie Catoe, and the truck driver, Mr. Cedric Gibson, the
13 reason why I ask them what the victims were telling them
14 when they first had contact with them, while they were
15 still under the stress, and excitement, and crying, and
16 upset, and still under the excitement of that event, and we
17 call that an excited utterance. And what did they say
18 then, because it was important for me to be able to show
19 you not that I was trying to get all this hearsay in, but
20 it was important for me to be able to show you that what
21 their testimony was yesterday, and what they have always
22 said, matches up with what they told those first responders
23 and that's why I called them. The law enforcement, truck
24 driver, the people who had the very first initial contact
25 with them, and that story matched up throughout every

CLOSING STATEMENT BY MS. MCKENZIE

274

1 witness. Maybe witness didn't mention a knife, but the
2 general basis of the story was the same. It would have
3 been impossible for them to have concocted that type of
4 lie. They didn't even --- Ms. Victoria didn't even have a
5 phone in her house. Dorothy didn't have a cell phone. How
6 could they have called each other? And then think about
7 the physical condition they were in and all of Dorothy's
8 injuries. Do you think concocting some kind of lie was the
9 first thing on her mind, when she was laying beside the
10 roadway after she had fallen off the motorcycle? He pushed
11 her off the motorcycle, but with all the injuries she had,
12 and as Dr. Balvich laid out for us a possible base skull
13 fracture, nasal fracture, both arms broken, and with all
14 the injuries she had, and the amount of pain she was in, do
15 you think that was the first thing that come across her
16 mind. I am going to lie on him. I fell off the
17 motorcycle, but I am going to say he pushed me. Or was she
18 in pain. Or was she in fear for life, or was it that
19 adrenaline what we call fight or flight that took over her
20 when she saw the headlights that night, and she saw the
21 truck driver coming. She got up and she flagged him down,
22 then ran from the Defendant. You heard Cedric Gibson
23 testify that the Defendant was chasing her. Then he went
24 for the back and she went for the truck. She crawled up
25 the cab of the truck bleeding with those injuries, trying

CLOSING STATEMENT BY MS. MCKENZIE

275

1 to get help for herself, while the Defendant got on his
2 motorcycle, drove up along side the eighteen-wheeler to try
3 to pull her down while she was hanging on the rear view
4 mirror. That was Cedric Gibson's testimony. Looking back
5 on this trial, and looking back on the case as a whole,
6 Cedric Gibson is the one thing the Defendant did not count
7 on. He did not count on running into somebody that night.
8 He had a plan when he took her from the house. He knew
9 what he intended on doing. He told her he was going to
10 kill her, but after he pushed her off that motorcycle, and
11 he turned around and he saw that he didn't finish the job;
12 here those headlights come around that curve. And in this
13 day and time, a lot of people don't stop today. A lot of
14 people wouldn't have stopped. Even Mr. Gibson testified
15 that being a truck driver out on the road, that sometimes
16 people stage things, or fake things just to get a truck
17 driver to stop so they get robbed. Or it could be some
18 plan or trick he could have been hurt. But he did stop.
19 And what ax does he have to grind here. What reason would
20 he have to lie on this Defendant? He testified that he
21 doesn't even know the Defendant. I want you to think about
22 his credibility, and what he said earlier this morning from
23 that stand. I want you think about the scene that he
24 described. And did the scene that Cedric Gibson describes
25 sound like at the scene of an accident. Did it sound like

CLOSING STATEMENT BY MS. MCKENZIE

276

1 the scene of an accident? Did the Defendant's actions as
2 Cedric Gibson described them, sound like how someone would
3 react if they were alone with a friend, and were riding,
4 and an accident happened? Think about his actions. Even
5 in his own testimony, when I did cross examination earlier
6 today, he admitted that he tried to pull her off the
7 eighteen-wheeler. He admitted to going to try to get his
8 motorcycle out the road. He admitted that she climbed up
9 the cab of the truck. Does that really sound like the
10 scene of an accident? Is that what Cedric Gibson drove up
11 on that day, or was it a crime scene that he drove up on?
12 Because, as soon as he mentioned that he called 911; zoom,
13 the Defendant was gone. He was nowhere to be seen.
14 Nowhere to be found at the scene of the accident. Nowhere
15 to be found at the hospital that night. He didn't even
16 visit her the next day. He wanted to make out like they
17 were friends. They were drinking together that night.
18 Partying at Frank's, and, oh, they were going back to his
19 house. So it seems like someone that he would at least
20 hold enough in high regard to care about her well being.
21 See how she was doing. He testified that he didn't go to
22 the hospital, and he didn't go the next day, or the day
23 after that, or the day after that, or the day after that.
24 He didn't go at all.

25 I want you to think about a lot of the things that

CLOSING STATEMENT BY MS. MCKENZIE

277

1 have been the focus of the Defense's case. A lot of what
2 they want to do is to point the finger, and talk about some
3 things that Dorothy is not proud of. And in my job I don't
4 get the right to write the story. I am not an author. I
5 don't --- you know, this isn't a play. I am not a play
6 writer. I don't get to create facts. I get to present
7 them to you as they are. Is Dorothy Perkins perfect? No.
8 Has she made some mistakes in her life? Yes. Did she have
9 any business drinking with him that night? Probably not.
10 She testified she was in the process of trying to get her
11 kids back. She knew she had some things to do,
12 requirements to comply with through DSS, and was into that
13 process. She's not perfect. She didn't deserve what
14 happened to her that night. No matter how much dirt the
15 Defense wants to throw. And I tried to warn you about that
16 yesterday, because I said that criminal domestic violence
17 is a case where the parties know each other, and they know
18 each other very well, so there has been a lot of
19 mudslinging here. But I want you to think about the
20 evidence. Think about the facts. Think about what adds
21 up, what doesn't jive, what makes sense, and when you do
22 all that, and take all those things into consideration, I
23 am confident that you will find that Curtis Nealey is
24 guilty of assault and battery with intent to kill against
25 Dorothy's mother, Ms. Victoria. Assault and battery with

CHARGE ON THE LAW

278

1 intent to kill against Dorothy, for throwing her off the
2 bike. Kidnaping. Criminal domestic violence of a high and
3 aggravated nature, and possession of weapon during the
4 commission of a violent crime.

5 I thank you for your time and attention.

CHARGE ON THE LAW

7 **THE COURT:** All right, ladies and gentlemen, we are
8 now at the point of the case where I give you the charge on
9 the law, and if you will listen carefully for a few
10 moments, I am prepared to do that. Let me first of all,
11 thank you for the focus that you given this case.

12 You may recall, I discussed with you yesterday when we
13 were choosing you as jurors in this case, about the fact
14 that I knew that no one had just come down here yesterday
15 just to see what was going at the courthouse. That you had
16 been summoned from a busy life, not of your volition. And
17 I want to thank you for setting aside those busy lives, and
18 focusing closely on the facts. Because I sit here in the
19 courtroom where I can look beyond the witness or beyond
20 counsel and observe the jury. And I do that throughout the
21 trial. Not to stare at you, but just to see that you are
22 comfortable, and every time that I have looked at you as
23 you look at me right now, you have been sitting there with
24 close, what I call wrapped attention and close focus. I
25 appreciate that level of commitment to set aside your busy

1 lives, because I know that when you retire in a few moments
2 to decide what the facts are, as the judges of the fact,
3 you are going to be in a position to do that, because you
4 have listen closely and carefully throughout the trial.

5 Now, as you know, The State of South Carolina has
6 charged the Defendant now The State of South Carolina
7 seated at the table closes to you, has charged the
8 Defendant, Curtis Nealey, seated at the table furthest from
9 you with criminal domestic violence of a high and
10 aggravated nature, kidnaping, assault and battery with
11 intent to kill, and possession of a weapon during the
12 commission of violent crime.

13 Now, of course, bare in mind that the defendant plead
14 not guilty to these charges, and by that plea denied all
15 the allegations that are contained in the indictment.

16 As I said to you when we began, the indictments which
17 we talked about at the very beginning of this case are just
18 a set of accusations. They are the pieces of paper by
19 which the Solicitor commences a prosecution. They are not
20 evidence in the case. The evidence in the case is what the
21 witnesses have said right here from this witness stand
22 under oath, and under direct and cross examination, along
23 with such exhibits that have been placed in the record
24 during the trial of this case. And as you may noticed, we
25 have tried to keep up with what's in evidence and what is

CHARGE ON THE LAW

280

1 not, because what is in evidence is going back with you in
2 the jury room when you retire to deliberate.

3 I say to you again, the Defendant comes into this
4 courtroom clothed with a presumption of innocence, and that
5 presumption of innocence continues throughout the case, and
6 entitled the Defendant to a verdict of not guilty on each
7 charge, unless and until it is dispelled by evidence that
8 satisfies you the jury, beyond a reasonable doubt, that the
9 Defendant is guilty of the particular offenses charged, and
10 The State has proved each and every element of that
11 particular offense, beyond a reasonable doubt.

12 Now, as I said to you when we began, you are the judge
13 of the facts. You are the sole judge of the facts. No one
14 else, are the judges of the facts in this courtroom other
15 than you. You may recall I said to you that you are going
16 to have gauge credibility and believability if you hear
17 testimony that seems mutually exclusive. That has
18 occurred, in this case, at least if you find that it has
19 occurred because you are the judge of the facts, then you
20 are going to make the determination of credibility and
21 believability. And I am not going to go over again the
22 factors that I talked with you about, except I will remind
23 you that we do this every day in our everyday lives. You
24 should use those factors that you use every day in
25 determining credibility and believability in order to

1 determine the facts.

2 I will tell you that when you decide what the facts
3 are, you may believe as much or as little of any one
4 witness' testimony you think proper. You can believe the
5 testimony of one witness against a whole bunch of
6 witnesses, or you can do just the opposite. You can
7 believe part of what the witness says, and you can
8 completely disbelieve the rest. I will tell you, the fact
9 that certain testimony is not controverted, doesn't mean
10 you must accept it as true and undisputed. You must first
11 gauge the credibility of the witness through which that
12 testimony comes, in order to determine the believability,
13 or the truth of the facts that are offered through that
14 witness. I would say to you, keep in mind throughout the
15 process, you have one objection and that is to search for
16 and find the truth regardless from which witness, or from
17 which side of the case it may come.

18 Now, during the course of the testimony you heard from
19 a witness who had special knowledge, or skill, or
20 experience, or training, or education in a particular
21 field, and that person came in and they gave his opinion as
22 to matters in which he is skilled. Now in determining the
23 weight to be given such an opinion, you should consider the
24 qualifications and the credibility of that expert, and the
25 reasons that are given for that opinion. You are not bound

CHARGE ON THE LAW

282

1 by that opinion. You give it the weight you deem it to be
2 entitled to.

3 I will tell you that the value and effect of expert
4 testimony is a matter that is solely to be estimated by
5 you, ladies and gentlemen of the jury. And no mere opinion
6 of an expert can be accepted in and of itself as truthful
7 or reliable, but it must be weighed by you, and convince
8 you, in your judgment, beyond a reasonable doubt and with
9 the same force and effect as by other fact provided in this
10 case beyond a reasonable doubt before you can reply upon it
11 as a basis for conviction.

12 You must consider expert testimony in the same way you
13 would consider other testimony, and give it the weight you
14 believe it is entitled to. It's not given for the purpose
15 of controlling your judgment, but for assisting you in
16 findings matters of fact that are before you.

17 Now there are two types of evidences in cases such as
18 these. There is direct evidence, and then there is
19 circumstantial evidence. I will tell you that direct
20 evidence is the testimony of a person, who asserts or
21 claims to have actual knowledge of a fact, such as an eye
22 witness who will come in and give testimony about what they
23 saw, or heard, or did. That is direct testimony.

24 Circumstantial evidence on the other hand, is proof of a
25 set or chain of facts that then indicate the existence of

1 out here, yet of another fact. That is indirect evidence.
2 I will tell you that the law makes no distinction between
3 the weight or value to be given either direct or
4 circumstantial evidence, nor is a greater degree of one
5 required over the other. You should weigh all the evidence
6 in the case, both direct and circumstantial evidence. And
7 after weighing all the evidence, if you are not convinced
8 that the guilt of the Defendant beyond a reasonable doubt
9 with regard to that particular charge, you must find the
10 Defendant not guilty on that particular charge.

11 Now, I have been back in your jury room before, not
12 while you were back there, and I am sure that when you go
13 back in there you will see that there is not some set of
14 scales to weight the evidence on. Well, I will tell you,
15 that's obvious, because it is a mental process. But I
16 would say to you that evidence that weighs with you is that
17 evidence that convinces you of his truth. Again,
18 regardless of from which witness or which side of the case
19 that evidence may come.

20 Now the same constitution that makes you the judges of
21 the facts, makes me the Judge of the law, and the
22 instructor of the law. So I say to you, please, accept the
23 law as I give it to you in this proceeding and apply it to
24 the facts as you find in the case. I will tell you that
25 just having been out on the street myself a good bit, and

CHARGE ON THE LAW

284

1 around there is a lot of bad information about what the law
2 is out on the street about any particular given subject,
3 whatever that subject may be. So I am going to ask you to
4 set aside what you may have understood the law is, or what
5 you believe is a better idea, and apply to the facts as you
6 find them the law that I give you in this proceeding right
7 now. And if you do that, then you will reach a verdict
8 which is just and fair.

9 Now I tell you that in a criminal prosecution of this
10 type, as I have already stated to you, The State, the
11 prosecution, seated across to you has the burden of proof.
12 The Defense has no burden whatsoever. The Defendant is
13 presumed innocent. And in this State, according to our
14 Constitution, the prosecution must prove its case to the
15 standard of proof we call, beyond a reasonable doubt. That
16 is the standard, beyond a reasonable doubt, before any
17 finding of guilt may occur. If The State fails to meet
18 this high burden, and I tell you it is a high burden, then
19 the Defendant is entitled to an acquittal on that
20 particular charge.

21 So then you say okay, what is a reasonable doubt.
22 Well I am going to start by telling you what it is not. It
23 is not an imaginary, or fanciful, or a weak doubt; it is a
24 substantial doubt. It is a doubt which the words imply; a
25 doubt for which you can give or assign a reason, based on

1 the testimony and the evidence in the case. A reasonable
2 doubt is not any sort of a doubt. You and I know, we may
3 have any sort of a doubt about any matter, no matter how
4 trivial it may be in our everyday lives, such as what pair
5 of shoes to wear to some event, or what tie to take to some
6 event. That is not a reasonable doubt.

7 A reasonable doubt is a doubt that makes and honest,
8 sincere, conscientious juror, in search of the truth,
9 hesitate to act. Proof beyond a reasonable doubt is proof
10 that leaves you firmly convinced of the Defendant's guilt.
11 If you have a doubt for which you can give or assign a
12 reason as to the guilt of the Defendant on a particular
13 charge, then he is entitled to a verdict of not guilty on
14 that particular charge.

15 Reasonable doubt may arise from the evidence that is
16 in the case, or from the lack or absence of evidence in the
17 case. You the jury, must make the determination of whether
18 or not reasonable doubt exists as to the guilt of the
19 Defendant on each and every one of these charges.

20 The very fact, however, that the jury goes back in the
21 jury room, and engages in a full and free discussion on the
22 issue of guilt or non guilt with a conversation ebb and
23 flow on that issue, does not automatically mean that
24 reasonable doubt exists in this cases or any other cases for
25 that matter.

CHARGE ON THE LAW

286

1 Now I tell you that criminal intent is a necessary
2 element of each crime that must be proved by The State
3 beyond a reasonable doubt. Criminal intent is always a
4 matter that must be determined by the jury from the
5 circumstances that surround a situation. You and I know
6 that there is no way we can prove intent to some
7 mathematical certainty. There is no way that medical
8 science allows us to dissect someone's brain and look in
9 and determine what a person had in mind at a particular
10 time. So the law says, that criminal intent may be
11 inferred from the circumstances shown to have existed, both
12 before, during, and after the fact. This is how you, the
13 jury, makes a determination of whether or not the element
14 requiring intent is present.

15 Criminal intent is a state of mind that operates
16 jointly with an act or omission in the commission of a
17 crime. Criminal intent is a mental state of conscious
18 wrongdoing. So it is up to you, the jury, to determine
19 what the Defendant intended to do based on the
20 circumstances shown to have existed as you find them to be.
21 I tell you that The State must prove criminal intent,
22 beyond a reasonable doubt, just as The State must prove
23 every other element, beyond a reasonable doubt of each of
24 the crimes charged.

25 Now you also heard evidence in this case that the

1 Defendant Mr. Nealey, had committed a prior bad act, or was
2 charged with a prior bad act, other than the one for which
3 is now on trial, that was not the subject of a conviction
4 at the time. In fact, the charge was pending at the time
5 that this incident occurred. I want to tell you that this
6 testimony, if you conclude it is true, may only be
7 considered by you on the question or whether some motive,
8 or intent, or absence of a mistake or accident existed on
9 the part of the Defendant in this serious of circumstances
10 or events, and no other reason, and for no other purpose.
11 You may give this evidence the weight and value, if any,
12 that you found it to be entitled to, on the sole issue of
13 whether motive, intent, or absence of mistake, or absence
14 of accident existed. You must not consider evidence of the
15 commission or alleged commission of another prior bad act
16 as proof of the Defendant's guilt of the charges that we
17 are trying here today.

18 Now, I further charge you under South Carolina law
19 that mere presence at the scene is not sufficient to prove
20 somebody guilty of a particular crime. A Defendant's
21 presence where an alleged crime is being committed, or mere
22 association with a person who may commit a crime, does not
23 make the Defendant an accomplice, or an aider, or abetter
24 of that person committing the crime. The burden is on the
25 State to prove every element of the crime charged. And if

CHARGE ON THE LAW

288

1 you find, after reviewing all the evidence, that The State
2 has proved only that a particular Defendant was present at
3 the scene of a crime, but has not proved beyond a
4 reasonable doubt any other participation in any crime, then
5 you must find the Defendant not guilty on the particular
6 charge that you are considering. The law is that proof
7 that someone is at the scene of a crime is not sufficient
8 to find someone guilty of that crime.

9 Now I further charge you that during the course of
10 this trial, the Defendant came forward and testified, you
11 saw that, and made certain explanations. But, I charge you
12 that it is not incumbent upon the Defendant to prove his
13 explanations or anything else for that matter. The
14 Defendant's plea of not guilty; places the burden upon the
15 State, to prove his guilt beyond a reasonable doubt before
16 a Defendant can be found guilty. You must gauge the
17 credibility and the believability of the Defendant, as you
18 would any other witness.

19 Now, also as you are aware, and as I have said several
20 times, the Defendant has multiple charges against him. At
21 this point, he has five charges pending against him. I
22 instruct you that these charges are separate and they are
23 distinct, and they must be considered individually and
24 separately by you, not all lumped together. Your verdict
25 on one, does not control your verdict on the other. In

1 fact, Mr. Foreman, ladies and gentlemen of the jury, when
2 you see your Verdict Form, you will see that the questions
3 that are set forth specifically about each individual
4 charge. Again I say your verdict on one, does not control
5 your verdict on the other.

6 Now, further as you are aware, The State has combined
7 five separate criminal charges into one trial, which is
8 what we have just had. Now before defining the various
9 charges, I want to give you some specific information on
10 two of them. The criminal domestic violence of a high and
11 aggravated nature, and one of the charges of assault and
12 battery with intent to kill; both of which have as the
13 alleged victim, Ms. Dorothy Perkins, that The State alleges
14 that these two separate crimes occurred at two separate
15 places. I want you to understand that. The CDV claim, or
16 the criminal domestic violence claim or charge, arises from
17 alleged acts that occurred at the East Home Avenue
18 residence in Hartsville. And the assault and battery with
19 intent to kill charge arises from a separate act alleged to
20 have occurred out on Billy Farrow Highway, in the County of
21 Darlington. Please appreciate the distinction between
22 those two particular criminal charges, with regard to the
23 alleged victim, Dorothy Perkins.

24 Ma'am, are you okay? You need something to drink.

25 JUROR: I'm fine.

CHARGE ON THE LAW

290

1 THE COURT: All right, very good. Now let me define
2 the charges for you. Let's go through these charges, one
3 at a time. Let's talk about criminal domestic violence of
4 a high and aggravated nature that is the first one I will
5 define for you.

6 The Defendant is charged with criminal domestic
7 violence of a high and aggravated nature. Again, with
8 regard to the alleged victim, Dorothy Perkins. Now to
9 convict someone for criminal domestic violence of a high
10 and aggravated nature, The State must first prove, beyond a
11 reasonable doubt that the Defendant, through the commission
12 of a assault and battery, caused physical harm or injury,
13 or offers or attempted to cause physical harm or injury
14 with the apparent present ability to do so, that is to
15 inflict it, under circumstances reasonably, causing fear
16 of imminent peril to a member of the Defendant's own
17 household, or that the Defendant offered or attempted to
18 cause physical harm or injury to a member of the his own
19 household, accompanied by circumstances of aggravation.
20 Now let me define this a little bit. First, I said, the
21 State must prove that the Defendant committed an assault
22 and battery on the alleged victim. I am going to define
23 assault for you.

24 An assault occurs when a person unlawfully attempts or
25 offers to commit a violent injury upon another person and

1 had the present ability to complete that injury. An
2 assault is the intentional creation of a reasonable fear of
3 immediate bodily harm. It's not necessary that the
4 attempted injury actually take place, or the harm actually
5 occurred. For example, using me and my court reporter as
6 an example. If I walk up to her, and when I am in arms
7 reach, if I draw back to hit her, that is an assault.

8 Now the battery is the unlawful touching of another
9 person by the person who has committed the assault. And
10 unlawful touching can be caused by part of the accused
11 body, or any object that the accused puts in motion. A
12 battery is the completion of the assault by using or
13 applying force to another person however slight, in a rude,
14 angry, or resentful manner, without legal justification for
15 doing so. In using my early example, if I draw back to hit
16 and commit an assault, if I carry through and actual strike
17 that person, then that is a battery, and I have committed a
18 battery.

19 Now a household member, because remember this is
20 criminal domestic violence of a high and aggravated nature,
21 must also involve a household member, is defined as for the
22 purposes of this statute, a spouse, a former spouse, a
23 person with whom the Defendant has a child in common,
24 and/or a person of the opposite sex with whom the Defendant
25 is, or has lived in the past.

CHARGE ON THE LAW

292

1 The State also must prove a circumstance of
2 aggravation for criminal domestic violence of a high and
3 aggravated nature. And circumstances of aggravation
4 include, the use of a deadly weapon, infliction of serious
5 bodily injury, great disparity in the ages or physical
6 conditions of the parties, or a difference in gender. And
7 that is the definition of criminal domestic violence of a
8 high and aggravated nature.

9 Now let's talk about assault and battery with intent
10 to kill. The Defendant, has been charges with actually two
11 counts of assault and battery with intent to kill. In
12 order to prove assault and battery with intent to kill, the
13 State must prove, beyond a reasonable doubt that the
14 Defendant committed an unlawful act of a violent nature to
15 the person of another with malice aforethought. Now I just
16 defined assault for you. Remember my example. Drawing
17 back when I am within range, and the definition of assault
18 is the same. And I just defined battery for you. You may
19 recall with regard to criminal domestic violence, and the
20 definition of battery, which is carrying through the
21 assault if the same.

22 I will tell you that in this case you must also have
23 malice for assault and battery with intent to kill. Malice
24 is hatred, ill will, or hostility toward another person.
25 It is the intentional doing of a wrongful act without just

1 cause or excuse and with the intent to inflict an injury
2 under circumstances that the law will infer, and evil
3 intent.

4 Malice aforethought does not require that malice
5 exists for any particular time before the act is committed,
6 but malice must exist in the mind of the Defendant just
7 before and at the time that the act was committed.
8 Therefore, there must be a combination of the previous evil
9 intent and the act itself.

10 Now malice aforethought may be expressed, or it may be
11 inferred. Let's talk about that. These terms, express and
12 inferred don't mean different kinds of malice, but merely
13 the manner in which malice may be shown to exist. This is
14 either by direct evidence, or by inference from the facts
15 and circumstances which are proved. Express malice is
16 shown when a person speaks words of hatred or ill will for
17 another, or when a person prepared beforehand to do the act
18 which was later accomplished. Such as lying in wait for a
19 person, or any other act of preparation going to show that
20 the deed was within the Defendant's mind, well that would
21 be express malice.

22 Malice may be inferred however from conduct that shows
23 a total disregard for human life. Inferred malice may also
24 arise when the deed is done with a deadly weapon. A deadly
25 weapon is any article, or instrument, or substance which is

CHARGE ON THE LAW

294

1 likely to cause death or great bodily harm. Whether an
2 instrument has been used as a deadly weapon depends on the
3 facts and the circumstances of each case.

4 Now the following are some examples of deadly weapons.
5 A pistol, a shotgun, a knife, a rifle, or a razor. A gun
6 may be a deadly weapon, even if it's not operating. I tell
7 you that a deadly weapon may be any article or instrument
8 that is likely to produce death or great bodily harm. If
9 facts are proved beyond a reasonable doubt sufficient to
10 raise an inference of malice to your satisfaction, this
11 inference would be simply an evidentiary fact to be
12 considered by you along with the other evidence in the
13 case, and you should give it the weight that you believe it
14 is entitled to receive.

15 I tell you that with assault and battery with intent
16 to kill; a specific attempt to kill is not, and I repeat to
17 you, is not an element that must be proved. But there must
18 be a general intent to commit some serious bodily injury.
19 Intent means, intending the result that actually occurs,
20 not in some accident or involuntary way. Intent may be
21 shown by acts or conduct of the Defendant and other
22 circumstance from which you may naturally and reasonably
23 infer intent. Evidence of the character of the assault,
24 the character of the instrument used, the manner in which
25 it was used, the purpose to be accomplished, and the

1 resulting wounds or injuries may be considered in
2 determining the intent with which an assault is committed.
3 Intent may be inferred when it is demonstrated that the
4 Defendant voluntarily and willfully committed an act, the
5 natural tendency of which is to destroy another's life.

6 All right. Now I want to define for you kidnaping.
7 As you are aware, the Defendant is charged with kidnaping.
8 Now The State, in order to prove this, must prove beyond a
9 reasonable doubt, that the Defendant knowingly and
10 unlawfully seized, or confined, inveigled, or decoyed, or
11 abducted, or carried away another person without the
12 authority of law. To do a thing unlawfully is to do it
13 wilfully against the law.

14 Knowing means, with knowledge, consciously, and not as
15 an accident.

16 Seize means to take hold of suddenly or forcibly.

17 Confine means to limit, restrict, or enclose within
18 some bounds, or imprison, or shut, or keep in.

19 Inveigle means to lure, entice, or lead astray by
20 false representations, promises, or other deceitful means.

21 Decoy means, to lure someone as if by a decoy. A
22 decoy is something to entice some person into a trap.

23 I tell you that to kidnap someone is to remove a
24 person against his or her will by unlawful force, or by
25 fraud.

CHARGE ON THE LAW

296

1 Abduct means to carry off secretly or by force for an
2 illegal purpose.

3 To carry away, means to remove.

4 Now, I tell you that The State does not have to prove
5 that the Defendant did all of these. Instead, if find
6 beyond a reasonable doubt, that the Defendant did any of
7 these things that I've just listed, then you may find the
8 Defendant guilty of kidnaping.

9 Something done without authority of law, is something
10 which the law does not sanction, permit, allow, condone, or
11 provide justification for.

12 I will tell you that kidnaping; we often think of
13 kidnaping from watching television that someone is kidnaped
14 for a ransom or for some monetary purposes. It is not
15 required under South Carolina law that the kidnaping be for
16 any personal or monetary gain, or for some illegal purpose,
17 but it may be for any reason whatsoever.

18 All right. And then my last charge I want to define
19 for you is possession of a weapon during the commission of
20 a violent crime. The Defendant is charged with possession
21 of a weapon during the commission of a violent crime. The
22 State must prove --- in order to prove this, beyond a
23 reasonable doubt, that the Defendant was in possession of a
24 firearm, or visibly displays what appeared to be a firearm,
25 or visibly displays a knife during the commission of

1 violent crime.

2 A knife means, an instrument or tool consisting of a
3 sharp cutting blade whether or not fastened to a handle,
4 which is capable of being use to inflict a cut, a slash, or
5 a wound. In order to find the Defendant guilty of
6 possession of a weapon during the commission of a violent
7 crime, you first find the Defendant either guilty of
8 committing a violent crime or attempting to commit a
9 violent crime. Criminal domestic violence of a high and
10 aggravated nature is a violent crime under South Carolina
11 law.

12 All right. Now, ladies and gentlemen, in conclusion
13 let me just say this to you. In a few minutes you are
14 going to retire to the begin your deliberations. And when
15 you do, I want to express to you the hope that I have, that
16 you are mindful of the importance of your responsibility,
17 and I know that you are. You are not called upon to serve
18 often as jurors. You may remember we talked about the fact
19 yesterday that you can't be required to serve more than one
20 time in three calender years in the same Court. There is a
21 reason for that, and the reason for that is this. This is
22 a difficult task, because it requires you and I of freeing
23 your minds from all outside influences, because you and I
24 are acting for the community in seeing to it here that
25 every trial is fair, and that every verdict is just.

CHARGE ON THE LAW

298

1 You probably noticed throughout this trial that the
2 presiding officer is referred to as Your Honor. And I know
3 you know that is not some title given to me. It's a title
4 that is assigned to the position that I am privileged to
5 hold. And that is because this Court is entrusted with the
6 honor of this community, this county, this State and indeed
7 this Nation in seeing to it that every person tried here
8 receives fair and impartial justice.

9 Now in just in a moment or two you are going to take
10 the preservation of the honor of community, county, State,
11 and Nation when you go back in your jury room to decide
12 this case. Now when I say that, please don't think I'm
13 telling you how to decide this case. That is not my point.
14 That would be inappropriate.

15 I am simply saying this as the presiding officer of
16 this Court, I am vitally concerned that whatever verdict
17 you find will be the result of you going into the jury
18 room, confining your considerations to the evidence put
19 forth here in this courtroom, weighing that evidence fairly
20 and impartially, and applying it to the law that I have
21 given you I this charge. And I have every confidence that
22 that is what you will do. I will tell you that everyone in
23 this case is entitled to justice, nothing more and nothing
24 less. We owe no support to any party. We have no sympathy
25 to any party. And I am of the confirmed opinion that

1 whatever verdict you reach will in fact represent truth and
2 justice for all the parties that are before the Court
3 today.

4 Now, Mr. Foreman, let me just say to you, let me
5 remind you that your verdict must be unanimous. It cannot
6 be a split verdict. It must be a unanimous verdict. What
7 we have on the Verdict Form are five questions. Now as you
8 debate these questions, please, the jury room is somewhat
9 large. There may be some seated at the table, some by the
10 wall, somebody over by the window. If they have a point
11 they wish to make on a particular issue, please make sure
12 as a moderator and facilitator of the jury discussions,
13 that they are able to do so, so that your verdict not only
14 is a consensus verdict, but it is indeed a unanimous
15 verdict. Because I will tell you that right at the bottom
16 of this form, the last line says, I certify this decision
17 was a unanimous decision of the jury. When you sign there,
18 Mr. Clark, you are confirming to the Court that each of
19 these five questions are answered in a unanimous fashion.

20 Now, as you know, there are five charges that are
21 pending, and there is a question as to each one of these
22 charges on this Verdict Form. You can't see it here while
23 I'm holding it, but you will have it with you in the jury
24 room. And let me just read the first question from the
25 Verdict Form. It says, as to Indictment Number 09-872,

CHARGE ON THE LAW

300

1 Indictment for criminal domestic violence of a high and
2 aggravated nature as to Dorothy Perkins and then in
3 parentheses, for acts that allegedly occurred at the
4 residence within the City of Hartsville, we the jury,
5 unanimously find the Defendant, Curtis Ray Nealey, --- And
6 let me just say to you, I've got two choices to give you, I
7 can't give them to you at the same time on the piece of
8 paper. One is listed in front of the other. Not because
9 it is a priority, it's just simply that one's got to come
10 in front of the other. The first choice is not guilty, and
11 the second choice is guilty. Whichever it is among those
12 two, please mark that and then proceed. Because as I have
13 explained to you, if you find the Defendant not guilty you
14 should skip the next charge, which has to do with
15 possession of a knife during a violent crime, because you
16 find him not guilty of the violent crime. If you do find
17 him guilty of the violent crime, then you must go to the
18 next question which has to do with possession of a weapon
19 during the commission of a violent crime. Then you move on
20 to questions three, four, and five, in like fashion.

21 Now should you have a question, you can knock on the
22 door. We will be glad to answer any questions you may
23 have. If you need to take a break, we will give you that
24 opportunity as well.

25 What I am going to ask you do now is to go back in the

1 jury room, and to take a break for a moment while we get
2 the evidence together. Make sure it's correct. Then send
3 in the Verdict Form with you, and at that point you can
4 begin to deliberate.

5 Now while we are all together, one more thing. I want
6 to address our alternate juror. Ma'am, I want to thank you
7 for your service in this case. I think our twelve jurors
8 are going to hold their health here for the next minute or
9 two such that we will not need you to serve as an
10 alternate. But I don't want you to think that somehow you
11 have wasted your time, because you haven't. Because under
12 South Carolina law, Constitutional requirements actually,
13 we must have twelve jurors. If you are not here, and even
14 now at the very end of this case as the jury retires to
15 deliberate, if one of the jurors got sick, or had an
16 emergency, I would have to declare mistrial and this case
17 would have to be tried again. Your presence here has
18 avoided that, and I want to thank you in the presence of
19 your colleagues for your service. I am going to let you go
20 back with them and say your goodbye's, and then when the
21 evidence goes in please come out, and I am going to speak
22 to you one more time, and give you other opportunity to
23 leave at that time, if you wish. But thank you for your
24 service.

25 All right, let's all remain where we are while I

THE STATE VERSUS CURTIS RAY NEALEY

302

1 jurors return to the jury room.

2 BAILIFF: Come this way, please.

3 (Whereupon, the jury exits the courtroom at 3:02
4 p.m.)

5 THE COURT: All right, the jury is out. Are there
6 any exceptions or objection to the charge given by the
7 Court. What says The State?

8 MS. MCKENZIE: None, Your Honor.

9 THE COURT: And Defense?

10 MS. LITTLE: No, sir.

11 THE COURT: All right, then come forward and let's
12 make sure the exhibits are in order.

13 (Whereupon, counsel examines the evidence before
14 it is given to the jury.)

15 (PAUSE.)

16 THE COURT: All right, ladies and gentlemen, just a
17 moment, please. Let's come back to order. Some of the
18 jurors have gone out to take a break. When they come back
19 in, we will send the evidence to them and allow them to
20 begin deliberations. Please do not leave the fifth floor.
21 If you do, counsel, if you want to step to the fourth
22 floor, make sure we have your cell phone or know where you
23 are so we can contact you immediately in the event there is
24 a jury question or verdict. In the meantime, we will stand
25 down. Court is in recess now awaiting to call the jury.

1 (Whereupon, the Court is in recess and the jury
2 begins deliberation at 3:14 p.m..)

3 **THE COURT:** All right, welcome back, ladies and
4 gentlemen. I am told the jury has reached a verdict, and
5 please bring in the jury.

6 **BAILIFF:** All right, sir.

7 (Whereupon, the jury enters the courtroom at 4:40
8 p.m.)

9 **THE COURT:** All right, ladies and gentlemen, welcome
10 back to the courtroom. Dr. Clark, I am told that the jury
11 has reached a verdict. Is that correct?

12 **DR. CLARK:** Yes, sir.

13 **THE COURT:** Would you please give your Verdict Form
14 to our Clerk. Thank you.

15 All right, let's let the record reflect that the
16 Verdict Form is appropriately filled out, and it is signed
17 by the foreperson. Defendant, please rise.

18 Mr. Clerk, please publish the verdict.

19 **CLERK OF COURT:** Yes, sir, Your Honor.

20 **VERDICT**

21 **CLERK OF COURT:** The State of South Carolina verses
22 Curtis Ray Nealey, Defendant. Question one, as to
23 Indictment Number, 2009-GS-16-872, Indictment for criminal
24 domestic violence of a high and aggravated nature as to
25 Dorothy Perkins.

THE STATE VERSUS CURTIS RAY NEALEY

304

1 We the jury find unanimously find the Defendant,
2 Curtis Ray Nealey, guilty. If chosen, proceed to question
3 two.

4 Question Two, as to Indictment Number, 2009-GS-16-872,
5 possession of a weapon during the violent crime as to
6 criminal domestic violence of a high and aggravated nature
7 as to Dorothy Perkins. We the jury, unanimously find the
8 Defendant, Curtis Ray Nealey, guilty.

9 Question Three, as to Indictment Number, 2009-GS-16-
10 869, assault and battery with intent to kill as to Dorothy
11 Perkins. We the jury, unanimously find the Defendant,
12 Curtis Ray Nealey, guilty.

13 Question Four, as to Indictment Number, 2009-GS-16-
14 874, assault and battery with intent to kill as to Victoria
15 Perkins. We the jury, unanimously find the Defendant,
16 Curtis Ray Nealey, guilty.

17 Question Five, as to Indictment Number, 2009-GS-16-
18 873, kidnaping as to Dorothy Perkins. We the jury,
19 unanimously find the Defendant, Curtis Ray Nealey, guilty.

20 I certify, that this decision was the unanimous
21 decision of the jury. Drew S. Clark, dated as the
22 foreperson, November 10, 2009. If this is your verdict as
23 to each Indictment, would you please raise your right hand.
24 If this was your verdict, would you please raise your right
25 hand.

1 **THE COURT:** All right. Then, ladies and gentlemen,
2 let's let the record reflect that all of the jurors have
3 raised their hands in response to the question. You may be
4 seated, ladies and gentlemen.

5 Now, while we are in the presence of the jury, are
6 there any Motions for which a jury response would be
7 necessary. First from The State?

8 **MS. MCKENZIE:** None, Your Honor.

9 **THE COURT:** From the Defendant?

10 **MS. LITTLE:** No, sir.

11 **THE COURT:** Very good. Then, ladies and gentlemen,
12 that concludes your service in this case. I will tell you
13 that what we are going to do next is the sentencing
14 proceeding. You are welcome to remain with us, but rather
15 than have you sit in the box for this, what we will do is
16 we are going to let you exit the courtroom, and then come
17 back in the back, and sit and observe from the back. That
18 way you are able to leave if you wish at any point during
19 proceeding. You are not required to stay for the
20 proceeding. You are welcome to walk right out the door and
21 leave, without watching the sentencing proceedings.

22 But ladies and gentlemen, let me thank you for your
23 service for rendering a verdict, which is just and true
24 what you determine justice to be in this case. I will say
25 to you the good news is --- is that this concludes your

1 service for the week. Tomorrow is a holiday, and there
2 will not be further jury draw this week, so I am going to
3 release you for the week. In a few days the county is
4 going to send you check. It is going to be the county's
5 expressing gratitude for your service, which will be per
6 diam. It is not going to be enough to retire on, but that
7 will be coming your way. But I am going to come over and
8 express my gratitude by shaking your hand as you leave the
9 jury box for a job well done. I thank you for your service
10 in this case.

11 Mr. Clerk, do you have anything further you want to
12 say to the jury?

13 CLERK OF COURT: I will take the checks and excuse
14 them back there when we break a moment.

15 THE COURT: Well let's step back to the jury room for
16 a moment and then we will wait on you before we start.

17 (Whereupon, the jury exits the courtroom at 4:35
18 p.m..)

19 THE COURT: We will wait a moment while the jury
20 comes back around.

21 (PAUSE.)

22 SENTENCING HEARING

23 THE COURT: All right, counsel, are you ready?

24 MS. LITTLE: Your Honor, would it be appropriate for
25 me to make my Motion at this time?

1 THE COURT: All right. While we are waiting, on the
2 sentencing sheets are there any Motions now outside of the
3 presence of the jury, that the Defendant wishes to make,
4 I'll be glad to hear from you.

5 MS. LITTLE: Thank you, Your Honor. At this time
6 Defense moves for a new trial, based on the lack of
7 evidence in this case.

8 THE COURT: Based on the lack of evidence?

9 MS. LITTLE: Yes, sir.

10 THE COURT: The Court respectfully denies the Motion.
11 The question before the Court was whether there is
12 competent evidence in the record that supports the decision
13 of the jury. The record is repeat with evidence that
14 supports the jury's decision. And I would deny your
15 Motion. Is there anything further?

16 MS. LITTLE: No. Thank you, Your Honor.

17 THE COURT: All right, very good. All right, are we
18 ready, Madam Solicitor?

19 MS. MCKENZIE: I'm filling out sentencing sheets,
20 Your Honor.

21 THE COURT: Madam Solicitor, I note that you filling
22 out sentencing sheets, were you expecting an acquittal?

23 MS. MCKENZIE: I'm sorry, what?

24 THE COURT: Were you expecting an acquittal?

25 MS. MCKENZIE: We just don't like to be presumptuous.

THE STATE VERSUS CURTIS RAY NEALEY

308

1 THE COURT: I see. Whether than delay these
2 proceedings let's go ahead and take arguments on whatever
3 sentencing arguments you wish to make.

4 Ms. McKenzie, I will be glad to hear from you.

5 MS. MCKENZIE: Your Honor, we would ask --- In
6 working with this case, I've spoken to both --- I've
7 obviously had a lot of contact with both victims in the
8 case. Dorothy Perkins, she has indicated to me that she
9 did believe that Curtis Nealey was going to kill her that
10 night. He told her he was going to kill her, and they
11 both were going to die. He was going to kill her, and
12 then kill himself. She was very concerned that she was
13 going to lose her life that night, and she feels like
14 that truck driver that stopped in the road is the only
15 thing that prevented her from being dead in a field,
16 somewhere off Billy Farrow Highway. She is still scared
17 of the Defendant to this day, and also her mother. We
18 would just ask that the Court take everything into
19 consideration. The evidence that was presented, and
20 just the violent nature of this crime into consideration
21 with your sentencing. I would defer to them, if there is
22 anything they would like to say, maybe we could hear that
23 a little bit later.

24 THE COURT: All right. Does the Defendant have a
25 prior record?

PRESENTATION OF PRIOR RECORD

1
2 MS. MCKENZIE: Your Honor, the Defendant had a prior
3 criminal domestic violence conviction in the Magistrate's
4 Court, and also a breach of peace in the Magistrate's
5 Court. That would be the extent of his record.

6 There is another assault and battery with intent to
7 kill that is pending that involved Kenneth Ray Gainey, who
8 is Dorothy Perkins' son's father.

9 THE COURT: All right, let me ask. What about the
10 assault and battery that apparently --- the criminal
11 domestic violence that The State alleges was one of the
12 motives for this series of crimes?

13 MS. MCKENZIE: That is pending.

14 THE COURT: Is this the one for which there was a
15 conviction subsequently?

16 MS. MCKENZIE: No, Your Honor. There was a CDV, and
17 I mis-spoke, earlier and I apologize. There was a CDV
18 pending. He had a CDV conviction.

19 THE COURT: All right.

20 MS. LITTLE: From 2006 or 2007.

21 THE COURT: And what happened with the other pending
22 CDV?

23 MS. MCKENZIE: It is still pending. It occurred in
24 January of 08, and it is still pending. That is the one
25 that we referenced in the trial.

THE STATE VERSUS CURTIS RAY NEALEY

310

1 THE COURT: All right. And you are telling me there
2 is yet another pending assault and battery with intent to
3 kill?

4 MS. MCKENZIE: Yes, sir.

5 THE COURT: And the victim in that case is what
6 relationship to Ms. Perkins, if any?

7 MS. MCKENZIE: The father of her oldest son.

8 THE COURT: All right. Now let me just address the
9 jury for a moment, who has come into the courtroom, and
10 some are sitting in the back. First of all, you wonder
11 well, why don't we know this whenever this case is being
12 tried. I will tell you that generally --- Well not
13 generally, but always, if there is not a conviction,
14 because the Defendant is presumed innocent, it is not put
15 into the record that there may be a pending charge, or some
16 previous pending charge. The only thing that would be
17 admissible would be whether there had been a conviction,
18 and that only on the issue of whether the Defendant is a
19 credible and believable witness if he took the stand. For
20 whatever reason that was not offered on the issue of
21 credibility during the portion of the trial, that there had
22 been a previous CDV conviction. That may or may not have
23 been admissible but the Court can consider for sentencing
24 purposes, but generally it is not admitted during the trial
25 of the case, because the question is whether the Defendant

1 committed the acts for which he is charged, and not whether
2 he committed some past acts, which I suspect is why that
3 evidence was not offered, that there was a previous CDV
4 conviction. Who was the victim in the previous CDV
5 conviction?

6 MS. MCKENZIE: Ms. Perkins.

7 THE COURT: All right. The same victim, Dorothy
8 Perkins?

9 MS. MCKENZIE: Yes, sir.

10 THE COURT: All right. And so our record will be
11 clear, please state for those present in the courtroom.
12 What are the maximum sentences that are carried by each of
13 these charges?

14 MS. MCKENZIE: Your Honor, the kidnaping carries up
15 to thirty-years. Assault and battery with intent to kill
16 up to twenty. Criminal domestic violence of a high and
17 aggravated nature up to ten. And possession of a weapon
18 during the commission of a violent crime, five.

19 THE COURT: All right. Anything further --- And let
20 me say to both of the victims who are present, if you have
21 something you wish to say you are not required to speak,
22 the Court would be glad to hear from you. Do you either of
23 you have something you wish to say?

24 MS. PERKINS: Yes, sir, --

25 THE COURT: Ms. Perkins, please remember that you

THE STATE VERSUS CURTIS RAY NEALEY

312

1 remain under oath from your previous testimony, and I will
2 be glad to hear from you.

STATEMENT BY DOROTHY PERKINS

3
4 MS. PERKINS: I ask that you punish him and sentence
5 him fullest, because I mean, he won't get a chance to do
6 this to no one else's family. I honestly believe if it
7 wasn't for that truck driver that night, I wouldn't be here
8 for my kids today. Thank you for your time.

9 THE COURT: All right, Ma'am. Thank you for your
10 presence here at this trial, and to relive some things that
11 were pretty difficult for you, and the fact that you came
12 forward to testify it took some courage to do that. So I
13 commend you for that.

14 Is there anything further, Ms. Perkins, that you wish
15 to say?

STATEMENT OF VICTORIA PERKINS

16
17 MS. PERKINS: I hope you give him what he deserve,
18 cause he lied on me about selling them pills and stuff. I
19 hope he get just what he deserve.

20 THE COURT: All right, Ms. Perkins, thank you, ma'am.

21 All right, now I will be glad to hear from the
22 Defense. Ms. Little?

STATEMENT ON BEHALF OF DEFENDANT BY MS. LITTLE

23
24 MS. LITTLE: Thank you, Your Honor. Your Honor,
25 Curtis is thirty-five-years-old. Did not complete high

1 school, but did go back on his own and get his GED. He was
2 working as a home builder in construction. Your Honor, he
3 is the father of three. Two of whom were living with him
4 up until his arrest. He does have one prior misdemeanor
5 CDV first conviction. Your Honor, we would ask that you
6 not consider any pending charges relating to anyone other
7 than Ms. Perkins, non-convicted charges. We would ask that
8 you not take those into consideration today.

9 Your Honor, he is apologetic for his behavior. I
10 think he would like to apologize to the Court. I would
11 like to remind the Court that this incident involved
12 drinking, alcohol, partying, drugs. It is tragic. We ask
13 that you take into consideration his lack of prior record.
14 Thirty-five-years-old, has never been convicted of any
15 felonies. And, Your Honor, also that you give him credit
16 for three hundred and eighty-two days, which he has served
17 in the county jail.

18 THE COURT: All right. Mr. Nealey, do you have
19 something you want to say, sir?

20 STATEMENT BY DEFENDANT CURTIS RAY NEALEY

21 MR. NEALEY: Sir, I apologize for all the things that
22 happened whatever that night and the things that went wrong
23 or whatever. I apologize to them or whatever, for anything
24 that you know that has trouble them, or is troubling them
25 now.

SENTENCING

1
2 THE COURT: All right, sir, just one moment. Mr.
3 Nealey, the Court has listened carefully to the testimony,
4 sir, you have been accorded each and every one of your
5 constitutional rights. You have been tried by a jury of
6 your peers, and you have been found guilty of all charges
7 against you, sir.

8 I will say, and although I am not one of the judge's
9 of the facts, I am quite convinced that the jury gave very
10 little credibility to your testimony, sir, as did the
11 Court. It was very telling that you fled the scene after
12 this incident occurred, and then of course, you left the
13 jurisdiction, which that information did not come out in
14 the course of the trial.

15 But the Court finds that your testimony to have been
16 manifestly not credible. This is a violent personal attack
17 on a defenseless lady, as well as a violent personal attack
18 that could have very easily resulted in the death of one of
19 the victims. In fact, if you throw someone off a
20 motorcycle you would expect that to be a fatal event. And
21 this cannot to be tolerated, sir, in our society.

22 I sentence you in the following fashion. First of all
23 for assault and battery with intent to kill, I sentence you
24 to twenty-years on each of those accounts to be concurrent
25 to each other, and to be concurrent on your kidnaping

1 sentence.

2 For the CDVHAN, criminal domestic violence high and
3 aggravated, I sentence you to ten-years, and that is also
4 going to be concurrent to your kidnaping sentence.

5 For the kidnaping, sir, I sentence you to thirty-years
6 in the Department of Corrections.

7 Please understand that is a non parol able offense,
8 meaning that you will serve a minimum of 85% of that before
9 you will be eligible for parole.

10 Furthermore, I sentence you to a consecutive five-
11 years for the possession of a weapon during the commission
12 of a violent crime, which is associated with the CDVHAN for
13 a total of thirty-five-years in the Department of
14 Corrections.

15 I am going to note on the record that I find that this
16 kidnaping was not sexual in nature, which means you will
17 not be required if you are able to be released from prison
18 at some future time to registry on the sex offender
19 registry.

20 I say again, you will not be required, but that is the
21 sentence of the Court, sir. An aggregate of thirty-five-
22 years in the Department of Corrections.

23 I am going to remand you now to the custody of the
24 Detention Center for transport to the Department of
25 Corrections. Please go with the officer.

THE STATE VERSUS CURTIS RAY NEALEY

316

1 All right, ladies and gentlemen, to the members of the
2 Perkins' family, to the attorneys who represented the
3 parties in this case, I wish all of you well. This case
4 has been well tried. To the members of the jury, I commend
5 you for a decision consistent with the facts, and
6 consistent with justice in this case.

7 This hearing in this case is now adjourned.

8 (Whereupon, this trial was concluded at 5:00 p.m.
9 on Tuesday, November 10, 2009.)

10 -- END OF TRANSCRIPT --

CERTIFICATE OF REPORTER

317

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of The State of South Carolina, do hereby certify, that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the above captioned case, relative to appeal, in the Court of General Sessions, Darlington County, South Carolina, on the 9th and 10th day of November 2009.

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

May 9, 2010

Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Darlington)Curtis Nealey #337988)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

2012-CP-16-070

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2012 JAN 17 AM 11:52
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Court of General Sessions
Darlington County

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) Two ABTK's 09-GS-16-0869 + 0874. CDVHAN, 09-GS-16-0872

(b) Kidnapping, 09-GS-16-0873

(c) Poss of A Weapon During A Crime, 09-GS-16-0872

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 11-10-09 35 Years

(b)

(c)

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed, due to Trial Attorney's failure to object
- ii. to improper Jury instruction.
- iii. _____
- (c) the date of each such result:
- i. 12-20-11
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N-A
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment Page 2(A)-9A "Not enough space" to write
- (b) Ineffective Assistance of Counsel 1-6
- (c) _____

2012 JAN 17 AM 11:52
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.
 DARLINGTON COUNTY, S.C.

FILED

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See Attachment Page 2(A) - 10(A)

Not enough space to write. o!!

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

N-A

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i.

N-A

ii.

iii.

iv.

(c) the disposition thereof:

i.

N-A

ii.

iii.

iv.

(d) the date of each such disposition:

- i. N-A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N-A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. The trial judge committed reversible error by instructing the jury
- ii. that inferred malice may arise when the deed is done with a
- iii. deadly weapon as this charge violated St V. Belcher 685522d
802 (2009)

(b) the proceedings in which each ground was raised:

- i. Direct Appeal, Could not make a ruling due to
- ii. Attorney Not objecting, and preserve for review.
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N-A
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N-A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Tonya Capeland Little PO Box 648 Darlington SC 29540
- ii. Joseph L. Savitz III Appellate Defender PO Box 11589
- iii. Columbia S.C. 29211-1589

(b) the proceedings at which each such attorney represented you:

- i. Trial, Sentencing
- ii. Appeal
- iii.

18. State clearly the relief you seek in filing this application.

Reverse Conviction Set aside

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

COUNTY OF Darlington)

VERIFICATION

I, Curtis Nealey II, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Curtis Nealey II

Sworn to and subscribed before me

This 13 day of Jan, 2012

Shirley Simon L.S.

Notary Public for South Carolina

My Commission Expires 5-16-12

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Curtis Nealey II, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Curtis Nealey
Applicant

Sworn to and subscribed before me

This 13 day of Jan, 2012

Shirley Simon L.S.

Notary Public for South Carolina

My Commission Expires: 5-16-12

FILED
2012 JAN 17 AM 11:52
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(a)

FILED

2012 JAN 17 AM 11:52

9.(a) Applicant was denied the effective assistance of counsel as guaranteed by U.S.C.A. Sixth and Fourteenth Amendments, Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code Ann. §17-27-20(A) 1-6 (1976).

SCOTT B. SUGGS
CLERK OF COURT
CHARLINGTON COUNTY, S.C.

10.(a) Trial counsels acts or omissions during Applicants trial fell below the standard of reasonable representation as required and set forth in the U.S. Supreme Court ruling of Strickland v. Washington, 466 U.S. 668 (1984). This unreasonable, sub-standard representation prejudiced the Applicant by depriving him of a fair and impartial trial.

- (1). Trial counsel failed to present developed medical reports for impeaching testimony factually refuted by the medical reports. See: CUMULATIVE REPORT.
- (2). Trial counsel failed to present evidence and/or testimony from a Forensic Toxicologist to establish the physical and mental condition of State Witness Dorothy Perkins - WHEN WITNESS PERKINS WAS DOCUMENTED TO HAVE BEEN UNDER THE INFLUENCE OF ALCOHOL AND PRESCRIPTION MEDICATION. This failure to rebut the testimony of State Witness Dorothy Perkins was damaging and prejudicial to Applicants defense. See: CUMULATIVE REPORT (Chemistry).
- (3). Trial counsel failed to adequately cross-examine State Witness Dorothy Perkins for the purpose of suppressing, limiting precluding testimony, and introducing prior statements evidencing inconsistencies and contradictions to testimony given under oath at Applicant's trial.
- (4). Trial counsel erred by their failure to object to the States improper eliciting of detrimental character evidence involving criminal domestic violence against Applicant at Applicants trial.

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(b)

- (5). Trial counsel failed to adequately cross-examine State Witness Victoria Perkins, and law enforcement Officers, for the purpose of establishing inconsistent and contradicting testimonies which proved damaging and prejudicial to Applicants defense.

SUPPORTING FACTS

- 10(a)(1). Trial counsel failed to present developed medical reports in Applicants defense for impeaching testimony shown to be untruthful by the medical reports. See: CUMULATIVE REPORT.

It is an undeniable fact that the credibility of a witness is within the sole province of the jury; Pigford v. U.S., 518 F.2d 831 (4th Cir. 1975).

At Applicants trial the Court made the following statements:

The Court: "But this case in great part is going to rely on the credibility and believability of the witnesses who testify"; Tr. Tran., p.82, 1.10-12.

The Court: "Address the use of evidence of blood, and urinalysis from Carolina Pines. What did the blood test show?"; Tr. Tran., p.77, 1.10-23.

The Court: "Any presence of any other drugs, or illegal substances? There was a positive flag for **TRICYCLICS**"; Tr. Tran., p.78, 1.15; see: definition of TRICYCLICS,

The Court: "What defense, what use if any do you intend to make of this evidence?"; Tr. Tran., p.78, 1.23, 24.

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(c)

Trial Counsel: "Your Honor, as to the blood alcohol in her blood for impeachment [she] had a very high level"; Tr. Tran., p.79, l.1 - 6; Blood Level showed 175.3

The Courts Decision: "I will allow that evidence to come in under the following circumstances: (1) for impeachment, if she testifies she was not intoxicated; and, (2) secondly, you can provide a witness that can explain to the jury what that blood alcohol means"; Tr. Tran. p.80, l.10-16.

During direct examination of State Witness Dorothy Perkins by States Attorney:

Q. "Do you remember what effect that drinking had on you that night as far as being intoxicated? What would you say that had on you?"

A. "I can tell you I wasn't drunk and I remember everything that happened, and I was in complete control of my body and everything. I can tell you that"; Tr. Tran., p.118, l.23.

Q. "And were you also taking pills that night?"

A. "No, M'am"; Tr. Tran., p.121, l.24.

There were two separate testimonies from Applicant and Victoria Perkins regarding the taking of pills by State Witness Dorothy Perkins on the night in question.

Q. "Did you give her some of your prescription pills sometimes did you not?"

A. "Well she asked me for pills to make her rest and I

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(d)

and I told her I got some that will make you sleep, and she got it herself."

Q. "Okay you gave it to her or she ---"

A. "No, she got it herself out the bottle, I didn't give it to her"; Tr. Tran., p.144, l.2-10.

Under direct-examination of Applicant the following was recorded:

Q. "Do you know whether or not Ms. Dorothy Perkins took any of that medication?"

A. "That perticular one I don't know, but she did take some other ones"; Tr. Tran., p.228

See: CUMULATIVE REPORT, Definitions.

SUPPORTING FACT

- (2) Trial counsel failed to present any Expert Witness to explain the levels and effects of diagnosed amounts [developed medical reports] of alcohol and prescription medication on States Witness Dorothy Perkins.

Trial Counsel: "I have Dr. Wheeler who could testify about the level"; Tr. Tran., p.79, l.11; p.23, l.13.

This evidence in the record discloses that trial counsel met both conditions required by the Court to present evidence [developed medical reports] for the purpose of impeaching the testimony of State Witness Dorothy Perkins, testimony that was integral to the States prosecution and the guilty verdict returned by the jury. Trial counsels failure to use the available evidence to discredit the testimony of State Witness Dorothy Perkins deprived Applicant of a fair and unbiased hearing; State v. White, 428 S.E.2d 791, (S.C. App. 1993) ("Once a witness

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(e)

FILED

2012 JAN 17 AM 11:52

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

qualifies as an Expert Witness, testimony goes to the weight of the evidence."

ARGUMENT

Applicant testified that State Witness Dorothy Perkins caused all this and lied about drinking and taking pills to cover up for DSS by lying; Tr. Tran., p.230, 1.14-24.

In Wiggins v. State, 539 U.S. 510 (2003), it was ruled that once a strategy is embarked on between attorney and defendant, counsel must perform in an effective manner.

Trial counsel failed to present developed medical documentation which established that State Witness Dorothy Perkins testified falsely under oath. The failure by trial counsel to use the developed medical reports and testimony from an Expert Witness on Toxicology deprived Applicant of the opportunity to have the jury determine the credibility of the testimony of State Witness Dorothy Perkins, as the case was decided solely on the credibility of witness testimony.

This failure by trial counsel reaches the threshold of ineffective assistance when assessed in the light of Strickland v. Washington. Counsel's failure deprived Applicant of his constitutional right to have the jury examine the developed medical reports, hear testimony from an Expert Witness on Toxicology, and then properly make a determination as to the credibility of the testimony given by State Witness Dorothy Perkins. Because the jury, and Applicant, was unconstitutionally precluded from having the jury act as the sole trier of all the evidence, it can be factually stated that counsel's unreasonable

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(f)

performance meets the standard of ineffective assistance, and that ineffective assistance served to deprive Applicant of a fair and impartial trial.

Counsels failure to use the developed medical reports to discredit the testimony of State Witness Dorothy Perkins establishes, for the record, deficient performance by trial counsel, below the required standard set by the U.S. Supreme Court in Strickland v. Washington. It can be factually stated 'but for counsels ineffective representation and unprofessional errors, the result of Applicants trial would have been different, because the truth would have been exposed through the developed medical reports'.

CONCLUSION

For the preceeding reasons Applicant respectfully asks this Court to reverse his conviction and remand for a new trial.

10.(a)(2) Counsel failed to reasonably investigate (the developed medical reports), and consult a Forensic Toxicologist (Sled Forensic Agent) on how the combination of alcohol and prescription medication effected Dorothy Perkins, who was the States main witness. See: CUMULATIVE REPORT (Chemistry)

SUPPORTING FACTS

The Court: "All right, what witness do you have that would explain the impact of that particular level on a person, and the difference between blood drawn at the hospital, and the

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(g)

Breathalyzer result?"; Tr. Tran., p.79, 1.7-10.

Trial Counsel failed to present any testimony as to the difference between blood drawn at the hospital, and the Breathalyzer result, and/or to explain to the jury the impact of that particular level on a person; Tr. Tran., p.79, 1.13-17.

Trial Counsel knew well in advance that State Witness Dorothy Perkins was highly intoxicated; counsel was aware of this by and through the existing medical reports. Counsel had ample time to prepare a reasonable defense by consulting, and presenting the testimony of, a Forensic Toxicologist - as an **Expert Witness** - to explain to the jury how the documented levels affected a person. This failure was inexcusable where Applicant testified in his defense that Dorothy Perkins lost consciousness and fell off the motorcycle that she and Applicant were riding, wherein Applicant was wrongfully charged with AB/WIK; Tr. Tran., p.235, 1.1, 10.

Applicant takes the position that trial counsel established ineffective assistance by their failure to pursue this defense, and to fully and fairly present the findings of the developed medical reports, with certified forensic explanation, before the jury. Applicant alleges that State Witness Dorothy Perkins was using her intoxicated state to conceal unlawful drug abuse in an effort to evade DSS scrutiny.

ARGUMENT

"At a minimum counsel has the duty to interview potential

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(h)

witnesses, and to make an independent investigation of the facts and circumstances of the case"; Troedel v. Wainwright, 667 F.Supp. 1456, 1461.

Counsel had the available evidence to 'at least' investigate Applicants defense, and present documented evidence to the jury that State Witness Dorothy Perkins did lose consciousness and fall off the motorcycle while she and Applicant were riding on the highway, as Applicant declared in his defense. This evidence would have most assuredly changed how the jury credited the testimony of Dorothy Perkins! This failure by trial counsel to perform a minimum duty to defend Applicant can not be construed in any manner as reasonable or effective performance under professional norms; citing Strickland, at 695.

Some errors made by trial counsel, as documented in the trial record, will prove to have a cumulative and pervasive effect on the inferences to be drawn from the evidence altering the entire evidentiary picture, and some errors will prove to have an isolated, trivial effect. Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by the error addressed in Strickland, at 695-696.

At Applicants trial, counsel should have, at all costs, presented a Forensic Toxicologist to testify concerning the developed medical reports. An Expert Witness explanation about the levels of intoxication documented in the existing medical reports would have established credibility to Applicants defense, while discrediting the testimony of State Witness Dorothy Perkins, yet counsel put no witness or testimony forward in Applicants defense to explain the difference in the blood samples

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(i)

taken by S.L.E.D. and the blood taken by the hospital, and the impact/effect of those levels on the person of State Witness Dorothy Perkins at the time of the motorcycle accident; Tr. Tran., p.79. 1.13-17.

Due to the error cited above, Applicant states that his conviction is unreliable, for the reason that trial counsel put no defense forward with usable evidence!

CONCLUSION

For the preceeding reasons stated above, Applicant respectfully asks this Court to reverse his conviction and remand for a new trial.

10.(a)(3) Trial counsel failed to adequately cross-examine State Witness Dorothy Perkins, the States main witness, to suppress, limit, preclude testimony, and to introduce prior statements establishing inconsistencies to testimony at trial.

SUPPORTING FACTS

Before testifying every witness shall be required to declare that the Witness will testify truthfully by oath, or affirmation, administered in a form calculated to awaken the Witnesses conscience, and to impress upon the mind of the Witness the duty to do so; SCRE, Rule 603, OATH AFFIRMATION.

The credibility of a witness may be bolstered or attacked by proof of prior consistent, or inconsistent, statements, except

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(j)

where the court excludes them as irrelevant; 22A CREDIBILITY 713; Rule 106, SCRE.

Whereupon State Witness Dorothy Perkins was duly sworn upon her oath and testified as follows: Tr. Tran., p.103, 1.18-20. State Witness Dorothy Perkins did not testify truthfully, and therefore violated her sworn oath.

During trial proceedings for Criminal Domestic Violence, State Witness Dorothy Perkins testified she got beat in the head ten to fifteen times; Tr. Tran., p.109, 1.6-8.

Applicant testified to an assault on State Witness Dorothy Perkins by her Mother, Victoria Perkins, where Applicant attempted to separate them to stop the assault; Tr. Tran., p.231, 1.1-21. It was found that the assault erupted after the Mother, Victoria Perkins, discovered that her Daughter, Dorothy Perkins, had stolen some prescription medication from her; Tr. Tran., p.230, 1.24-25.

Witness Victoria Perkins admitted in sworn testimony that Dorothy Perkins took medication out of her prescription bottle; Tr. Tran., p.44, 1.8-12.

On re-cross examination from State Witness Dr. Balvich, Dr. Balvich rendered his opinion that injuries examined on Dorothy Perkins were consistent with a fall from a motorcycle; Tr. Tran., p.175, 1.15-20.

ARGUMENT

NO TESTIMONY WAS PRESENTED as evidence regarding head

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(k)

injuries that can be deemed consistent with the testimony offered by State Witness Dorothy Perkins alleging she had been beaten in the head with a 'what-knot' weighing 10 pounds. Clearly, if Witness Dorothy Perkins had sustained a beating to the head with an object of this weight, for that many times, there would have been undeniable evidence from an Expert Witness to corroborate her testimony. A more adequate cross-examination of State Witness Dorothy Perkins by trial counsel, introducing substantive and probative evidence, would have affected the credibility of her testimony by an overt display that Witness Dorothy Perkins testified untruthfully.

SUPPORTING FACTS

In POLICE REPORT #0311, on page 3, State Witness Dorothy Perkins made the unbelievable statement to Police: ". . . at 80 mph Applicant slammed on the front brakes, and while the rear wheel was suspended in the air . . . Applicant had a conversation with Witness Perkins, . . . and then shoved her off the motorcycle with his left hand; see POLICE REPORT # 0311, page 3.

During direct-examination of Witness Dorothy Perkins:

Q. Where did y'all go next?

A. We went down Billy Farrow road. He kept speeding up, and slowing down. He popped one wheelie, and i kept telling him to stop, to slow down, cause I couldn't hardly hold on with my right arm, because he broke my wrist at the house. And then he kicked it up one more time, reached, and shoved me off of it; Tr. Tran., p.111, 1.6-11.

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(1)

ARGUMENT

There was no testimony, no doctors records, or evidence in any form to indicate Witness Dorothy Perkins suffered a broken wrist, and trial counsel failed to effectively cross-examine the Witness to challenge this issue, which would have shown a gross inconsistency from the first statements given at trial. Trial counsel failed to present existing medical reports to establish alcohol intoxication and (unprescribed) prescription medication influence on Witness Dorothy Perkins at the time Applicant states Dorothy Perkins lost consciousness and fell off the motorcycle. Counsel absolutely failed in their duty and obligation to effectively represent this issue in Applicants defense.

The record of the proceeding will sadly expose trial counsels failure to challenge the inconsistent, changing testimony of State Witness Dorothy Perkins, compounded with the failure to present and address the developed medical reports, which substantiated the alcohol intoxication and drug influence of State Witness Dorothy Perkins at the time of the motorcycle accident.

Trial counsel failed to properly cross-examine the Police Officers involved in the case, along with State Witness Dorothy Perkins, for the purpose of showing relative inconsistencies in testimony, thereby dismantling the credibility of State Witness Dorothy Perkins.

The specific failures named above properly present sufficient evidence to warrant a finding of ineffective assistance of trial counsel, as the record shows a combination of errors working to deprive Applicant of a fair and impartial

APPLICATION FOR POST-CONVICTION RELIEF**Page 2(m)**

hearing. The errors cannot be found harmless, nor attributed to trial strategy. Factually, the cumulative errors constitute deficient performance, which confers upon Applicant a standing cause of action against trial counsel by virtue of the prejudice arising from the errors. Applicant states that counsels errors fully satisfy the two-prong standard required by the judiciary for granting relief to Applicant, to wit: (1) trial counsels failures meet the assignment of error, and, (2) the errors assigned so undermined the fairness of Applicants trial that prejudice can be stated as a factual claim.

CONCLUSION

Applicant respectfully asks this Court to find that his U.S.C.A. 6th Amendment right to the effective assistance of trial counsel was violated, and seeks a reversal of his conviction, with a remand for a new trial.

10.(a)(4) Trial counsel committed error by failing to object to the States improper act of eliciting detrimental character testimony against Applicant implying criminal domestic violence during the course of Applicants trial.

SUPPORTING FACTS

Applicant was tried on November 9, 2009 for offenses alleged to have occurred on October 14, 2008, and the States Attorney improperly elicited testimony prejudicial to Applicants character, testimony referencing alleged incidents prior to Applicants October 14, 2008 charges. At Applicants trial, before

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(n)

the jury, States Attorney improperly and unethically drew out the following testimony from the States main witness:

Q. Do you have any knowledge doing anything else?

A. I know he takes pills real bad, and smoke marijuana, and occasionally did cocaine.

Defaming and detrimental character testimony of this nature, in a criminal proceeding, is prohibited by Rules of Criminal Law and Rules of Evidence; see CRIMINAL LAW, 369.2(2), where the general rule is that for evidence of a defendants drug use to be admissible during the trial of another crime, drug use must have some relevant connection to the crime. See also RULES OF EVIDENCE, 404(B); State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999).

ARGUMENT

Trial counsel committed error by failing to object to this improper and unethical testimony assailing Applicants character. Applicant was not on trial for possessing or abusing drugs. The unfairness of this act, and the prejudice resulting, is prohibited by SCRE, Rule 403, 404, where the prejudicial testimony is factually irrelevant to the subject matter of Applicants charge. It appears to Applicant that States Attorney cunningly elicited this testimony before the jury to deliberately prejudice Applicant by slandering his character to buttress the States case. This sly conduct by states attorney and failure by Applicants trial counsel served to thrust a negative bias upon Applicant in that the act was unfair to Applicant, and offered an undue tendency to suggest a decision to the jury on an improper basis by implying that Applicant was a chronic drug abuser; State v. Bixby, Op. No. 4768 (Filed Dec. 17, 2010); State v. Dickerson,

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(o)

241 S.C. 391, 400, 535 S.E.2d 119, 123 (2000).

No evidence or supporting testimony was presented to establish that Applicant had ever used any of the drugs testified about. Applicant never raised the issue of character, conclusively showing that states attorney committed error by attacking Applicants character first. States attorney craftily purposed to libel Applicant before the jury to help the states prosecution. This improper course of legal maneuvering skewed the designed judicial mechanism of equity and justice for all participants. Without controversy, the presentation of this improper, prejudicial testimony before the jury was far more harmful than any probative value which may or may not have been assessed in regard to that testimony. The unproven allegation of Applicants extensive drug abuse before the jury was an assault on Applicants character, which was outside the realm of the subject matter being tried, which should be found by the court to have been improper, with error following by and through trial counsels failure to object.

Trial counsel committed error by failing to move the court to strike this testimony from the record as being improper and inadmissible for review by the jury, correctly arguing the issue of subject matter relevance.

CONCLUSION

For the preceeding reasons Applicant respectfully asks this Court to reverse his conviction and remand for a new trial.

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(p)

FILED

2012 JAN 17 AM 11:53

ALLEGATION

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

10.(a)(5) Counsel failed to adequately cross-examine State Witness Victoria Perkins, along with law enforcement Officers, to establish for the record of the proceeding that the testimony of State Witness Victoria Perkins had "changed", yet States Attorney did not submit to the defense any documentation or reasons for the "change" in testimony.

FACT

It is an accepted fact that before testifying every witness shall be required to declare that the witness will testify truthfully by Oath, or Affirmation, administered in a form calculated to awaken the witness conscience, and impress the witness mind with the duty to do so! S.C.R.E. Rule 603. OATH, AFFIRMATION.

A witness must be permitted to admit, or deny, or explain, the inconsistencies; McMillan v. Ridges, 229 S.C. 76, 91 S.E.2d at 883 (1956).

If admitted making statement they are impeached, and then the statement is usable; State v. Lynn, 222 S.E.2d 786.

Whereupon State Witness Victoria Perkins, being duly sworn upon her oath, testifies as follows in Tr. Tran., p.131, 1.4-5:

Direct-examination of Victoria Perkins by the State:

Q. Okay, I am going to stop you right there Ms. Perkins. I am going to show you what has been marked as States Exhibit #1. Do you recognize this?

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(q)

A. Yes, M'am.

Q. And what is this?

A. That is the vase he hit me with. That is the vase he picked up off my coffee table; Tr. Tran., p.135, 1.1-7.

Applicant testified that States Exhibit #1 is the object State Witness Dorothy Perkins threw at State Witness Victoria Perkins; Tr. Tran., p.232, 1.1.

INCIDENT REPORT 2008-10-233 to Jackie Cato (Officer):

Officer Cato stated on line 5 that while waiting on an ambulance Ms. [Victoria] Perkins said she got hit with something but she could not tell me what it was, and, that he was holding a knife. This statement also appears on Arrest Warrant No. J-081400.

Officer Jackie Cato testified that State Witness Victoria Perkins could not tell him what she got struck with, Tr. Tran., p.201, 1.7:

Q. Officer Cato, what types of service is it common in your work as an Officer to find fingerprints on?

A. Mostly burglaries, but any type of aggravated assaults or murders or such; Tr. Tran., p.207, 1.12-15.

Q. Do you know whether the ornament was ever tested to see if there were fingerprints on it?

A. Not to my knowledge.

Applicant states emphatically that for a definite, affirmative identification to be made of a "weapon" used in an

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(r)

alleged assault fourteen (14) months prior, which alleged "weapon" could not be identified immediately after the alleged assault, is beyond the scope of believability, and exceeds the bounds of credibility regarding a judicial trier of fact. Applicant states that there is no evidence in the proceeding which assigns actual possession of the "whatnot".

CROSS-EXAMINATION of State Witness Victoria Perkins

Q. But you never saw the knife in the house, is that correct?

A. No, M'am, because I was in the next room; Tr. Tran., p.148, 1.8-10.

SUPPLEMENT #2: John T. Westman-1175 10/19/2008 - 10-233:
State Witness Victoria Perkins again told this Officer that Applicant brandished a knife at her. Incident occurred on 10/14/2008; REPORT five (5) days later.

State Witness Victoria Perkins gave conflicting and contradictory testimony about seeing Applicant through the front door, holding a knife in his right hand, and leaving at a high rate of speed (on a motorcycle). In this testimony, Witness Perkins could not identify the size of the knife she testified she saw; Tr. Tran., p.146, 1.21 thru p.148, 1.9.

Applicant states affirmatively that the throttle on the motorcycle involved in the incident is located on the right side handlebar of the motorcycle, making the circumstance testified to by Witness Victoria Perkins a physical impossibility. Applicant is familiar with motorcycles of all makes and models, and will

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(s)

admit that there are individually modified motorcycles with the throttle on the left side handlebar, HOWEVER, Applicant states under the penalty of perjury that the aforementioned motorcycle is factory-equipped with a right-side handlebar throttle.

ARGUMENT

When evidence is collected and submitted to the defense, it is to prepare defense counsel for trial as to what a witness will testify to. AT ALL COST counsel should question witnesses regarding the accuracy of memory attached to the witnesses testimony. Bias, prejudice, the Witnesses personal interest and/or credibility is in a position to be closely examined at this point. At this stage the Witnesses may be questioned in regard to prior statements/testimony which appear to conflict with or contradict prior statements/testimony; S.C. Digest Witnesses; 329.

State Witness Victoria Perkins gave statements to law enforcement Officers that Applicant brandished a knife at both women (Victoria and Dorothy Perkins); Report 2008, 10-233 at 7. Testimony was given at Applicants trial - before the jury - by State Witness Victoria Perkins that Applicant never brandished a knife; Tr. Tran., p.215, l.23; p.216, l.1-25.

Applicant states for the courts review that no evidence was presented during Applicants trial to show actual possession of the "whatnot" alleged by State Witness Victoria Perkins to have been used as a weapon against her. Furthermore, no fingerprint or DNA samples were taken to establish any physical connection [use] of the "whatnot".

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(t)

Applicant again states the claim of trial counsels failure to challenge the contradictory testimony of State Witness Victoria Perkins, relevant to Witness Perkins inability to identify the "whatnot"-weapon on the night Perkins alleged she was assaulted, as opposed to Witness Perkins testimony at Applicants trial, where she recounted with specificity the "whatnot" she alleged was used as a weapon to assault her.

Applicant would show to the court trial counsels failure to question State Witness Victoria Perkins regarding her statement to Police Officers that Applicant brandished a knife at both women (State Witnesses Victoria Perkins and Dorothy Perkins). See Tr. Tran., p.215. 1.23 - p.216, 1.25.

Applicant declares that trial counsels failure to challenge the under oath testimony of State Witness Victoria Perkins as relates to her statements given to law Officers in the Police Report taken on the date of the alleged assault indicates one incidence of ineffective assistance among numerous instances where counsel failed to expose inconsistencies which would assuredly have diminished the credibility of the testimony, or, in the alternative, totally discredited the testimony. The trial judge made a point of informing the jury during the proceedings that the entire case hinged on credibility, on whom the jury chose to believe. The harm resulting from counsels failure to challenge the credibility of contradictory, inconsistent statements and testimony given by State Witnesses Victoria Perkins and Dorothy Perkins is clear and unambiguous. Applicant states that the record supports his contention that because conflicting and even contradictory testimony was allowed to go unchallenged, the subsequent consequence of this failure was damaging prejudice which served to deny Applicant his day in

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(u)

court, his one bite at the apple. Applicants defense was never supported by reasonable, effective representation. Tr. Tran., p.139, 1.1-16 establishes an appropriate example of Applicants claim. In the Police Report State Witness Victoria Perkins gave the statement that she saw a knife in the house on the day of the alleged assault, yet under oath Witness Perkins testified totally different. Contradicting statements on important matters of criminal evidence should reasonably be challenged as to which account of the allegation is true, OR, IF EITHER ACCOUNT OF THE ALLEGATION IS TRUE. In either event, Applicant states the record will divulge that the jury was unconstitutionally precluded from hearing the supporting defense of Applicant by virtue of counsels failure to operate effectively by presenting all evidence in the defenses' possession in order to allow the jury to be the trier of all the facts.

Applicant states that the unchallenged testimony of State Witness Victoria Perkins was instrumental in producing unfounded bias and prejudice in the jurys' determination. That claim is made by reason that the jury heard only unchallenged testimony - with no rebuttable evidence to weigh against what State Witness Victoria Perkins offered. The jury was prohibited from making a fair and impartial determination as to the truth, and hence credibility, of the testimony given by Witness Perkins. Applicant takes the position that his conviction was obtained through the use of false testimony, and asks this Court to review, inter alia, the cases of Alcorta v. Texas, 355 U.S. 28, and Montgomery v. Rogen, 86 F.Supp. 382.

Applicant states he possesses medical evidence to support factually that State Witness Dorothy Perkins was highly intoxicated from alcohol and under the influence of Tricyclics, a

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(v)

class of hypnotic sedative drug, when the alleged assault occurred. Effective representation could have, would have, exposed that State Witness Victoria Perkins and her Daughter, State Witness Dorothy Perkins were both under the influence of pharmaceutical medication when the alleged assault occurred, and the fact hidden from the jury was that State Witnesses Victoria and Dorothy Perkins were the actual combatants in a fight. This fact was cleverly concealed by ascribing the blame of the altercation to Applicant. The purpose for this deceitful design was to prevent the DEPARTMENT OF SOCIAL SERVICES (DSS) from discovering the alcohol and drug abuse of State Witness Dorothy Perkins, who was at that date under scrutiny by the DSS, which Agency would ultimately decide if State Witness Dorothy Perkins would retain custody of her children. Applicant possesses material evidence to support all these claims; records maintained by the DSS will affirm that State Witness Dorothy Perkins was awaiting a disposition by the DSS regarding the custody of her children at the date of the alleged assault incident.

CONCLUSION

The foregoing reasons establish trial counsels deficient performance. Applicant has shown by a preponderance of probative and substantive evidence, aligned with genuine issues of material fact, that trial counsel failed to provide competent, professional representation for Applicant. All the errors, by commission or omission, serve to support Applicants claim of a U.S.C.A. 6th Amendment violation of ineffective assistance of counsel. In light of the trial judges admonition to the jury, the cumulative errors can be deemed tantamount to egregious representation by trial counsel. Applicant prays this Court will agree with his conclusion.

FILED

APPLICATION FOR POST-CONVICTION RELIEF

2012 JAN 17 AM 11:53

Page 2(w)

SCOTT B. SUGGS
CLERK OF COURT/R.O.O.
DARLINGTON COUNTY, S.C.

RELIEF SOUGHT

Applicant respectfully asks this Court to find a violation of Applicants 6th Amendment right, reverse his conviction and sentence, and remand for a new trial.

APPLICANTS STATEMENT

Applicant states to this Court he fully understands that he bears the burden of establishing cause for entitlement to relief on his PCR Application. Applicant asserts that he has, by a preponderance of the evidence presented in his PCR Application, shown a justifiable cause for relief. In Strickland v. Washington the U.S. SUPREME COURT set forth the two-prong standard for achieving relief through a 6th Amendment ineffective assistance of trial counsel claim, that being errors resulting from counsels deficient performance, and the untenable results of counsels errors. Applicant states that the genuine issues of material facts presented in this PCR Application, encompassing probative and substantive evidence, has crossed the threshold predicates required by this Court for the relief sought. Applicant states that embodied within the content of his five allegations of ineffective assistance is evidence adequate to invoke this Courts sanction in a grant of relief, as delineated in Strickland. All the evidence brought to bar in this Application meets or exceeds the parameters for a showing of a U.S.C.A. 6th Amendment violation. Applicant states that even if trial counsel was given the benefit on every claim levied by Applicant, and that the benefit extended to a finding that no single error or omission was sufficient to warrant relief, the cumulative error doctrine is applicable in the present case, where the collective effect of all counsels errors have been shown to deny Applicants

FILED

APPLICATION FOR POST-CONVICTION RELIEF

Page 2(x)

2012 JAN 17 AM 11:53

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

constitutional right to a fair and impartial trial; see State v.
Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (90).

In the interest of equity and justice, Applicant makes request of this Court to vacate and set aside his conviction and sentence. Further your Applicant sayeth not.

APPLICATION FOR POST-CONVICTION RELIEF

FILED

Page 3(a)

2012 JAN 17 AM 11:53

FINAL ISSUE

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

10(a)(6). Counsel failed to object to a improper jury instruction and to properly preserve for appellant review. Due to this error the Court of Appeals cannot rule on this issue.

SUPPORTING FACT

The trial judge committed reversible error by instructing the jury that inferred malice may....arise when the deed is done with a deadly weapon, as this charge violated State v. Belcher, 385 S.C. 595, 685 S.E.2d 802 (2009). Which was decided one month prior to Nealey's Trial.

Generally an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review. In Re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (ct. App)

If an error is not presented to and ruled upon by the trial judge it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737 (2005)

The appellate court will not consider any issues that were not presented to or passed upon by the trial judge. State v. Fleming, 254 S.C. 415, 421, ___ S.E.2d 624, 627 (1970)

An issue must be raised in a sufficiently specific manner to call attention to the exact error to the trial court. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005)

The two counts of assault and battery with intent to kill (ABWIK for which Nealey was prosecuted involved both Dorothy and her mother Victoria). Three potential deadly weapons were involved. Dorothy testified that Nealey beat her with the "whatnot", pulled a knife on her, then shoved her off his speeding motorcycle. Tr. 108: 1-9, Tr. 112; 1-16

APPLICATION FOR POST-CONVICTION RELIEF

Page 3(b)

Victoria testified that Nealey struck her with the "whatnot" Tr. 134; 1-5: Tr. 138, 1-12.

The night of the incident, Victoria could not identify weapon arrest warrant No. J-081400. Nor did she ever see a knife.

The judge defined (ABWIK) as "an unlawful act of violent nature to a person of another with malice afterthought. Tr. 292; 11-15

He then added "Malice may also arise when the deed is done with a deadly weapon". Tr. 293: 22-24.

ARGUMENT

Trial counsel did not object to this charge on inferred malice Tr. 302; 5-10.

Nealey testified that Dorothy assaulted her mother, they were the two that was fighting. He only broke them up and they left. While traveling back to Darlington, Dorothy while intoxicated passed out and fell off his motorcycle. Tr. 231: 1-24; Tr. 235: 1-10. See: cumulative report!

Nealey put up a defense that he was not involved in the altercation, but just tried to break up the fight then left. That they were covering up her drinking and taking pills from DSS. Based on Nealey's testimony the jury convicted him on mere presence. Tr. 287, 1-18; Tr. 288: 1-8.

In State v. Belcher, 385 S.C. 597, 685 S.E.2d 802, 809 (2009) "The Supreme Court held that "the use of a deadly weapon" implied malice instruction has no place in a murder (or assault and battery with intent to kill [citation omitted]) In prosecution where evidence is present that would reduce mitigate excuse or justify the killing (or the alleged assault and battery with intent to kill)

APPLICATION FOR POST-CONVICTION RELIEF

Page 3(c)

This decision was effective at the time of Nealey's trial. 685 S.E.2d at 810. Compare in the Interest of Walter M. 688 S.E.2d 133.

Nealey's Appellate Counsel raised this issue to the Court of Appeals, but Nealey has clearly shown that they had no jurisdiction to rule on this issue.

In so far defense counsel "did not object to this erroneous malice instruction", Nealey's only option is to raise this issue at Post Conviction Relief. This will be his last allegation of ineffective assistance of counsel pursuant to: Strickland v. Washington, 466 U.S. 688 (1984), See for example Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008).

CONCLUSION

If this instruction would have been properly object to and preserved the court should have reversed Nealey's conviction for ABWIK, and remand for further proceedings.

FILED
2012 JAN 17 AM 11:53
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

permanent

CUMULATIVE REPORT

CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway, Hartsville, SC 29550
Harold N. Wheeler, M.D., Pathologist

PATIENT: PERKINS, DOROTHY
I.D.#: 8936534

MRN: 0000062434
DOB: [REDACTED]

LOCATION: 3SG-031
AGE: 29 SEX: F

C H E M I S T R Y

	G6150053-M1	G6150227	G6160059	G6170031	REFERENCE RANGE
COLLECTED	10/15/08 00:45	10/15/08 14:00	10/16/08 04:12	10/17/08 03:20	
PRIORITY, PHYSICIAN	STAT BALVICH, JIM	ROUTINE BALVICH, JIM	TIMED BALVICH, JIM	TIMED BALVICH, JIM	

	10/15/08 00:45 CBI	10/15/08 14:00 NURSE	10/16/08 04:12 TTM	10/17/08 03:20 NURSE	
COLLECTED	10/15/08 00:45 CBI		10/16/08 04:12 TTM	10/17/08 03:20 NURSE	
GENERAL CHEMISTRY					
COLLECTED	10/15/08 00:45 CBI		10/16/08 04:12 TTM	10/17/08 03:20 NURSE	
SODIUM	139		136	132	135-147 meq/L
POTASSIUM	4.0		4.1	3.9	3.3-5.5 meq/L
CHLORIDE	113	H	111	102	100-110 meq/L
CARBON DIOXIDE	19	L	21	26	24-32 meq/L
ANION GAP	11.0		8.1	7.9	6.0-20.0
CALCIUM	8.5		7.7	7.8	8.4-10.7 mg/dL
GLUCOSE	100		97	96	70-110 mg/dL
BLOOD UREA NITROGEN	17		9	<5	6-22 mg/dL
CREATININE SERUM	0.80		0.51	0.50	0.60-1.50 mg
PROTEIN TOTAL, SERUM	7.1				6.2-8.0 g/dL
ALBUMIN SERUM	3.2				3.4-5.1 g/dL
BILIRUBIN TOTAL	0.3				0.4-1.7 mg/dL
AMYLASE	98				37-129 U/L
ALKALINE PHOSPHATASE	49				40-130 U/L
CKMB LEVEL	4.2				0.6-8.3 ng/m
CPK TOTAL	260	H			0-243 U/L
SGOT	24				5-40 U/L
SGPT	12				5-40 U/L
BILIRUBIN DIRECT	0.1				0.0-1.0 mg/dL
LIPASE	30.0				7.0-42.0 U/L
TROPONIN I	0.02	M			ng/mL
MAGNESIUM	2.0	M			1.6-2.8 meq/L
ALCOHOL BLOOD	175.3	M			mg/dL
GFR NON-AFRICAN AMERICA	>60.0		>60.0	>60.0	60.0-120.0 mL
GFR AFRICAN AMERICAN	>60.0		>60.0	>60.0	60.0-120.0 mL

U R I N E C H E M I S T R Y

	10/15/08 03:00 NURSE			
COLLECTED	10/15/08 03:00 NURSE			
TRICYCLICS	POSITIVE			NEGATIVE ng/

S P E C I A L C H E M I S T R Y

	10/15/08 14:00 NURSE			
COLLECTED	10/15/08 14:00 NURSE			
PREGNANCY TEST URINE	NEGATIVE			

M1: TRAUMA/MULTI-SYSTEM--MVA

RESULT REPORTED FIRST TIME

ATT. PHYS.: BALVICH, JIM
LOCATION: 3SG-0314-B

MRN: 0000062434
PATIENT: PERKINS, DOROTHY

KEY FOR ABNORMAL COLUMN: L-LOW, H-HIGH, AB-ABNORMAL, P-PANIC

C H E M I S T R Y

permanent

CUMULATIVE REPORT

CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway, Hartsville, SC 29550
Harold N. Wheeler, M.D., Pathologist

PATIENT: PERKINS, DOROTHY
I.D.#: 8936534

MRN: 0000062434

DOB: [REDACTED]

LOCATION: 3SG-031
AGE: 29 SEX: F

continued

C H E M I S T R Y

	G6150063-M1	G6150227	G6160059	G6170031
COLLECTED	10/15/08 00:45	10/15/08 14:00	10/16/08 04:12	10/17/08 03:20
PRIORITY, PHYSICIAN	STAT BALVICH, JIM	ROUTINE BALVICH, JIM	TIMED BALVICH, JIM	TIMED BALVICH, JIM

M2: Negative <0.03
Suspect AMI >0.5

The cTnI isoform is specific for myocardial injury, but not for AMI.
Elevated cTnI levels inconsistent with patient history or clinical
condition should be considered a sign to investigate for other cardiac
conditions.

M3: Effective ranges for OB patients on Mg Sulfate
are from 5.0 - 8.0 mEq/L.

M4:

Reference Range	0 mg/dl
Limited muscular incoordination	<50 mg/dl
Incoordination	50-100 mg/dl
Incoordination, behavior changes (Legally intoxicated in most states)	100-150 mg/dl
Incoordination, prolonged reaction times (Legally intoxicated in most states)	>150 mg/dl

NOTE: Carolina Pines Regional Medical Center does NOT
perform legal blood alcohols. No chain of custody
exists. Results are for medical purposes only.

RESULT REPORTED FIRST TIME
ATT. PHYS.: BALVICH, JIM
LOCATION: 3SG-0314-B

MRN: 0000062434
PATIENT: PERKINS, DOROTHY

KEY FOR ABNORMAL COLUMN: L-LOW, H-HIGH, AB-ABNORMAL, P-PANIC

C H E M I S T R Y

PRINTED 10/17/2008 13:24

Page: 3 of 3

temporary

CUMULATIVE REPORT

CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway, Hartsville, SC 29550

Harold N. Wheeler, M.D., Pathologist

PATIENT: PERKINS, DOROTHY

MRN: 0000062434

LOCATION: ICU-000

I.D.#: 8936534

DOB: 10/05/1979 AGE: 29 SEX: F

U R I N A L Y S I S

-----G6150063-M1-----
COLLECTED | 10/15/08 03:00 | REFERENCE RANGE
PRIORITY, PHYSICIAN | STAT BALVICH, JIM |

COLLECTED | 10/15/08 03:00 NURSE |
U R I N A L Y S I S

COLLECTED	10/15/08 03:00 NURSE	
COLOR	yellow	STRAW-AMBER
APPEARANCE	clear	CLEAR-SL CLOUDY
GLUCOSE	NEGATIVE	NEGATIVE
BILIRUBIN	NEGATIVE	NEGATIVE
KETONES	NEGATIVE	NEGATIVE
SPECIFIC GRAVITY, URIN	1.020	1.005-1.030
PH-URINE	5.0	4.5 - 8.5
PROTEIN(URINE DIP)	NEGATIVE	NEGATIVE
UROBILINOGEN	NORMAL	NORMAL MG/DL
NITRITE	NEGATIVE	NEGATIVE
BLOOD	NEGATIVE	NEGATIVE
LEUKOCYTE ESTERASE	NEGATIVE	NEGATIVE
PHENCYCLIDINE	NEGATIVE	NEGATIVE
BENZODIAZEPINES	NEGATIVE	NEGATIVE
COCAINE	NEGATIVE	NEGATIVE
AMPHETAMINES	NEGATIVE	NEGATIVE
TETRAHYDROCANNIBOL THC	NEGATIVE	NEGATIVE
OPIATES	POSITIVE	NEGATIVE
BARBITURATES	NEGATIVE	NEGATIVE
TRICYCLICS	POSITIVE	NEGATIVE
METAMPHETAMINE	NEGATIVE	NEGATIVE
METHADONE	NEGATIVE	NEGATIVE
MI: TRAUMA/MULTI-SYSTEM--MVA		

1) If the ketones
not indicated

2) what blood alcohol
level means

RESULTS REPORTED FIRST TIME

ATT. PHYS.: BALVICH, JIM

MRN: 0000062434

LOCATION: ICU-0007-A

PATIENT: PERKINS, DOROTHY

KEY FOR ABNORMAL COLORING: L-LOW, H-HIGH, AB-ABNORMAL, P-PANIC

U R I N A L Y S I S

temporary

CUMULATIVE REPORT

CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway, Hartsville, SC 29550
Harold N. Wheeler, M.D., Pathologist

PATIENT: PERKINS, DOROTHY
I.D.#: 8936534

MRN: 0000062434
DOB: [REDACTED]

LOCATION: ICU-00
AGE: 29 SEX: F

continued

U R I N A L Y S I S

-----G6150063-M1-----
COLLECTED 10/15/08 03:00 REFERENCE RANGE
PRIORITY, PHYSICIAN STAT BALVICH, JIM

M2: This is a screening test for medical purposes only. Legal
drug screens are not performed at Carolina Pines RMC.
Confirmations or quantitations of positives should be ordered
by the physician and will be sent to the reference laboratory.

Results are considered Positive when at or above the following threshold
values:

Acetaminophen	5ug/mL
Amphetamines	1000ng/mL
Methamphetamines	1000ng/mL
Barbiturates	100ng/mL
Benzodiazepines	100ng/mL
Cocaine	100ng/mL
Opiates	100ng/mL
Phencyclidine	25ng/mL
THC	50ng/mL
Tricyclic Antidepressants	1000ng/mL
Methadone	100ng/mL

--- RESULT REPORTED FIRST TIME

ATT. PHYS.: BALVICH, JIM
LOCATION: ICU-0007-A

MRN: 0000062434
PATIENT: PERKINS, DOROTHY

KEY FOR ABNORMAL COLUMN: L-LOW, H-HIGH, AB-ABNORMAL, P-POSITIVE

U R I N A L Y S I S

Page: 7 of 7

P. 8

84 933024

7 Investigations

Oct 21 2008 4:26PM

ARREST WARRANT

J-087400

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 HARTSVILLE

THE STATE

against

CURTIS R. NEALEY

 Address: PEEBLE DRIVE
DARLINGTON SC 29550

 Phone: SSN:
 Sex: M Race: W Height: 5-9 Weight: 150
DL State: DL#: DOB: 4 Agency OR#: SC0160200Prosecuting Agency: HARTSVILLE POLICE DEPT.Prosecuting Officer: J. CATOE
 Offense: POSS. WEAPON DURING COMMISSION OF
VIOLENT CRIME Offense Code: 0549
Code/Ordinance Sec. 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant CURTIS R. NEALEY
 on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 JUDGE CARL SALEEBY
 PO BOX 2497
 HARTSVILLE, SC 29550

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

HARTSVILLE

Personally appeared before me the affiant

being duly sworn deposes and says that defendant CURTIS R. NEALEYdid within this county and state on 10/14/2008
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of HARTSVILLE)

In the following particulars:

DESCRIPTION OF OFFENSE: 16-23-0490 / POSS. WEAPON DURING COMMISSION OF VIOLENT CRIME
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 OFFICER CATOE, AN OFFICER WITH THE HARTSVILLE POLICE DEPARTMENT, STATES TO THE AFFIANT THAT ON OR
 ABOUT THE 14TH DAY OF OCTOBER, 2008, THE DEFENDANT (CURTIS R. NEALEY) DID IN THE CITY OF HARTSVILLE,
 DARLINGTON COUNTY COMMIT THE OFFENSE OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
 CRIME TO WIT: THAT THE DEFENDANT (CURTIS NEALEY) DID HAVE IN HIS POSSESSION AND BRANDISH IN A
 THREATENING MANNER A KNIFE WHILE COMMITTING THE OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL ON
 THE VICTIM (VICTORIA PERKINS). THIS OFFENSE OCCURRED ON THE ROADWAY NEAR THE RESIDENCE OF EAST
HOME AVENUE.

Signature of Affiant

Affiant's Address 135 W CAROLINA AVENUEHARTSVILLE SC 29550Affiant's Telephone (843) 383-3013

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 10/14/2008 defendant CURTIS R. NEALEY

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of HARTSVILLE) as set forth below:

 DESCRIPTION OF OFFENSE: WEAPONS / POSS. WEAPON DURING VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE OR DEATH

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
 to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 10/15/2008)
RILLA THOMAS (L.S.)
 RILLA THOMAS
Judge Code: 6334Judge's Address PO DRAWER 2497HARTSVILLE SC 29551Judge's Telephone 383-3008Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

Case: 2008-10-233

ORIGINAL

 Form Approved by
 S.C. Attorney General
 July 28, 1990
 SC2A 519

AFFIDAVIT

ORIGINAL

356

 FILED
 2012 JAN 17 AM 11:54
 SCOT B. SUGGS
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

AGENCY I.D.
SC0160200

INCIDENT REPORT
Hartsville Police Department

CASE NUMBER

2008-10-233

NCIC

357

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM ☐ Individual ☐ Business ☐ Financial Ins ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
	1. 13A - Assault and Battery with Intent to Kill				☒ YES ☐ NO	☐ YES ☐ NO	20(Residence/Home)		
	2. 100 - Kidnapping				☒ YES ☐ NO	☐ YES ☐ NO	20(Residence/Home)		
	3. 520 - Possession of a Weapon During the Commission of a Violent Cri				☒ YES ☐ NO	☐ YES ☐ NO	20(Residence/Home)		
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE			
E Home Avenue, Hartsville, SC				29550-		20-Knife/Cutting Instrument (Ax, Scr			
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK		LOCATION NO.	
10/14/2008		22:45		10/15/2008	23:15	DISP. DATE	DISP. TIME	TIME ARRIVED	
						10/14/2008	23:32	23:34	
						DEPART. TIME			
						4:15			
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	
Perkins, Tommy Christopher				#1 #2 #3		☒ S ☐ O ☐ U	W	M	
ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.	
E Home Avenue				Hartsville		SC	29550-	04	
VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	
Perkins, Victoria				#1 #2 #3		☒ S ☐ O ☐ U	W	F	
HEIGHT				WEIGHT		HAIR	EYES		
[REDACTED]				[REDACTED]		BRO - Brown			
FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.									
CITY				STATE		ZIP CODE			
Hartsville				SC		29550-			
VICT. 1) ☒ YES ☐ NO				EXPLAIN - L - Severe Laceration; U - Unconsciousness		COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO			
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☒				DRUGS: ☐ YES ☐ NO ☐ UNK ☒		TYPE:			
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐				ALONE ☐ ASSISTED ☐		* J - This Jurisdiction S - State O - Out of State U - Unknown			
SUSPECT NAME (LAST, FIRST, MIDDLE)				RACE		SEX	AGE	ETH.	
Nealey, Curtis Ray				W		M	34	N	
DATE OF BIRTH				HEIGHT		WEIGHT		HAIR	
02/19/1974				[REDACTED]		[REDACTED]		BRO - Bro	
FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.									
CITY				STATE		ZIP CODE			
Darlington				SC		29532-			
SUBJECT (NO. 1) USING: ALCDHOL ☐ YES ☐ NO ☐ UNK ☐				ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☒		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST	
DRUGS: ☐ YES ☐ NO ☐ UNK ☐				TOTAL # ARRESTED 1		10/14/2008 22:45		10/24/2008 4:00	

On 10/14/2008 officers were dispatched to E Home Avenue in reference to an assault. Upon arrival I observed an elderly woman sitting in a chair covered in blood. I could see that she had severe cuts to the top of her head. When asked what happened, her son, Tommy Perkins said that his mother Victoria Perkins tried to break up a fight between his sister Dorothy Perkins and her exboyfriend Curtis Nealey. While waiting on an ambulance Ms Perkins said that Nealey hit her with something but she could not tell me what it was and that he was holding a knife. She also said that Nealey threatened to kill her and her daughter. V. Perkins said that Nealey was beating on her daughter and forced her onto a motorcycle at knife point and said that if she did not leave with him, that he would kill her and her mother. V. Perkins then crawled next door to her son's residence for assistance. I went next door 811 E Home where the incident actually took place. There was blood splatter on the walls and a very large pool of blood in a bedroom. There were also footprints through the blood where it appeared that someone was running away. There was a ceramic

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							
COUNTERFEIT							

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DEMPED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY									
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
1167 - Jackie Catoe		10/15/2008		1167		1114 - Cheryl B. McCall		10/15/2008	
1166 - Christopher Stokes						FOLLOW-UP INVESTIGATION OFFICER		10/15/2008	
						☒ YES ☐ NO 1118 - John R. Specht		1118	

358
AGENCY I.D.
SC0160000

SUPPLEMENTARY INCIDENT REPORT
Darlington County Sheriff's Office

CASE NUMBER

200810-0311

NCIC
INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 of 6 PAGES

YELLING AND SCREAMING "HE'S TRYING TO KILL ME, HE'S TRYING TO KILL ME!" MR. GIBSON SAID THAT THE WHITE MALE WAS RUNNING AFTER HER, TRYING TO GRAB HER. MR. GIBSON STATED THAT THE WHITE MALE DID GRAB HER FROM BEHIND, AND SHE WAS SCREAMING LOUDLY. MR. GIBSON SAID THAT THE WHITE MALE APPEARED TO BE TRYING TO GET HER TO QUIT SCREAMING, BY KISSING HER, OR PUTTING HIS MOUTH OVER HERS. MR. GIBSON STATED THAT THE WHITE MALE WAS TRYING TO PULL THE FEMALE BACK TOWARDS THE MOTORCYCLE. MR. GIBSON SAID THAT THE FEMALE GOT AWAY, AND RAN BACK TO HIS TRUCK, TRYING TO CLIMB INTO HIS TRUCK. MR. GIBSON SAID THAT THE MALE THEN DROVE THE MOTORCYCLE UP BESIDE HIS TRUCK, GRABBING THE FEMALE, TRYING TO PULL HER DOWN OFF THE TRUCK (18 WHEELER RIG). MR. GIBSON SAID THAT THE FEMALE HAD A VERY TIGHT GRIP ON HIS TRUCK, AND WAS NOT LETTING GO. MR. GIBSON SAID THAT HE YELLED AT THE MALE, TELLING HIM THAT HE HAD CALLED 911, THEN THE MALE LET THE FEMALE GO, DRIVING OFF TOWARDS NORTH CENTER ROAD. DEPUTY SCOTT STACEY ARRIVED ON SCENE, AND THIS DEPUTY ADVISED HIM OF WHAT HAD OCCURRED, THAT THE AMBULANCE WAS GOING TO CAROLINA PINES HOSPITAL, AND THAT THE ON CALL INVESTIGATOR NEEDED TO BE CONTACTED, IN REFERENCE TO THIS INCIDENT. DEPUTY STACEY DID CONTACT SERGEANT RALPH BROWN, WHO STATED TO HAVE THE ON CALL INVESTIGATOR TO BE NOTIFIED. DISPATCH DID ADVISE THE ON CALL INVESTIGATOR, CHAD MCINVILLE, WHO ADVISED THAT HE WAS GOING TO MEET US AT CAROLINA PINES EMERGENCY ROOM.

THIS DEPUTY DID FOLLOW THE AMBULANCE TO CAROLINA PINES EMERGENCY ROOM. WHILE AT CAROLINA PINES EMERGENCY ROOM, THIS DEPUTY DID SPEAK WITH MS. PERKINS FURTHER, AND SHE HAD STATED THAT HER EX-BOYFRIEND, CURTIS NEALEY, HAD BEAT HER MOTHER IN THE HEAD, AND ALSO HIT HER SEVERAL TIMES ABOUT HER BODY, USING A HEAVY WHAT-NOT (KNICK KNACK) OBJECT. MS. PERKINS ALSO SAID THAT CURTIS PULLED A KNIFE ON HER, POINTED IT AT HER, TELLING HER THAT IF SHE DIDN'T LEAVE WITH HIM, HE WAS GONNA KILL HER. MS. PERKINS STATED THAT SHE THEN LEFT HER RESIDENCE, OF [REDACTED] E. HOME AVENUE, WHICH IS IN THE CITY LIMITS OF HARTSVILLE. MS. PERKINS SAID THAT CURTIS KEPT SAYING THAT HE WAS GOING TO PRISON FOR A VERY LONG TIME. MS. PERKINS ALSO SAID THAT CURTIS THREATENED TO KILL HER MOTHER, AND ALSO HER, SEVERAL TIMES AT THE RESIDENCE. MS. PERKINS THEN SAID THAT CURTIS DROVE THE MOTORCYCLE VERY FAST AWAY FROM HER HOME.

MS. PERKINS SAID THAT WHEN THEY GOT ONTO WEST BILLY FARROW HIGHWAY, CURTIS POPPED A "WHEELIE" ON THE REAR TIRE, THEN HIT THE FRONT BRAKES, CAUSING THE REAR WHEEL TO GO UP IN THE AIR. MS. PERKINS SAID THAT CURTIS TOLD HER "YOU ARE GONNA DIE, AND I'M GONNA DIE WITH YOU". MS. PERKINS ALSO SAID THAT CURTIS SAID "WE ARE BOTH GONNA DIE TONIGHT, WE WILL DIE TOGETHER!" MS. PERKINS SAID THAT WHILE THE REAR WHEEL WAS IN THE AIR, THAT CURTIS USED HIS LEFT ARM, SHOVING HER VERY HARD OFF THE BACK OF THE MOTORCYCLE. MS. PERKINS SAID THAT SHE TUMBLED, AND ROLLED FOR A WHILE, AND THAT SHE GOT TO HURTING VERY BADLY, BUT THAT SHE GOT UP, AND BEGAN TO RUN, BECAUSE CURTIS WAS YELLING "I'M GONNA FINISH YOU OFF, I'M GONNA KILL YOU!" MS. PERKINS SAID THAT SHE RAN TOWARDS AN 18 WHEELER BIG RIG, COMING TOWARDS HER, FOR HELP. MS. PERKINS SAID THAT CURTIS DID GRAB HER SEVERAL TIMES WHILE SHE WAS RUNNING, TRYING TO PULL HER BACK TOWARDS THE MOTORCYCLE. MS. PERKINS SAID THAT SHE GOT AWAY FROM CURTIS, AND HELD ON TO THE BIG TRUCK FOR HER LIFE. MS. PERKINS SAID THAT THE DRIVE

SUBJECT IDENTIFIED
☒ YES ☐ NO

SUBJECT LOCATED
☐ YES ☒ NO

☐ ACTIVE ☐ ADM. CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 18
☒ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ 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
16787 - LCPL. RODNEY B. HOPKINS	10/15/2008	16787	11570 - SGT. CLEVELAND O. HOWARD	10/15/2008	115
FOLLOW-UP INVESTIGATION OFFICER					
YES ☐ NO ☐ 70664 - INV. MICHAEL C. MCINVILLE			10/15/2008	706	

AGENCY I.D.
SC0160200

SUPPLEMENTARY INCIDENT REPORT
Hartsville Police Department

CASE NUMBER

2008-10-233

359 NC
ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 of 6 PAGES

medical staff also said that they were still checking on her to make sure nothing else was broken or any internal injuries. Dorothy Perkins said that Nealey told her that he knew he was going to go to prison and was going to kill himself and her. Deputies were responding also because of Dorothy Perkins being thrown off the motorcycle in the county. Highway patrol and other county units were looking for Nealey also. Staff on call was notified and Sgt Specht responded. Warrant affidavits were completed on Nealey and left in the Clerk of Court's box as he has not been located at the time of this report. See supplements for further.

SUPPLEMENT #2 Cheryl B. McCall - 1114 10/15/2008 12:10

On Wednesday, 10/15/2008, I entered the suspect Curtis R. Nealey into NCIC as a wanted person. NIC# W085298162. The arrest warrant dated 10-15-2008 for Assault and Battery with Intent to Kill, J-087398, was signed by Judge R. Thomas on the same date and countersigned by magistrate Judge Brigman on the same date. The warrant was time and date stamped by me before entering Nealey into NCIC as a wanted person.

SUPPLEMENT #5 John T. Westman - 1175 10/19/2008 04:22

I, Ofc Westman, talked to Victoria Perkins about the incident and she stated that Nealey had been drinking and getting loud. She stated that she told Nealey to get out before and during the assault on her daughter. She stated that he had beat her several times with something in his hand and was brandishing a knife at both the women. I also talked with her son Tommy Perkins about what had the incident and he stated to me that Nealey had assaulted his sister (Dorothy Perkins) on previous incidents and was to report to court the next day for (stabbing a Ray Gainey.)

SUPPLEMENT #6 Christopher Stokes - 1166 10/19/2008 04:58

On October 15th 2008 Officer Catoe was dispatched to an assault on E Home Avenue. Catoe informed other officers to be on the look out for a yellow motorcycle driven by a white male and a white female passenger. Catoe stated the female was in danger. I drove to E Carolina Avenue and did not locate the suspect bike. Dispatch advise the suspect, Curtis Nealey had wrecked the motorcycle and had left the location leaving Perkins behind.

I went to the residence at E Home Avenue to assist Officer Catoe. I observed blood on the couch, floor and in the bedroom floor as well as on top of the dresser. Their was also bloody foot prints on the floor. Officer Catoe took photo's of the blood. On the couch in the living room was a statue that was broken and had blood on it. It appeared the statue was used as a weapon recently. I left the location.

ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ 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
	1167 - Jackie Catoe		10/15/2008	1167	1114 - Cheryl B. McCall		10/15/2008
	1166 - Christopher Stokes				FOLLOW-UP INVESTIGATION OFFICER ☒ YES ☐ NO 1118 - John R. Specht		10/15/2008

FILED

Antidepressants and Alcohol

2012 JAN 17 AM 11:54

It is an extremely bad idea to combine antidepressants and alcohol. The reasons why this combination could prove fatal. Read on to know more..

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Antidepressants are the medications that are prescribed as a depression and anxiety cure. It is often recommended to avoid alcohol while you are on antidepressants. The reason is that, alcohol and antidepressants act on the same chemicals in the brain. Naturally, alcohol is likely to counteract the effects of antidepressants. In turn, antidepressants can aggravate the intoxication ability of alcohol. Here are some reasons why antidepressants and alcohol consumption should not be mixed with each other. More on depression medications.

Antidepressants and Alcoholism

Increased Depression

Alcohol interferes with the working mechanism of the antidepressants and reduces their effect. As a result, the antidepressants cannot efficiently cure anxiety. This results in increased symptoms of depression. Consequently, the person may be tempted to stop the antidepressants entirely and indulge in alcoholism.

Increased Intoxication

As mentioned above, alcohol and antidepressants act on the same set of chemical stimulants in the brain. Thus, antidepressants are likely to elevate the levels of intoxication in the body. Interaction of antidepressants and alcohol is particularly risky as it directly impairs the control of the brain over the body. This might make it impossible to carry out tasks such as driving which require judgment and attention.

Antidepressants and Alcohol Side Effects

Antidepressants are known to induce certain side effects such as ~~rowsiness, sleepiness, etc~~. These side effects are often aggravated when you combine alcohol with antidepressants. This can be detrimental on some occasions where you are required to stay awake and alert. This is particularly true when you mix tricyclic antidepressants and alcohol. The severity of side effects is more during the first few weeks of starting antidepressants.

Lethal Combination

Antidepressants, particularly from the class monoamine oxidase inhibitors (MAOIs), when combined with certain foods and drinks can cause fatal effects. MAOIs such as isocarboxazid, phenelzine and tranylcypromine can substantially elevate the blood pressure and may even cause stroke. Thus, when you are on antidepressants, it is imperative to know what foods can be safely consumed and which alcoholic beverages can induce lethal reactions.

When is Alcohol Safe with Antidepressants?

Many people are wary of the fact that if they start antidepressants, they won't be able to drink alcohol. Though, this is true in many cases, alcohol can be safely consumed under certain circumstances. This is when the type of antidepressants are fluoxetine, sertraline, paroxetine or citalopram, which have insignificant effects when combined with alcohol. However, it is better to consult your doctor if you have been prescribed fluvoxamine, which has a potential to induce some side effects when mixed with alcohol. More on list of antidepressants.

Often, your doctor may allow you to drink alcohol in moderation, while on antidepressants. However, when you have been asked to drink alcohol in moderation, it is not wise to exceed the limit beyond two drinks a day for men and one drink a day for women. One drink is measured in terms of ounces and the proportion is as follows:

- One drink = 12 ounces of beer
- One drink = 5 ounces of wine
- One drink = 1 ounce of 80-proof whiskey or 1 ounce of 100-proof spirits

Antidepressants and alcohol, is definitely not a great combination. However, you might seek permission from your doctor who will be able to advice you, depending upon the type of antidepressants you are using. Also, it is better to confirm it beforehand, what are the types of foods that can be safely consumed while on antidepressants.

By Ashwini Kulkarni Sule

majority of complications occur within the first six hours and in patients who are sedated. An alert patient with a normal ECG six hours after overdose who has had gastrointestinal decontamination is extremely unlikely to develop major complications.

Blood concentrations

These are unhelpful in aiding acute management. Patients with plasma TCA concentrations greater than 450 ng/mL tend to develop cognitive or behavioral toxicity (agitation, disorientation, confusion, memory impairment, fragmented speech, pacing, decreased concentration). Major toxicity and death is associated with concentrations above 1000 ng/mL.

DIFFERENTIAL DIAGNOSIS TCAs should be considered along with other drugs with membrane blocking effects in patients with seizures, QRS prolongation and/or ventricular arrhythmias. A presentation with coma in the presence of anticholinergic signs make TCAs the most likely drug ingested.

DIFFERENCES IN TOXICITY WITHIN THIS DRUG CLASS

There is some variation in the toxic dose between the drugs in this class. The number of deaths per million defined daily doses (DDDs) prescribed in the UK (a fatal toxicity index) varied from 2-7 for amoxapine, dothiepin, desipramine and nortriptyline to less than 0.5 for lofepramine and clomipramine (Henry et al 1995). The majority of these deaths occurred outside of hospital.

Large differences in the likelihood of producing major complications have also been noted in clinical studies with amoxapine, dothiepin and desipramine having significantly higher rates of seizures when taken in overdose (Buckley et al, 1994; Vedin et al, 1986).

Dosulepin (dothiepin) and amitriptyline appear to be particularly toxic in overdose. Dosulepin overdose is associated with an increased risk of arrhythmias and seizures.

DETERMINATION OF SEVERITY

A worse outcome is associated with any of the following

- cardiac arrest
- cardiac arrhythmias
- seizures
- prolonged QRS (particularly with a slow heart rate)

However the in-hospital mortality is low (<1% in most centres) and therefore even patients from these groups have a reasonable prognosis after reaching hospital.

TREATMENT

Summary of management

Supportive

All patients should have assessment of the adequacy of their airway protection and ventilation. Ventilate any patient who can't protect their airway, or has a respiratory acidosis. Comatose patients require management in ICU and will need to be intubated if they are to have gastrointestinal decontamination safely. Ventilation should not be the primary method of achieving systemic alkalinisation (see sodium bicarbonate); mild hyperventilation can maintain a patient in alkalosis but the CO₂ should not go below 25 mmHg.

Patients should have continuous ECG monitoring for at least 6 hours after ingestion. All patients should have intravenous fluids (normal saline).

After cardiac arrest, prolonged resuscitation may be successful and should be continued for at least 1 hour.

FILED
 2012 JAN 17 AM 11:54
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

THE MOSBY ENCYCLOPEDIA DEFINITIONS

FILED

2012 JAN 17 AM 11:53

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

1. **TRICYCLICS:** antidepressant. See: antidepressant.
2. **ANTIDEPRESSANT:** referring to a drug or treatment that prevents or relieves depression. See also: antipsychotic.
3. **ANTIPSYCHOTIC:** referring to a drug or treatment that lessens the symptoms of a severe mental illness psychosis; (2) an antipsychotic drug. Phenothiazine drugs are most often given to treat schizophrenia and other psychotic defects. Common side effects of this drug are a dry mouth, blurred vision, and Parkinsonian symptoms. See also: antidepressant, neuroleptic, tranquilizer.
4. **NEUROLEPTIC:** referring to neuroleptosis; a drug that causes neuroleptosis, such as DROPERIDOL, also called neurolept. See also: antipsychotic tranquilizer; a drug to calm people who are nervous, excited, or worried about the future. Major tranquilizers are generally used to treat mental conditions. Minor tranquilizers are given to treat anxiety, irritability, tension, or failure to deal with unsolved problems. Tranquilizers often bring on drowsiness and can cause physical, or mental, addiction to the drug. See also: antipsychotic.
5. **NEUROLEPTOSIS:** an altered state of mind of consciousness marked by reduced physical movement, anxiety, and by indifference to the surrounding environment; sleep may occur. DROPERIDOL is a drug with a calming sleep-inducing effect.

Clerk of Court

2012-CP-16-070

I'm filing my PCR with is pages 2(a) to
pages 2(x) plus page 3; a, b, c.

Applicant also sends a cumulative Report of 4 pgs
one incident report 2008-10-0311 and two pages
of report 2008-10-233

one Arrestwarrant J-087400

Four pgs about Tricyclies! "Court Exhibits"

The reason for this is to insure that the Court
receives these copy's for my use at my PCR,
because they don't have to amend once Applicant
gets at his hearing. Applicant would like to
get a copy of this Clock stamped and
Returned to Him thanks for your time.

Curtis Neakey 337988
LCI Ric. C-148
990 Wiscaky Hwy
Bishopville SC 29010

FILED
2012 JAN 17 AM 11:52
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.



ALAN WILSON
ATTORNEY GENERAL

May 8, 2012

The Honorable Scott B. Suggs
Clerk of Court, Darlington County
Post Office Box 1177
Darlington SC 29540

2012 MAY 10 AM 10:49
CLERK OF COURT
DARLINGTON COUNTY, S.C.

Re: Curtis Nealey, 337988 v. State of South Carolina
2012-CP-16-0070

Dear Mr. Suggs:

Enclosed please find the original Return of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Tyson Andrew Johnson, Sr.
Assistant Attorney General

TAJ, Sr./jacc
Enclosure(s)

cc: David H. Moyd, Esquire

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16- 70
Curtis Nealey, 337988	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

2012 JAN 17 10 AM 10:50
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

Respondent, making its Return to the Application for post conviction relief (PCR) filed January 17, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted by the Darlington County Grand Jury for two counts of assault and battery with intent to kill (2009-GS-16-0869 and 0874), CDVHAN, (2009-GS-16-0872), Kidnapping (2009-GS-16-0873) and Possession of a weapon during the commission of a violent crime (2009-GS-16-872). Tonya Copland Little, Esquire, represented Applicant.

On November 10, 2009, the Applicant was tried before the Honorable J. Michael Baxley and a jury. After the jury returned convictions on Applicant's charges, Judge Baxley sentenced Applicant to twenty years imprisonment on both ABWIK charges, ten years on the CDVAN charge, thirty years imprisonment on the kidnapping charge, and five years imprisonment (to run

consecutive) on the Possession of a weapon during a violent crime charge, for an aggregate sentence of thirty-five years imprisonment. On information from the Application, Applicant appealed his verdict and sentence, and on information and belief, this appeal was dismissed. Counsel reserves the right to amend and add further information on the appeal upon receipt.

Attached herewith and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and Respondent will forward the trial transcript upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel failed to present developed medical reports for impeaching testimony factually refuted by the medical reports...
2. Trial counsel failed to present evidence and/or testimony from a Forensic Toxicologist to establish the physical and mental condition of State Witness Dorothy Perkins...
3. Trial counsel failed to adequately cross examine state witness Dorothy Perkins...
4. Trial counsel erred by their failure to object to the states improper eliciting of detrimental character evidence involving criminal domestic violence against applicant at applicants trial...
5. Trial counsel failed to adequately cross examine state witness Victorial Perkins and law enforcement officers...

Applicant seeks "reverse conviction set aside" as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application

alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

2012 MAY 10 PM 10:50
CLERK OF COURT
SOUTH CAROLINA
DALLAS

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS

2012-CP-16-0070

CURTIS NEALEY, 337988)

Applicant,)

vs)

AFFIDAVIT OF SERVICE VIA E-MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

David H. Moyd, Esquire
 Driggers & Moyd
 Post Office Box 1439
 Hartsville SC 29551

DATED this 8th day of May, 2012.

Judy A.C. Carey
 Judy A.C. Carey, Legal Assistant
 For Respondent

FILED MAY 10 AM 10:50
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)

CURTIS R. NEALEY)
337988
PETITIONER,)

v.) TRANSCRIPT OF RECORD
12-CP-16-0070

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

July 15, 2013
Darlington, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

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

TRISTAN M. SHAFFER, ESQ.
Attorney for the Petitioner

KAREN C. RATIGAN, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

I N D E X

	Page
History of the case	3
Wendy Bell:	
Direct examination	7
Cross-examination	16
Tonya Copeland-Little:	
Direct examination	18
Cross-examination	39
Redirect examination	44
Curtis Nealey:	
Direct examination	48
Cross-examination	70
Redirect examination	77

E X H I B I T S**APPLICANT'S:**

No.	Description	I.D./EVD.
1	Page 3(b)	70/70

1 MS. RATIGAN: This is the case of Curtis
2 Ray Nealey versus State of South Carolina. The
3 docket number is 2012-CP-16-00070. Mr. Nealey was
4 indicted for two counts of assault and battery with
5 intent to kill, two counts of possession of a weapon
6 during the commission of a violent crime, criminal
7 domestic violence of a high and aggravated nature
8 and kidnapping. He was represented on these charges
9 by Tonya Copeland Little. The case was brought to
10 trial before Judge Baxley in November of 2009. The
11 judge actually granted directed verdict on one of
12 the weapons charges; the others proceeded to the
13 jury. The jury found him guilty of the remaining
14 charges as indicted. He received concurrent
15 sentences of 20 years on each of the assault and
16 battery with intent to kill charges, 10 years for
17 criminal domestic violence of a high and aggravated
18 nature, 30 years for kidnapping, and a consecutive 5
19 years for the weapons charge. He did file a notice
20 of appeal. It was appealed in the nature of an
21 Anders brief at the Court of Appeals. That appeal
22 was dismissed in December of 2011, and the State
23 would turn it over to Mr. Shaffer.

24 THE COURT: Okay.

25 MR. SHAFFER: Your Honor, I have given a

1 copy of this to the attorney general's office. It's
2 entitled the State -- it's one that was in the last
3 case. If I may approach.

4 THE COURT: Okay.

5 MR. SHAFFER: Essentially the difference
6 between this case and the last case is that I don't
7 believe I made any changes compared to its pro se
8 filings in that. I think that they're, it's just
9 more clearly stated. There's pretty substantial pro
10 se filings in this, Your Honor, we ask that the
11 Court consider those. But this is sort of a, I
12 guess, abbreviated list sort of what we're doing
13 today. And there is one addition that I would like
14 to make that I have not made the attorney general
15 made aware of this because I found out just recently
16 Ms. Copeland Little indicated that she had offered,
17 or that the State offered the ten year offer and
18 she'd indicated that to me this morning. There's, I
19 believe there's Frye and Lafler (ph), which are two
20 U.S. Supreme Court cases from last year, speaking on
21 the ineffective assistance of counsel in the context
22 of relaying a plea offer, Your Honor. My client
23 indicates that he never got that offer for ten years
24 so we would move to amend to include that as well.
25 And that's something that I found out about. I was

1 questioning whether or not it had happened, and I
2 had emailed both the prosecutor and the attorney and
3 trial counsel on this case last week, and I was
4 confirmed this morning that there was an offer on
5 it. Now I understand that the State objects, but I
6 did just find out in all honesty.

7 THE COURT: Okay, you want to address
8 that?

9 MS. RATIGAN: Your Honor, the State would
10 object to the last amendment, last minute amendment.
11 However, since that is an issue that can be
12 developed through testimony rather than legal
13 argument, I guess we'll be -- we'll go ahead and
14 waive any objection go forward on that issue today
15 since it can be developed through testimony.

16 THE COURT: Okay.

17 MR. SHAFFER: Your Honor, if you may, or
18 if you would like, I can give you a brief factual
19 description of what had happened in this case and
20 the allegations. I'm going to call witnesses out of
21 order because we do have an expert here today, and I
22 want to make sure that she gets out early. But if
23 you would like, I can give you a basic factual
24 synopsis.

25 THE COURT: Okay.

PW - W. BELL - DIRECT

1 MR. SHAFFER: The allegations are that
2 Mr. Nealey was involved in an argument with his
3 girlfriend, his girlfriend's mother; that it arose
4 essentially from a -- the State alleges that it
5 arose from his involvement in a domestic violence
6 case that she was also involved in. They allege
7 that he had essentially assaulted the victim and her
8 mother and then kidnapped the victim on his
9 motorcycle and tried to kill her on the motorcycle.

10 Now, there's -- his version of facts are
11 vastly different than that allegations. He
12 testified at the trial, and he stated that he
13 would -- that it was his -- that although they were
14 arguing he was on the motorcycle and he did not
15 intend on killing her; that he never kidnapped her.
16 He also testified that she essentially fell off the
17 back of his motor vehicle while he was driving, you
18 know, she was intoxicated. At trial, Judge -- well,
19 when the victim went to the hospital she had a
20 random .18, I believe, blood alcohol level and I'll
21 let the expert talk with this more in detail. But
22 Judge Baxley ruled that it was only that he -- they
23 could only bring it up for the purposes of
24 impeachment. Our belief is that it was actually
25 substantive evidence, that the State should have or

PW - W. BELL - DIRECT

1 trial counsel should have called a witness to
2 testify to the effects of the alcohol and the drugs
3 that were found in her system. We have that witness
4 here today, a witness who would testify about that.
5 Her name is Whitney Bell; she's from SLED. And
6 essentially I was going to call her out of order
7 because of the fact I want to, I want to get her out
8 of here, if there's no objection from the State.

9 THE COURT: Do you have any objection?

10 MS. RATIGAN: No.

11 THE COURT: Okay.

12 MR. SHAFFER: Your Honor, the Applicant
13 calls Wendy Bell.

14 THE CLERK: Place your left hand on the
15 Bible, raise your right.

16 WHEREUPON,

17 **WENDY BELL,**

18 having been duly sworn by the Clerk, testified as
19 follows:

20 THE CLERK: Have a seat.

21 **DIRECT EXAMINATION**

22 BY MR. SHAFFER:

23 Q Good morning, Ms. Bell.

24 A Good morning.

25 Q Please state your full name for the record.

PW - W. BELL - DIRECT

1 A It's Wendy Bell.

2 Q And where do you work, Ms. Bell?

3 A I'm employed with the South Carolina Law
4 Enforcement Division in Columbia, South Carolina.

5 Q And what's your job?

6 A I'm currently the assistant lab director. My
7 title is captain of forensic operations.

8 Q Okay. And what was your job prior to that?

9 A Prior to that I was, I was hired as a forensic
10 toxicologist and I just recently was the chief
11 toxicologist for that department.

12 Q And ---

13 MR. SHAFFER: Does the State stipulate
14 that she's an expert in toxicology?

15 MS. RATIGAN: Just her qualifications.

16 MR. SHAFFER: Okay.

17 BY MR. SHAFFER:

18 Q All right, Ms. Bell, you work -- how long did you
19 work as a toxicologist?

20 A I was hired in 1998 and have been there for 15
21 years. Part of that, my education, I have a
22 bachelor's of science degree in chemistry from
23 Furman University and a Ph.D in analytical chemistry
24 from the University of South Carolina. My training
25 in toxicology is mostly come during the first two to

PW - W. BELL - DIRECT

1 three years at SLED, and it's ongoing ever since.
2 So, as I said, I'm -- my job responsibility as a
3 chief toxicologist were to train toxicologists
4 coming in both how to test for the different
5 chemicals that we identify individual's blood and
6 interpret how those drugs affect a person, so
7 impairment, judgment, all these different types of
8 conditions.

9 Q Okay. And have you been qualified as an expert
10 in courts of this state?

11 A Yes, I have.

12 Q How many times?

13 A I've testified probably 30 times.

14 Q All right.

15 MR. SHAFFER: Your Honor, we would move to
16 qualify Ms. Bell as an expert in the field of
17 forensic toxicology.

18 MS. RATIGAN: I have no objection, Your
19 Honor.

20 THE COURT: Okay, the Court so finds.

21 BY MR. SHAFFER:

22 Q Ms. Bell, you have reviewed records concerning a
23 Dorothy Perkins, correct?

24 A I have.

25 Q Okay. What records were those?

PW - W. BELL - DIRECT

1 A I was -- I have several different reports from
2 the Carolina Pines Regional Medical Center dated --
3 I'm trying to find the date on this. The sample was
4 collected on 10/15 of '08. I have a urinalysis
5 report, also a chemistry report for Ms. Dorothy
6 Perkins.

7 Q And whenever you -- when you reviewed these
8 documents did you notice anything -- well, first of
9 all, when were the samples taken according to the
10 documents?

11 A It appears that they were collected at 10/15/08
12 at 12:45 a.m. in the morning.

13 Q And what do these samples indicate?

14 A The chemistry report indicates that Ms. Perkins
15 had an alcohol level of .175 serum blood alcohol and
16 also that she was positive for tricyclic
17 antidepressants in her urine at a very high level.

18 Q What do you mean a very high level?

19 A Their screen cutoff is at a 3,000 -- excuse me,
20 one thousand nanograms per mill, and she was well
21 above that.

22 Q And that's a threshold about the one thousand?

23 A That's correct.

24 Q And how high was she?

25 A I don't know that I have an actual level for her

PW - W. BELL - DIRECT

1 for tricyclic antidepressants, only that it was
2 positive, a greater than one thousand nanogram per
3 mill. The hospital typically sets these threshold
4 levels to try to indicate whether a person is under
5 the influence of these drugs at the time. They're
6 trying to get a rapid answer to be able to provide
7 medical treatment to someone. So the thresholds are
8 set even, though they're in urine, to try to
9 identify what substances might still be present in a
10 person's blood. So in a positive urine for these
11 substances, at that level would indicate it is a
12 fairly recent use and should still be in the
13 person's system.

14 Q Okay. And by fairly recent use, could you ---

15 A Within that day.

16 Q Within that day?

17 A Yes.

18 Q Okay. And whenever you say still in their system
19 do you mean that they would still be under the
20 effects of it?

21 A Yes. I mean, again, this is testing urine so
22 it's, you cannot say with one hundred percent
23 certainty that it's still in a person's blood; but
24 that's why the hospital sets fairly conservative
25 thresholds to be able to try to identify the

PW - W. BELL - DIRECT

1 substances that are still in a person's blood. They
2 want to be able to give proper treatment and to
3 identify the substances are still active.

4 Q And if SLED was looking at these thresholds they
5 would have been lower?

6 A We actually no longer screen for tricyclic
7 antidepressants and this meaning our thresholds are
8 lower.

9 Q Do you -- was there a time when you did screen?

10 A We did. And to be honest I cannot -- I didn't
11 look up that number, what the threshold was.
12 However, we also are interested in recent exposure
13 because, again, when we're reviewing a urine report
14 we're also trying to identify is this person
15 impaired by the substance. We would not want to be
16 considering something that they had ingested two or
17 three days prior.

18 Q Okay. And the -- you indicated that there was
19 alcohol in her blood at what level?

20 A The serum level was a .175.

21 Q Could you explain the difference between serum
22 level and, you know, the blood alcohol level?

23 A Sure. At SLED's forensic laboratory we're
24 interested in testing whole blood because that's
25 actually what's pumping through your veins at the

PW - W. BELL - DIRECT

1 time of an incident. Hospitals suspend that down
2 and get a serum and then that's what they tested. A
3 serum level is actually a little higher than a whole
4 blood. We typically divide a serum level by 1.18
5 and that gives us what the whole blood reading would
6 be. I've done that calculation. In this instance
7 it would be a .148 and that's about a .15.

8 Q Okay.

9 A Whole blood level.

10 Q And that's essentially what you, the whole blood
11 level would be what you would hear, for example, in
12 a DUI trial?

13 A That's what we would take as a legal blood
14 alcohol, that's correct.

15 Q And from the alcohol alone, would that indicate
16 that she was likely impaired?

17 A Yes, it would. That is more than two times
18 what's considered the legal limit ---

19 Q Okay.

20 A ---for impairment in our state. A person under
21 the effects at that level would be experiencing
22 significant impairment.

23 Q What type of impairment would they have from the
24 alcohol line?

25 A They experience muscular incoordination. If they

PW - W. BELL - DIRECT

1 were looking at their speech you would expect
2 slurred speech, that, and staggered gate when
3 they're walking. You would expect slowed reaction
4 time because of the slow -- this is a central
5 nervous system depressant; it slows the brain's
6 processes. So you would expect impairment, impaired
7 judgment, impaired -- it could affect memory
8 recollection.

9 Q Okay. And the tricyclic antidepressant, what are
10 some of the effects of that?

11 A Well, the drug is intended to be used as
12 antidepressant; but in effect, it is also a central
13 nervous system depressant. So when it's combined
14 with alcohol, which it's warned against, it causes
15 an enhanced effect of the alcohol. You would expect
16 to see more impairment.

17 Q Okay. And if you were to combine the two you
18 would expect to see more impairment?

19 A Yes. A person with .15 with a tricyclic might
20 be behaving more like a .2.

21 Q Okay. So you believe that the person with the --
22 at the time that was taken the person who it was
23 taken from was impaired?

24 A Yes, that would be my opinion.

25 Q And who was that blood taken from?

PW - W. BELL - DIRECT

1 A From these reports it was taken from Dorothy
2 Perkins.

3 Q Okay. And could you give me the time of that?

4 A Again, I have -- the urinalysis said that it was
5 collected at 10/15/08 at 3:00, and the blood says at
6 10/15/08 at 12:45 and I believe that's both in the
7 a.m.

8 Q Okay. Beg the Court's indulgence. Do you
9 believe that, or in your opinion would a person who
10 had these readings likely be, have impaired balance?

11 A Yes.

12 Q And do you believe that they could have impaired
13 memory?

14 A They could.

15 Q What are some of the other effects that they
16 could have?

17 A As I said, slurred reaction time, impaired
18 judgment, just muscular incoordination in general,
19 not just balance.

20 Q And ---

21 A You start to get kind of -- I guess if anyone has
22 ever seen an impaired person they start to get kind
23 of relaxed and their muscles are very relaxed.

24 Q Okay. But it's safe to say that that person
25 couldn't be in complete control?

PW - W. BELL - CROSS

1 A Yes, that would be correct.

2 Q Do you believe it's dangerous to, it could be
3 dangerous to combine these two drugs together?

4 A It could be. It is definitely warned against
5 taking alcohol when you're taking tricyclic
6 antidepressants. It has a warning label that's on
7 the bottle. It's given by the pharmacist to the
8 individuals.

9 Q And on tricyclic antidepressants by themselves
10 would you want to drive taking those?

11 A You can if you are taking them as prescribed by
12 the doctor and you allow yourself, your body time to
13 adjust to the effects of these drugs. If it's a
14 prescription that someone had been on for a long
15 period of time, it can be safe; however, we have
16 seen cases where people have been DUI on the effects
17 of tricyclic antidepressants.

18 Q Would that be whenever they take it early on --
19 well, so essentially you're saying building up a
20 tolerance?

21 A You build up a -- your body develops adjustment.
22 It's a type of tolerance. It's a learned behavior
23 to this new equilibrium that your body is
24 experiencing under the effects of the drug. And
25 with most new drugs doctors give that warning don't

PW - W. BELL - CROSS

1 drive until you know how this drug affects you.

2 Q Okay. So it could affect somebody who hadn't
3 taken it in a way that could be dangerous to drive?

4 A It could.

5 MR. SHAFFER: No further questions.

6 **CROSS-EXAMINATION**

7 BY MS. RATIGAN:

8 Q A couple of quick questions. So the blood screen
9 indicated that's the alcohol?

10 A Yes.

11 Q And the urine screen was the tricyclic
12 antidepressant?

13 A That's correct.

14 Q Now just because I have no idea, what would a
15 tricyclic antidepressant be like? What would there
16 -- would there be a brand name that I would know?

17 A The two -- most of these are older drugs.
18 There's newer antidepressants on the market now, but
19 the two that are the most common are amitriptyline
20 and amipraney (ph). And to be honest, it's been a
21 while since I've looked up the trade names. In
22 toxicology we typically go by the active ingredient.

23 Q Okay.

24 A But those are the two active ingredients that are
25 the most common I think.

PW - T. LITTLE - DIRECT

1 Q But they're, you said they're a little bit older
2 in terms of prescription?

3 A There are safer medications for depression now so
4 they're just not as, not prescribed as frequently
5 anymore. Most of the new selective SSRIs such as
6 Zoloft and Paxil, those things are what we see now.

7 Q But the tricyclic antidepressant, that would have
8 -- the fact that that was in the urine screen would
9 show that it was a prescription drug. That's not
10 something you can get a result on from any kind of
11 over the counter medication?

12 A No, there's not typically anything that I'm aware
13 of that cross-reacts with that screen.

14 Q Okay. And you can't tell based on the screen
15 what dosage she was prescribed, what dosage she was
16 taking, just what the results were in her urine that
17 night?

18 A That's correct.

19 Q Okay.

20 MS. RATIGAN: That's all I have, Your
21 Honor.

22 THE COURT: All right. Anything further?

23 MR. SHAFFER: No, Your Honor.

24 THE COURT: Thank you. Any reason she
25 can't be excused?

PW - T. LITTLE - DIRECT

1 MR. SHAFFER: No, Your Honor.

2 MS. RATIGAN: No, Your Honor.

3 THE COURT: Thank you.

4 MR. SHAFFER: Your Honor, the applicant
5 calls Tonya Copeland Little.

6 THE COURT: Okay.

7 WHEREUPON,

8 **TONY COPELAND LITTLE,**
9 having been duly sworn by the Clerk, testified as
10 follows:

11 THE CLERK: Thank you.

12 **DIRECT EXAMINATION**

13 BY MR. SHAFFER:

14 Q Good morning, Ms. Little.

15 A Good morning, afternoon.

16 Q You represented Curtis Nealey, correct?

17 A Correct.

18 Q Okay. You were appointed, right?

19 A Yes, I was a public defender at the time.

20 Q Okay. And tell us a little bit about the
21 allegations against him.

22 A It was alleged that he beat his girlfriend's
23 mother in the head with a whatnot is what we called
24 it; I believe it was a vase. That he — they allege
25 that he forced his girlfriend on to his motorcycle

PW - T. LITTLE - DIRECT

1 at knife point. Prior to that they had been to the
2 bar, had been drinking. But at this point, after
3 the altercation with his mother in law I'll call
4 her, not really, but they weren't married but. He
5 forced, allegedly forced his girlfriend on to the
6 back of his motor vehicle at knife point; and then
7 at some point drove, I think was driving at a high
8 rate of speed and they allege that he pushed her off
9 the back of his motorcycle.

10 Q It is alleged that he did a -- at least initially
11 she claimed that he did, he essentially slammed on
12 brakes and pulled the back wheel off of her.

13 A That's right, I'm sorry. He actually, I believe
14 it was they said that he popped a wheelie and forced
15 and that made her fall off the back.

16 Q All right. Was it a wheelie or like a reverse
17 wheelie on the front there?

18 A I'm sorry, the front. He was stopped and then it
19 could go up in the back.

20 Q And then she claimed that he pushed her off the
21 back?

22 A That's my recollection.

23 Q Okay. When did you initially get appointed to
24 this case?

25 A Just one moment. I think that would have been in

PW - T. LITTLE - DIRECT

1 November of 2008 shortly after his arrest.

2 Q Okay. And when was the first time that you spoke
3 with Mr. Nealey?

4 A You know, I don't have that. If you can give me
5 one moment I could run back and check my notes in
6 defender data; I didn't print those out. But it
7 would have probably been within, within two weeks
8 when I was appointed to him.

9 Q Okay. But it would indicate on your notes the
10 defender data when you would have actually seen him?

11 A Yes, sir.

12 Q Okay. And if defender data indicated that you
13 saw him for the first time on January 7th, 2009, you
14 wouldn't disagree with that?

15 A Well, it would be -- it could possibly be that
16 that was the first time that I put any notes into
17 defender data. At that time we had an investigator,
18 Mr. Goodman, who would usually go out and talk to
19 our clients at the jail; and then if we knew
20 somebody was gonna be a trial or was gonna be in
21 jail for a lengthy time, then of course we would go
22 out, the lawyers would go out and talk to them.

23 Q When you were at the public defender's office how
24 long were you there?

25 A Three years.

PW - T. LITTLE - DIRECT

1 Q Okay. Approximately how many cases did you have
2 assigned to you?

3 A How many cases did I have pending at the time?

4 Q Yeah.

5 A Hundreds.

6 Q Hundreds? Many?

7 A Yes.

8 Q So obviously you had to take notes to remember
9 everything that was going on with them?

10 A Yes.

11 Q Okay. And you took real good notes on this,
12 right?

13 A I took a lot of notes. Some of those notes are
14 handwritten and are not in defender data. Actually,
15 at the time we were supposed to be putting
16 everything in the computer I was an older student
17 and someone who was used to writing things down, so
18 I usually had a box with a lot of handwritten notes
19 as well. After the trial was over that would be
20 turned back over to the public defender's office,
21 and they were supposed to be scanned into the
22 system.

23 Q Now, well first of all, could you tell us whether
24 there was an offer on this case?

25 A Yes. I do have my notes about the offers. I can

PW - T. LITTLE - DIRECT

1 tell you initially there was a 15 year offer from
2 assistant, then assistant solicitor Will Rogers,
3 which would have been violent, 15 years violent, and
4 I believe even at that time he was willing to drop
5 the kidnapping if he would plead to two counts of
6 ABWIK nonviolent is what I recall. I mean, sorry,
7 violent, two counts of ABWIK violent 15 years. And
8 after that we did a counteroffer. Initially
9 Mr. Nealey offered to plead guilty to three years
10 suspended to one year and two years probation.

11 Q So the initial offer you testified to is that he
12 would have done two ABWIKs, 15 years violent?

13 A Correct.

14 Q Is that a cap or is that a recommendation?

15 A That was a actual recommendation.

16 Q Okay. And ---

17 A We countered at three years suspended to one year
18 and two years probation.

19 Q When you spoke to Mr. Nealey about this, what did
20 you advise him? Did you think it was a good offer?

21 A Actually, no, I didn't really think it was a good
22 offer. It was a good offer based on the maximum
23 penalty he could receive for all charges. But at
24 the time Mr. Nealey, as I recall, didn't have any
25 felony convictions or anything on his record, and I

PW - T. LITTLE - DIRECT

1 was thinking that we would probably be able to get
2 something a little lower.

3 Q Okay. Had you had a chance at this point to look
4 over the discovery in the case?

5 A Yes.

6 Q Okay. And what did you think about his
7 likelihood at trial?

8 A You know, I guess at that point I wasn't really
9 sure -- after I talked to the witnesses personally
10 with our investigator I began to get a little
11 concerned about what might happen if we went to
12 trial.

13 Q And did you voice these concerns to Mr. Nealey at
14 any time?

15 A Yes, every time I spoke to him I told him what I
16 thought the witnesses were gonna testify to.

17 Q Okay. And at some point the offer actually got
18 lower, correct?

19 A That's correct. At some point during
20 negotiations I have a note that we offered -- my
21 client offered to plead to two counts of ABHAN which
22 would have been nonviolent for a sentence of seven
23 years, and that was what Mr. Nealey had agreed he
24 would accept. The Solicitor came back with ten
25 years violent. She wanted ten years. And I can't

PW - T. LITTLE - DIRECT

1 remember if that was ABWIK or CDV HAN. I think it
2 was ABWIK because it was gonna be violent ten years.

3 Q And do you recall whether that was a cap or
4 whether that was a recommendation?

5 A That was a recommendation.

6 Q So it would have been one count of ABWIK, ten
7 years recommendation?

8 A Two counts of ABWIK.

9 Q Two counts of ABWIK?

10 A And dismiss the kidnapping.

11 Q So at the most that would have exposed him to 20
12 years, correct, I mean, 40 years?

13 A Correct.

14 Q Is that correct? Yeah. What is your
15 recollection about Mr. Nealey's reaction to that?

16 A Mr. Nealey, I think, when he offered, we offered
17 seven years two counts of ABHAN, he was adamant that
18 he was not gonna plead guilty to anything that was
19 violent.

20 Q Okay, and this -- you ended up trying this case,
21 correct?

22 A Correct.

23 Q Tell us a little bit about your trial preparation
24 for this case. What all did you do?

25 A Obviously, you know, read through the records and

PW - T. LITTLE - DIRECT

1 notes. We had an investigator at the time,
2 Mr. Goodman. He and I went out. We actually went
3 to the bar that my client said they were at to try
4 to see if we could find any witnesses who were there
5 that night or even the bartender who he described to
6 me as who was the bartender that night. Unable to
7 find anyone there who remembered them. We went to
8 the house where his girlfriend was living at the
9 time, looked at that scene and the location in
10 reference to the next door neighbor where one of the
11 victims came to after the alleged altercation.
12 Spoke to both of the alleged victims in this case,
13 Ms. Dorothy Perkins and her mother Ms. Victoria
14 Perkins at length, reviewed discovery, spoke to the
15 pathologist at Carolina Pines and the ER doctor.
16 Q So in your discovery -- and you had discovery
17 from the State obviously?
18 A Right.
19 Q Did you review the medical records from Dorothy
20 Perkins?
21 A Yes.
22 Q Okay. And you had a copy of those, correct?
23 A I did.
24 Q You got a copy of all the nursing notes?
25 A Yes.

PW - T. LITTLE - DIRECT

1 Q What was your trial defense?

2 A Trial defense was that ---

3 Q Or strategy rather, sorry.

4 A ---that the victim in this case and her mother
5 both had a motive to lie and manufacture the story
6 because Ms. Perkins had previously lost her children
7 through DSS and was trying to regain custody, and
8 the reason she originally lost her children was
9 because of her alcoholism. She had been through
10 rehab and parenting classes, and Mr. Nealey stated
11 that she was just drunk and fell off the motorcycle
12 and that they made this up because they -- if DSS
13 found out she was drinking and partying then they
14 would have taken her children again.

15 Q And what did you, what did you think, or what did
16 you advise Mr. Nealey concerning that defense? You
17 think it was credible or his testimony or his
18 version of the facts?

19 A Did I tell him that I didn't think a jury was
20 gonna believe him? I mean, is that what you're
21 asking?

22 Q Yeah, that's what I'm asking. That's a better
23 way of ---

24 A I believe -- yes, I'm sure I let him know that
25 there was a chance that they weren't gonna believe

PW - T. LITTLE - DIRECT

1 that story.

2 Q Okay. How did the truck driver -- there was a
3 truck driver, right, ---

4 A Right.

5 Q ---that witnessed part of this? Could you
6 explain what he witnessed?

7 A If I recall, I didn't go back and look at his
8 testimony, but what I recall is he came up to the
9 scene after Ms. Perkins was already off the
10 motorcycle, and he could -- what he first thought
11 was that there had been an accident. But when he
12 got closer he could tell maybe something was kind of
13 wrong because he saw Dorothy get up, and he said
14 what appeared to be my client trying to calm her
15 down by kissing her but her behavior was, didn't
16 seem to match what him kissing her because she was
17 screaming and trying to run away from him. So he
18 knew it was more than just maybe a regular accident.

19 Q Okay. And what was your strategy to -- or how
20 did that fit into your strategy, strategy at trial?

21 A Well, it actually made his, my client's story
22 less credible because, you know, if she had just
23 fallen off I didn't, I don't know why she would have
24 been running and jumping on the truck trying to get
25 away from him. But I mean, we knew, he knew what

PW - T. LITTLE - DIRECT

1 the truck driver was gonna say. We knew what the,
2 you know, the truck driver was gonna hurt him.

3 Q Okay. And you said he was kissing on her,
4 correct?

5 A He -- yes. And what the truck driver said was
6 that it appeared like he was trying to keep her from
7 screaming by kissing her.

8 Q Did you argue that possibly kissing and, was a
9 sign of that he was trying to take care of her? Did
10 you argue that at trial?

11 A I don't recall specifically arguing that.

12 Q Okay. Do you think that that would have helped
13 or hurt his case?

14 A If they would have believed it it would have
15 helped his case.

16 Q Now prior to trial did Mr. Nealey say whether he
17 wanted to testify or not?

18 A He told me all along that he wanted to testify
19 because he maintained the same story all along, that
20 she was drunk, she fell off the motorcycle.

21 Q Okay. And is that what he actually told the
22 police as well?

23 A Yes.

24 Q Now during your -- prior to trial you moved to
25 have his statement suppressed, right?

PW - T. LITTLE - DIRECT

1 A Yes, I did.

2 Q And you were actually successful in doing that,
3 correct?

4 A Yes.

5 Q Why did you move to have his statement suppressed
6 if it were the same story he was about to tell?

7 A Well, when you - my personal opinion is I would
8 rather a jury hear what he has to say on the stand
9 than anything that he said initially; and also, he
10 denied -- he told me that he didn't give a voluntary
11 statement, that his statement was not voluntary so I
12 think it was a mutual decision to keep that
13 statement out. I mean, he even testified during the
14 Jackson v. Denno he didn't know if he was supposed
15 to answer questions or not.

16 Q But regardless, his statement seems like it would
17 be the same statement that he gave on testimony,
18 wouldn't that add credibility to his testimony?

19 A If it was exactly the same it would have.

20 Q Do you remember any discrepancies?

21 A I don't recall any without going back and reading
22 it.

23 Q Now you had access to Dorothy Perkins' medical
24 records, right?

25 A Right.

PW - T. LITTLE - DIRECT

1 Q And you're aware of her blood alcohol level; is
2 that correct?

3 A That's correct.

4 Q You're also aware of the fact that she had
5 tricyclic antidepressants in her system, right?

6 A Right.

7 Q Did you consult an expert concerning that?

8 A No, I did not.

9 Q Why not?

10 A Well, I did have a medical doctor who was gonna
11 testify and did testify that she was intoxicated. I
12 did not have an expert to explain the difference
13 between the blood alcohol taken at the hospital and
14 the blood alcohol that SLED normally tests for. I
15 believe the judge ruled that I could only admit the
16 alcohol results if I needed them for impeachment
17 purposes.

18 Q Okay. You said that you had someone testify, who
19 was that?

20 A Well, Doctor Balcovich (ph), I think, testified
21 she was intoxicated when she presented.

22 Q That was at the hospital, right?

23 A That's correct. And that's all.

24 Q Okay. And that wasn't based off of her blood
25 alcohol level, correct?

PW - T. LITTLE - DIRECT

1 A Right, that was just for history purposes.

2 Q Okay. So that was based off of his observation
3 of her?

4 A Correct.

5 Q Now the judge ruled that it was only permissible
6 for impeachment purposes. Did you object to that
7 ruling?

8 A No, I did not.

9 THE COURT: How is she going to do that?

10 MR. SHAFFER: Your Honor, I probably would
11 have at least said objection noted for the record
12 but that's neither here nor there. Whether or not
13 she did, I guess it's a question for you as whether
14 or not her objection was adequate based off of his
15 ruling, Your Honor.

16 THE COURT: Once he rules that's it.

17 MR. SHAFFER: Yes, Your Honor. That's how
18 I look at it too. That's why, I guess, number two
19 on my little list that I've given you is that it was
20 ineffective assistance of -- or, yeah, I guess
21 number three is ineffective assistance of appellate
22 counsel based off that issue because it was not
23 brought up on appeal.

24 THE COURT: Okay.

25

PW - T. LITTLE - DIRECT

1 BY MR. SHAFFER:

2 Q Now going back to Curtis' story, you said that
3 Curtis claims that she fell off the back of the
4 motorcycle?

5 A That's right.

6 Q And the fact that she was intoxicated, do you
7 think would that have helped his defense?

8 A Yes.

9 Q Okay. And you ended up introducing other than
10 the fact a doctor said she was intoxicated later,
11 right?

12 A Yes.

13 Q Okay. Did she testify as to whether or not she
14 was intoxicated?

15 A She testified that, if I recall, that she had had
16 a couple of beers and done some shots.

17 Q And she testified that she hadn't taken any
18 pills, correct?

19 A She said she had not taken any that day.

20 Q Okay. And ---

21 A But she did admit to sometimes taking her
22 mother's medicine to help her sleep.

23 Q Okay.

24 A But said she didn't take it that day.

25 Q Do you think that having someone -- did the

PW - T. LITTLE - DIRECT

1 doctor testify anything about her try-- the
2 tricyclic antidepressants being part of the reason
3 she was intoxicated?

4 A No, sir.

5 Q Okay. Do you think that that would have
6 impeached her credibility or?

7 A I think it would have if it could have been
8 proven that she was actually under the influence of
9 it at that time.

10 Q And a good way to, at least, add evidence that
11 she was under the influence is to show that she had
12 it in her urine,---

13 A Yes.

14 Q ---you would agree?

15 A Yes, I agree.

16 Q Okay. Now Victoria Perkins and Dorothy Perkins,
17 Victoria is the mother, right?

18 A Right.

19 Q And initially she testified that, or she had told
20 police that she was unaware of what she had been hit
21 with; is that right?

22 A That's right.

23 Q And at trial she testified that it was a vase,
24 right?

25 A Yes.

PW - T. LITTLE - DIRECT

1 Q Did you impeach her based off of the statement
2 made to police?

3 A About her not knowing exactly what it was that
4 hit her?

5 Q Yeah.

6 A No.

7 Q Do you recall arguing to the jury that her story
8 had changed?

9 A I believe I recall arguing to the jury that she
10 didn't have the ability to see what she said that
11 she saw. Actually, I don't really see that as
12 changing her story when -- she knew she was hit with
13 something; she just wasn't exactly sure what it was.
14 And then when she, in court she identified the vase
15 is what hit her.

16 Q And -- well, do you recall any difference in her
17 testimony versus her statement to police concerning
18 whether there was a knife involved?

19 A I do remember there being some -- one time she
20 said there was a knife, one time she said there
21 wasn't. I know that one of the weapons charges
22 against her we were able to get a directed verdict
23 on it because she never testified that she saw the
24 knife until after the altercation with her was over
25 so I'm sure that came out at trial.

PW - T. LITTLE - DIRECT

1 Q Okay. And one of the big issues -- is it safe to
2 say that this case basically hinged on credibility?

3 A Well, I would say in a good part, yes,
4 credibility. There was also physical evidence,
5 blood, and broken vases and such.

6 Q But was there physical evidence indicating that
7 he had actually assaulted her or that just an
8 assault occurred?

9 A That an assault occurred.

10 Q Isn't it true that Curtis said Dorothy was the
11 one that assaulted Victoria, right?

12 A That's true. He said that they were arguing and
13 that Dorothy threw the vase and hit Victoria with
14 it.

15 Q So I guess the question of who assaulted who is a
16 question of credibility in this instance?

17 A It is, you're right.

18 Q Okay. And the State decided, argued extensively,
19 that there's no way they could have all corrob-- or
20 contrived this story or all had the same story?

21 A I believe that I argued in closing that they had
22 been together and been living together this whole
23 time, that they had plenty of time to get together
24 on their story.

25 Q And the State responded by arguing what? Do you

PW - T. LITTLE - DIRECT

1 recall?

2 A I don't recall.

3 Q Would you argue with me if I say they argued that
4 they had the same story at the hospital that night?

5 A I wouldn't disagree with that.

6 Q Okay. And you reviewed the hospital records from
7 Carolina Pines, correct?

8 A Correct.

9 Q The hospital records indicate that they were
10 actually together at the hospital, correct, Dorothy
11 and Victoria?

12 A They shared a room after the initial I think -- I
13 think they shared a room after they were admitted.

14 Q And they would also indicate that they were
15 actually arguing, correct? The nurse even noted it.

16 A Yes, yes.

17 Q Did you ever consider calling the nurse to
18 testify about them arguing?

19 A I don't recall whether I considered that or not.

20 Q Did you speak to the nurse concerning what the
21 argument was?

22 A No.

23 Q But it's possible that they were arguing about
24 what happened, right?

25 A It's possible.

PW - T. LITTLE - DIRECT

1 Q Do you believe that that would have helped your
2 defense to have someone come testify to that?

3 A If that was what they were arguing about that
4 would have probably been helpful.

5 Q Now getting back to the allegation, initially
6 Dorothy argued that, or said that he stood the
7 motorcycle up on its front wheel and pushed her off
8 the back?

9 A Can you just give me one moment ---

10 Q Oh, yeah.

11 A ---to go back and see what we said about that. I
12 believe at trial I actually had Mr. Nealey stand up
13 and demonstrate that. If I recall, her story was
14 that she was on the back, she was holding on, and
15 he -- I don't know if he pulled up on the motorcycle
16 first, but he slammed on the brakes and somehow, I
17 guess it was like a reverse wheelie like you said.
18 And then she actually said that he pushed her,
19 physically pushed her off the back. And part of his
20 defense was that there's no way physically that he
21 could have done that because he would have been
22 driving the motorcycle and maybe hold, I think they
23 said he was holding a knife and that he would have
24 reached around the back and pushed her off. And he
25 tried to demonstrate to the jury that that was

PW - T. LITTLE - CROSS

1 physically impossible.

2 Q Okay. And there was a question as to whether or
3 not he had a knife. There seemed to be some
4 conflicting testimony or statements concerning that?

5 A That's correct. I think none of her, none of the
6 victim's injuries were consistent with a knife
7 injury. And she had testified that it was, he was
8 holding it to her throat.

9 Q Are you aware, you're aware of the Belcher case,
10 correct?

11 A Yes, I am.

12 Q Did you make any objection concerning the malice
13 charge in this?

14 A I did not, and I think that obviously I wasn't
15 aware of the Belcher case at the time. Whether I
16 should have been, obviously I probably should have
17 been. Judge Baxley also was not aware of it; but
18 interestingly, I tried a case like four weeks later
19 and that whole issue came out and was hashed out.
20 But at the time this case was tried I did not, I did
21 not know about Belcher.

22 MR. SHAFFER: Beg the Court's indulgence.
23 No further questions, Your Honor.

24 THE COURT: Okay.

25 **CROSS-EXAMINATION**

PW - T. LITTLE - CROSS

1 BY MS. RATIGAN:

2 Q Did you, I assume you did, but did you file the
3 usual Brady and Rule 5 motions?

4 A I did.

5 Q And did you receive discovery from the State?

6 A Yes, I did.

7 Q And in your opinion did you receive full
8 discovery from the State?

9 A I seem to recall at one time I had to file a
10 motion to compel, but I'm sure well before trial I
11 received everything.

12 Q Okay. And did you review those items both
13 independently and with Mr. Nealey?

14 A Yes, I did, and Mr. Nealey was provided a copy of
15 everything.

16 Q Did you review with Mr. Nealey the State's
17 version of the facts in the case?

18 A I did.

19 Q And did you review with him the elements of the
20 charges that they would have to prove at trial to
21 find guilty?

22 A I did.

23 Q Did you review with him the minimum and maximum
24 sentences he could receive on each of these charges?

25 A Yes, ma'am.

PW - T. LITTLE - CROSS

1 Q And I assume you would have reviewed his version
2 of the events multiple times?

3 A Yes.

4 Q And I believe your testimony was that he did not
5 want to plead guilty to anything that would be
6 considered a violent crime?

7 A Correct.

8 Q So the last offer made was a counter from the
9 State for ten years violent for the ABWIKs. There
10 was nothing further after that?

11 A That's correct.

12 Q That you recall?

13 A The final offer from the State was ten years
14 violent, dismiss the kidnapping.

15 Q And you reviewed that final offer with Mr.
16 Nealey?

17 A Yes, I did.

18 Q And what did he instruct you to do?

19 A Mr. Nealey wanted me to stick with seven years
20 nonviolent, said that that was the most he was gonna
21 take or we would just go to trial.

22 Q And would it be fair to say at trial that the two
23 victims Victoria and Dorothy testified consistently
24 with each other? Their stories kind of backed each
25 other up?

PW - T. LITTLE - CROSS

1 A They were more or less consistent, yes.

2 Q And would it be fair to say the basis of their
3 testimony was that Mr. Nealey hit Dorothy several
4 times, then hit Victoria, but then forced Dorothy on
5 to the bike?

6 A Correct.

7 Q And would it be fair to say that both Dorothy and
8 Victoria testified that he used a knife and threats
9 to accomplish getting her on the bike?

10 A That's right. I believe Ms. Victoria said that
11 she never actually saw the knife but she could hear
12 him, that he heard discussions about the knife and
13 hear Dorothy asking him maybe put the knife away.

14 Q And do you recall questioning Victoria about what
15 she could or could not have seen from her room?

16 A Yes.

17 Q Okay. Because the threats and the knife, that
18 was allegedly outside the front of the trailer; is
19 that correct?

20 A Correct, and it was a house. And she was, I
21 think Ms. Victoria was inside the bedroom when she
22 said that happened.

23 Q Okay. And you testified earlier the ER doctor
24 said that Dorothy was intoxicated?

25 A Yes.

PW - T. LITTLE - REDIRECT

1 Q And do you recall asking him whether or not
2 Dorothy had any knife wounds on her?

3 A I did.

4 Q And what was his response, do you recall?

5 A None.

6 Q Did you review with Mr. Nealey the impact -- let
7 me strike that. I believe you testified that you
8 spoke to the witnesses and the victims in the case?

9 A I did.

10 Q And did you review with Mr. Nealey afterwards
11 kind of your thoughts and impressions about how they
12 would be on the stand?

13 A I did.

14 Q Does that include -- did you also talk to the
15 truck driver before trial?

16 A I did not talk to the truck driver before trial;
17 I read his statement. And I can't recall if maybe
18 he was out of state or out of town, but he came back
19 for the trial and I may have talked to him on the
20 day of the trial.

21 Q Based on his statement to police and having
22 spoken to Victoria and Dorothy, were you concerned
23 about the strength of the State's case?

24 A I was very concerned. I think Mr. Nealey knew
25 that I thought my recommendation was for him to take

PW - T. LITTLE - REDIRECT

1 the plea.

2 Q And did you discuss with him his right to testify
3 in his own defense?

4 A Yes, I did.

5 Q And he did ultimately testify at the trial?

6 A He did because he felt that that was the only —
7 because what, his whole thing was it didn't happen
8 the way they said it did and the only way I'm gonna
9 get my story across is to testify.

10 Q And his testimony is basically that the two women
11 fought and that Dorothy basically was drunk and kind
12 of slid off the back of his bike; would that be fair
13 to say?

14 A Yes.

15 Q In your opinion did he make a good witness for
16 Defense?

17 A No, I didn't think he was a very good witness.

18 MS. RATIGAN: Beg the Court's indulgence.
19 That's all I have, Your Honor.

20 THE COURT: Okay. Anything else?

21 **REDIRECT EXAMINATION**

22 BY MR. SHAFFER:

23 Q Did you tell him that you didn't think he would
24 be a good witness?

25 A I'm sure I did.

PW - T. LITTLE - REDIRECT

1 Q And you said you advised him he should plead
2 guilty?

3 A I did. And Mr. Nealey, when -- well, even during
4 our conversations he would sort of kind of come off
5 a little harsh sounding or sometimes angry. I
6 talked to him extensively about trying to control
7 his emotions while he was on the stand and not to
8 appear angry or threatening in any manner, although
9 I'm afraid he did come off somewhat as threatening
10 when he was testifying.

11 Q Did you tell him -- well, why did you tell him
12 that it was your advice to plead guilty?

13 A Why didn't I tell him?

14 Q Or no, why did you tell him that?

15 A Because basically you had Dorothy, her mother,
16 telling consistent stories. Then you have the truck
17 driver, basically that was what I thought was gonna
18 be the worst, her jumping on to the truck and
19 clinging on to it. I just, I thought that he was
20 gonna, I thought he was gonna lose and he did.

21 Q Did you explain to him about his exposure if he
22 was to be found guilty at trial?

23 A Yes.

24 Q You explained to him about concurrent versus
25 consecutive time?

PW - T. LITTLE - REDIRECT

1 A Yes.

2 Q All right. What did you tell -- did you explain
3 to him, or did you -- do you feel that someone is
4 more likely to get concurrent time if they plead
5 guilty?

6 A As a general rule, yes, they will more likely get
7 concurrent time if they plead guilty as opposed to
8 going to a trial.

9 Q And did you explain that to him?

10 A Yes. The way I normally explain it is you're not
11 supposed to be punished for exercising your right to
12 a jury trial; however, when you put the State to a
13 trial, my experience is that if you're convicted you
14 get a lot more time than you would get if you stand
15 up there, take responsibility for what you did and
16 plead guilty.

17 Q And the taking responsibility part is generally
18 in your experience why judges give less time to
19 people who plead guilty? Would you say that's
20 correct?

21 A Well, I would have to ask a judge.

22 Q Okay.

23 A A real judge, I'm a municipal court judge.

24 Q Okay. Did you advise or -- do you believe that
25 early on Mr. Nealey was taking some responsibility

1 for the argument? I mean, he did admit that he
2 would plead guilty to it, correct?

3 A He -- yes, he did. He admitted that he would
4 plead guilty to two counts of ABHAN.

5 Q Now going to Victoria's statement, Victoria
6 initially said that he had held a knife to her
7 throat as well, right? Do you recall that?

8 A No, I don't recall that.

9 Q Okay.

10 MR. SHAFFER: No further questions.

11 THE COURT: Okay.

12 MS. RATIGAN: Nothing further, Your Honor.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you.

15 MR. SHAFFER: Your Honor, I call Curtis
16 Nealey.

17 THE COURT: Okay. Let me ask y'all
18 something, how long you think this is going to take?
19 And I'm not necessarily going to rush you. If it's
20 going to take 10 or 15 minutes that's one thing. If
21 it's going to take an hour we're going to lunch.

22 MR. SHAFFER: Your Honor, I don't think
23 it's gonna take an hour, but I would say it most
24 likely take more than 15 minutes depending on the
25 State's cross. I mean, I don't have a whole lot of

PW - C. NEALEY - DIRECT

1 questions for him, Your Honor, but...

2 MS. RATIGAN: I don't generally engage in
3 lengthy cross; but again, I don't know what
4 Mr. Shaffer is going to ask.

5 MR. SHAFFER: I would say mine will be
6 about 15 minutes; but then again, I'm really bad
7 with time, Your Honor. Whenever I'm questioning
8 people I'm out of time, Your Honor.

9 THE COURT: Well, I'll put it to you this
10 way, we can either go to lunch now or we can go to
11 lunch at 1:30. Now, that's y'all's call. If you
12 want to run till 1:30 and see if we can finish it or
13 we can go to lunch now and come.

14 MS. RATIGAN: I would say let's just go
15 now because we have one more case after this anyway.

16 THE COURT: Okay.

17 MS. RATIGAN: If that's all right with
18 Your Honor.

19 THE COURT: We'll break and start — can
20 y'all eat and be back by two?

21 MS. RATIGAN: Oh, yeah, yes, Your Honor.

22 THE COURT: All right, we'll start back at
23 two.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: Come around, Mr. Nealey.

PW - C. NEALEY - DIRECT

1 THE CLERK: Place your left hand on the
2 Bible, raise your right.

3 WHEREUPON,

4 **CURTIS R. NEALEY,**

5 having been duly sworn by the Clerk, testified
6 as follows:

7 **DIRECT EXAMINATION**

8 BY MR. SHAFFER:

9 Q Mr. Nealey, you were convicted of assault and
10 battery with intent to kill. Well, tell us the
11 charges you were convicted of.

12 A I was convicted of kidnapping, assault and
13 battery intent to kill, assault and battery intent
14 to kill, CDV with a high and aggravated nature, and
15 possession of a weapon during the commission of a
16 violent crime, which total 85 years.

17 Q Okay. And how many years sentence did you
18 actually get, effective year sentence?

19 A Thirty, and then a mandatory five, possession of
20 a weapon.

21 Q Okay. So you're doing 35 years and 85 percent
22 right now?

23 A Doing mandatory five day for day and then 85 off
24 of 30.

25 Q Okay. Now you were represented by Ms. Copeland

PW - C. NEALEY - DIRECT

1 Little, correct?

2 A Yes, sir.

3 Q Tell us about the first time you met with
4 Ms. Little.

5 A The first time I seen her she come in, I think in
6 like the first of '09 when I was in A-pod. I was in
7 lockup then. I seen her for a few. That was pretty
8 much -- we talked a few things, whatever, and I
9 don't remember exactly what it was but that was
10 pretty much about it.

11 Q Okay. And you saw her several times before you
12 ended up going to trial, right?

13 A Yes, sir.

14 Q Okay. Now initially the -- what was the offer in
15 your case?

16 A The only plea that she brought to me was a 15, a
17 10, a 10, and a 5, which would be a open plea, two
18 victims supposedly, and that was it.

19 Q And what did she tell you about that?

20 A She told me I was facing, I could face up from 15
21 up to 40 years, which my charges, I think, was like
22 90 years all together anyway. So the only plea
23 agreement that was ever brought to me was that
24 particular one and I signed a piece of paper I
25 wouldn't accept it because -- the reason that the

PW - C. NEALEY - DIRECT

1 seven come about because there was other people in
2 our pod that had similar charges, kidnapping,
3 possession of a weapon, stuff like that, and they
4 were getting seven years which was prior right to
5 mine.

6 Q And that seven years you had suggested that to
7 her?

8 A Yes. I said, well, what would be the difference
9 in me getting seven compared to what you're getting
10 these other inmates here that pled guilty to
11 charges.

12 Q Okay. Did she tell you whether it would likely
13 run consecutive or concurrent, the 15 years?

14 A She said she didn't know. She said they
15 recommended 15; but depending on the judge with it
16 being two separate victims, it could go either way.
17 He could sentence me 15 to 10 on top of each other.

18 Q Okay. And you didn't take that plea obviously?

19 A No, sir.

20 Q Do you recall them coming to you and asking for,
21 or offering a 10 year offer?

22 A No, sir.

23 Q Okay. Are you sure about that?

24 A Yes, sir.

25 Q Did you ever sign any paperwork other than the

PW - C. NEALEY - DIRECT

1 one rejecting the 15 year offer?

2 A No, sir.

3 Q Okay.

4 A The only time they ever come to me was her and
5 Investigator Goodman. That was when I was in, I
6 moved to across the hall to B-pod in the little
7 sally port right there.

8 Q And you said that she had met with you several
9 times. Did she go over the discovery with you?

10 A Yeah, we talked about certain things.

11 Q What do you mean about certain things?

12 A We talked about Dorothy, her mom, you know, that
13 Dorothy being on the medication which was prescribed
14 to her mother, and that she had actually taken it
15 from her mother. Her mother testified that she did
16 take the medication; but Dorothy testified she
17 didn't take no medication, was not on any
18 medication, was not drunk at all. The transcript
19 says that. I got verification from the transcript
20 here stating that she denied being intoxicated or
21 under the influence of any drugs.

22 Q And did Ms. Copeland Little ever mention the --
23 did she ever mention the, whether she was planning
24 on calling a toxicologist to testify about that or
25 any sort of expert?

PW - C. NEALEY - DIRECT

1 A Not that I recall. But she said she had talked
2 to the doctor, I think, Jim Balvich (ph) but which
3 he was a -- he testified on the State side so it
4 wasn't, it wasn't even a witness for me whenever he
5 testified. It was a State witness.

6 Q Did she tell you about the -- did she give you a
7 copy of your discovery?

8 A Yes.

9 Q So you reviewed it in there?

10 A Yes. Yes, I got part of it here and then she
11 kept part of it I never get back.

12 Q Okay. Did you see -- did you ever get the
13 medical records from the victims?

14 A I got Dorothy Perkins, which is one that come in
15 the Rule 5.

16 Q Okay. Did you get any of the nursing notes?

17 A I think I did, but I never -- I don't think I
18 went to them or anything. I even have the original
19 copy of Tonya Little's handwriting stating the
20 stipulations for the impeachment. Number one, she
21 testified not intoxicated; and number two, what the
22 blood alcohol level means, in her original
23 handwriting from trial that day.

24 Q Okay. Explain what you're looking at right now.

25 A This is the cumulative report for the chemistry

PW - C. NEALEY - DIRECT

1 of Dorothy Perkins whenever she was submitted at the
2 hospital which was taken 45 minutes after, I guess,
3 she was received of blood alcohol 175.3.

4 Q And that was the original one you received from
5 her?

6 A Yes. No, this -- well, this is this original one
7 here. This is just a copy that I made.

8 Q Okay.

9 A I got her original handwriting on top right
10 there.

11 Q What does she -- what does that document
12 indicate?

13 A Indicate that the urine analysis and blood report
14 of Dorothy Perkins.

15 Q Okay. So she actually had that, right?

16 A Yes.

17 Q Did she tell you whether or not they'd be
18 admissible at trial?

19 A Well, she said she was going to try to get them
20 admitted, whatever. The State objected to it but
21 the judge ruled in my favor if she denied being
22 intoxicated and somebody to explain what the reports
23 mean 'cause nobody knows what none of these records
24 ranges or any of the stuff meant 'cause we're not
25 qualified to assess it.

PW - C. NEALEY - DIRECT

1 Q Okay. So he ruled in your favor partially
2 though, right?

3 A Yes, sir.

4 Q Okay. And he ruled in your favor -- he basically
5 said it would be admissible for impeachment?

6 A Right, right. That, and the DSS records also
7 which was a ruling, ruled in my favor too to prove
8 that the State had custody over the kids at the time
9 and that she had lost them due to alcohol and drug
10 abuse.

11 Q And you requested for the DSS ---

12 A Yes.

13 Q ---records to be admitted, right?

14 A Yes, sir.

15 Q Did she admit those?

16 A I never heard anything else about the DSS
17 records.

18 Q Okay. And she didn't call a witness to testify
19 about the blood alcohol?

20 A No, sir, I was the only witness in my defense.

21 Q Now regarding whether or not to, you decided to
22 testify, well, why did you decide to testify in this
23 case?

24 A Well, like I told her, it would be the only way I
25 can get my story across because it, I was the only

PW - C. NEALEY - DIRECT

1 one in my defense. I mean, she didn't have, she
2 didn't have nobody to back up my story for the
3 alcohol and being intoxicated. She just didn't, I
4 don't guess she followed it up.

5 Q Okay. And did she mention anything else about
6 other possible witnesses she could have called, or
7 did you request any other possible witnesses?

8 A Well, she mentioned to the judge in the
9 transcript that she had a expert that would testify
10 about this, about the reports; but at the conclusion
11 of the first day, nobody ever showed up the second
12 day for the trial.

13 Q Okay. So she never called an expert?

14 A No, no, never showed up the next day whenever I
15 put up a defense.

16 Q All right. Going back to this plea offer, you
17 mentioned that she never offered you a 10 year plea
18 offer?

19 A Correct.

20 Q If you had gotten one do you think you would have
21 pled guilty?

22 A I would have considered it. I have three kids
23 and facing either go to trial or get 90 years or
24 taking 10, I would highly considered taking it.

25 Q Okay.

PW - C. NEALEY - DIRECT

1 A Considering, you know, my particular age.

2 Q What do you mean about your age?

3 A That particular time I was 35.

4 Q Okay.

5 A At 35 we do 85 percent off 10 if she would have
6 offered it and then 86, I would have been, you know,
7 43 years old. Now it's considered whatever, get out
8 67.

9 Q Okay. So currently you're scheduled to get out
10 when you're 67?

11 A 2039.

12 Q Okay. So you would have -- you said you would
13 have highly considered ---

14 A Yes, sir.

15 Q ---a ten year offer? But you don't -- she never
16 gave you one?

17 A No, sir.

18 Q What did she tell you about your likelihood of
19 success at trial?

20 A Well, she said that if I could prove, you know,
21 that, the, my allegations what I was saying I had a
22 good chance. If not, we'd face just as much time as
23 I would to plea agreement, if not more. I mean, the
24 plea agreement she gave me was up to 40 so it was
25 either take a chance with the 40 or take a chance

PW - C. NEALEY - DIRECT

1 and beat.

2 Q And you decided to take a chance and try to beat
3 it?

4 A Yes, sir, we did.

5 Q Okay. Now concerning those DSS records why did
6 you think that those were important?

7 A It would have established that she had a court
8 hearing coming up to regain custody of her kids
9 back.

10 Q Okay. Did she testify to that at trial?

11 A That the State had her kids at the time?

12 Q Yeah.

13 A I think it was mentioned, but I don't know, I
14 don't know if she directly testified that the State
15 had them and the reason why.

16 Q Okay. Now at trial you testified you
17 demonstrated -- well, let me go to this. You
18 recall -- you've read Dorothy Perkins' initial
19 account of what happened, right?

20 A Yes, sir.

21 Q And what was her account of what happened?

22 A Her initial account was that we ended up on Billy
23 Farrell Road and I slammed on the brakes at 80-mile
24 an hour with that knife in my left hand and we had a
25 conversation and my rear tire was suspended in the

PW - C. NEALEY - DIRECT

1 air, then I shoved her off the back of the
2 motorcycle.

3 Q Okay. Did you demonstrate that at trial?

4 A No. What I demonstrated was is, how it takes for
5 someone to take and get on a motorcycle for two
6 people to get on it. That what it was was a
7 demonstration stating that they were saying I held
8 her at knife point, that was it possible that she
9 could get on the motorcycle first; and it's
10 impossible when you have a motorcycle sitting on a
11 kickstand for somebody to get on the back seat and
12 then the rider get on afterwards in front of them.
13 That was the demonstration.

14 Q How long have you been riding motorcycles?

15 A Pretty long time.

16 Q Okay. Do you recall your first motorcycle?

17 A KH-60.

18 Q Is that a dirt bike?

19 A Yes.

20 Q Were you approximately what age?

21 A About 10 or 11.

22 Q The motorcycle you were riding the night of the
23 incident, what kind of motorcycle was that?

24 A Yamaha XJ-6.

25 Q Okay. And what type of motorcycle was that?

PW - C. NEALEY - DIRECT

1 A It's a street bike.

2 Q Okay.

3 A Just an ordinary cruiser pretty much.

4 Q And you -- and were there any modifications to
5 it?

6 A Naw, I just painted it. I painted it a canary
7 yellow, the chrome wall, exhaust pipe and that was
8 pretty much it.

9 Q Okay. Now in her first account of the events she
10 said that you pushed her off while you were on the
11 front wheel, correct?

12 A Yes.

13 Q Okay. Were you asked to demonstrate that at
14 trial?

15 A No.

16 Q Okay. And do you think that that's possible?

17 A No.

18 MR. SHAFFER: Your Honor, I'm gonna ask
19 that we do something a little bit different. Just
20 for the purpose of a record, it's hard to for this
21 visual situation to come in. I have a picture of a
22 motorcycle essentially doing what he's claiming she
23 did or that she claimed he did, which is stand up in
24 the front wheel. I have a picture of that. It's
25 obviously not the motorcycle being used that night.

PW - C. NEALEY - DIRECT

1 I just want to introduce it for the purposes of
2 demonstrating that because it's a lot easier to
3 include that in an appeal record than it is to
4 explain exactly what was going on.

5 THE COURT: You got -- have you showed it
6 to the State?

7 MR. SHAFFER: No, Your Honor, it's
8 actually -- my client brought it in. Your Honor, if
9 I may approach.

10 THE COURT: Certainly. Show it to the
11 State, see what their position is gonna be, and then
12 I'll rule on it if they don't...

13 MR. SHAFFER: Your Honor, if I may hand it
14 up. I believe the State has an objection to it but.

15 MS. RATIGAN: I just don't -- I object to
16 its relevance. I think the testimony we've gotten
17 from both Ms. Copeland Little and from Mr. Nealey is
18 pretty explanatory that it -- the bike goes up on
19 the front wheel. I don't see the relevance in
20 putting in a picture from a magazine that I think is
21 called Super Street Bikes to illustrate that when
22 the testimony is what it is.

23 THE COURT: Let me ask, during the trial
24 was any of this introduced at trial? Is any
25 pictures or anything that's ---

PW - C. NEALEY - DIRECT

1 MR. SHAFFER: No, Your Honor, she -- the
2 trial attorney just testified that he demonstrated
3 it. He did not demonstrate it at the trial. The --
4 I guess this would be to basically demonstrate so
5 that someone wouldn't have to explain that he
6 slammed on brakes, put his, put the back wheel in
7 the air, let go of the right side of the bike and
8 pushed her off the back. I mean, essentially that's
9 what she claimed happened, but it's a lot easier to
10 see a picture than it is to actually include -- it's
11 a lot easier for appellate court, I imagine, to view
12 the picture versus from a picture versus from me
13 describing it.

14 THE COURT: Okay. But normally the
15 standard is whether it's relevant and whether it's a
16 fair and accurate representation. The State's
17 objection is it's not relevant?

18 MS. RATIGAN: I just don't think it's
19 probative in any way. I mean, I don't even know
20 exactly how to base my objection the fact that the
21 best evidence of what he says happened that night is
22 his description, which is pretty clear the front
23 wheel is down, the back wheel was up. I don't see
24 where a picture from a bike that's not his of
25 someone who is at least doing some kind of stunt on

PW - C. NEALEY - DIRECT

1 the bike would be at all relevant to an appellate
2 court or Your Honor understanding what happened that
3 night based on a very simple description.

4 MR. SHAFFER: Your Honor, it's not that
5 important. I just, I thought it'd be easier than...

6 THE COURT: Well, it may be relevant
7 whether, you know, you can authenticate it or
8 whether it's a fair and accurate representation of
9 his bike and what happened on the day of the
10 incident I don't know about that. I mean, it's --
11 and I assume that at least the court at the time the
12 trial went on, that that was brought out and the
13 fact you got a bike standing on its front wheel and
14 that the jury understood that when they made a
15 factual determination. I assume that all came in to
16 the jury.

17 MR. SHAFFER: Your Honor, it didn't, it
18 didn't actually come in. The -- that's part of our
19 allegation is that she didn't properly ask him to
20 explain, you know -- in the report, I guess the
21 incident report would speak for itself which I
22 believe is in the pro se filings. The incident
23 report is attached as an exhibit in the pro se
24 filings already so. Your Honor, I'm okay with not
25 putting it in; I just thought it would be easier.

PW - C. NEALEY - DIRECT

1 THE COURT: Well, if she's going to
2 object, technically I don't know a picture in a
3 magazine has nothing to do with this is going to
4 work if he had, you know, so I'll sustain the
5 State's objection.

6 MR. SHAFFER: Okay, Your Honor.

7 BY MR. SHAFFER:

8 Q Mr. Nealey, were you a -- did you ride stunt
9 bikes?

10 A No.

11 Q Okay. Did you do stunts on your motorcycles?

12 A No, I rode them just for, just to ride them. My
13 dad has always rode them. My family has always rode
14 them. We just ride them for, you know, recreation.

15 Q That move is referred to as a stoppie or an endo,
16 correct?

17 A Yes.

18 Q Okay. And have you ever done a stoppie or an
19 endo?

20 A No.

21 Q Okay. Do you think it would be possible given
22 your skill level on a motorcycle to do a stoppie and
23 push someone off the back?

24 A No.

25 Q Okay. And how much did you weigh at the time of

PW - C. NEALEY - DIRECT

1 the incident?

2 A 165.

3 Q How much did Dorothy weigh?

4 A 185, somewhere around in there.

5 Q Okay. And according to the incident report
6 essentially you did -- Dorothy claims you did a
7 stoppie, let go with one hand, and pushed her off
8 the back of the motorcycle, correct?

9 A Yes.

10 Q Okay. And you were not asked to explain the
11 impossibility of that during your testimony; is that
12 correct?

13 A Right. One of my issues is that actually from
14 the statement that she originally said, whatever she
15 testified, it was the opposite to that. It actually
16 happened totally different, you know what I'm
17 saying. It not on the front, not slammed on brakes
18 like that. It was just actually I popped a wheelie
19 which was never indicated prior to trial or
20 anything.

21 Q And that was never -- and so at trial she
22 testified that you just popped a wheelie, right?

23 A Right, and shoved her off the back.

24 Q And did your attorney impeach her based off of
25 the ---

PW - C. NEALEY - DIRECT

1 A No.

2 Q Okay.

3 A It was never questioned.

4 Q Okay. So, and you were never asked to explain
5 whether it was possible or not?

6 A No.

7 Q Whether you thought it was possible?

8 A Not that I recall.

9 Q And at trial she -- obviously it was sometime
10 after this event, right?

11 A Yes, a good while.

12 Q How long approximately?

13 A 13, 14 months.

14 Q She possibly had some time to actually think
15 about her previous statement?

16 A Well, we had 13, 14 months so there was a good
17 bit of time. It was over a year.

18 Q And at trial she just said you popped a regular
19 wheelie and pushed her off?

20 A Yes.

21 Q Okay.

22 A In my original pro se briefing here, whatever, I
23 have all the statements which was made which was the
24 officers, what she said, the dates and the times
25 when they were recorded three to five days after the

PW - C. NEALEY - DIRECT

1 incident had happened.

2 Q You mentioned most of the statements are three to
3 five days after the incident happened?

4 A Yes, sir.

5 Q Okay. Did your attorney ever mention to you that
6 they were housed together, that Dorothy and Victoria
7 Perkins were housed together?

8 A I thought that they were, but it was never, she
9 didn't never mention it to me. I think that the
10 solicitor stated that they didn't -- that they was
11 not housed in the same room, there was no way they
12 could concoct a story like that; but which, once we
13 received the Rule 5 we had found out that they were
14 actually in the same room.

15 Q And concerning the solicitor's statement that
16 they were not in the same room, you're saying
17 essentially she testified that they were not?

18 A Yeah, I think she pretty much vouched for that.

19 Q Because they were in the hospital?

20 A Right.

21 Q And that's one of your issues in your pro se
22 filing as well?

23 A Yes, that's one of them.

24 Q Okay. You're alleging that the -- essentially
25 prosecutorial misconduct for ---

PW - C. NEALEY - DIRECT

1 A Right, for vouching for the credibility of a
2 witness.

3 Q Okay. Now it also goes to whether or not that's
4 actually a true statement based off the Rule 5,
5 right?

6 A Right.

7 Q Now Mr. Nealey, if you could, I know that there's
8 a lot of things in a pro se filing. A lot of those
9 are straight legal arguments that, you know, there's
10 essentially no testimony needed because they're ---

11 A Right.

12 Q ---established. Could you tell us, tell me
13 essentially have I missed anything? Do you have any
14 other issues you would like to be addressed or?

15 A Well, the only, the only issue I was concerned
16 pretty much with was when I sent in my original PCR
17 application it come back, and I had pages 2-A to
18 pages 2-X, plus page 3-A, B, and C. Whenever I
19 received my copy back, which is what you have, it
20 was missing the first page of my issue of the malice
21 instruction that Judge Baxley had done. So I don't
22 know if it was just a mishap and it was just not
23 sent back, or what it was with that.

24 Q And do you have a copy of that here today?

25 A Yes, sir.

PW - C. NEALEY - DIRECT

1 Q Okay.

2 MR. SHAFFER: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 THE WITNESS: That was the page that was
5 missing. I had to take -- that's the complete
6 issue.

7 BY MR. SHAFFER:

8 Q And Mr. Nealey, this page marked 3-B, is that the
9 page that you believe was missing out of the file?

10 A Yes, it was added into it. I think it was the
11 back one 'cause I didn't have but one copy whenever
12 I sent it. This would be the only other issue that
13 I couldn't amend it after the fact of I was
14 appointed counsel.

15 Q If you can, talk about that issue that the page
16 that was left out?

17 A Yeah.

18 Q Is that a, the copy you have is a true and
19 accurate depiction of that page ---

20 A Yes.

21 Q ---that you believe was left out?

22 A Yes.

23 MR. SHAFFER: Your Honor, may I introduce
24 this as Applicant's Exhibit 1?

25 THE COURT: Okay. What says the State?

PW - C. NEALEY - DIRECT

1 MS. RATIGAN: No objection, Your Honor.

2 THE COURT: It's in without objection.

3 (WHEREUPON, Applicant Exhibit Number 1 was
4 marked for identification and admitted
5 into evidence.)

6 BY MR. SHAFFER:

7 Q Mr. Nealey, if you can, please let us know if
8 there are any other issues you'd like to address
9 here today.

10 A Besides my original five that were submitted to
11 my PCR application, the only other one I had was
12 this one here; but I couldn't amend it due to the
13 fact that once you're appointed counsel you can't do
14 any amendments yourself 'cause it's hybrid
15 representation so.

16 Q What issue was that?

17 A My right to effective of assistance of counsel
18 was denied because she never objected to any of the
19 testimonies that what Ms. Perkins had told them
20 under the influence of the sedative drug that she
21 was taking and the alcohol, her account of
22 recollecting of how things happened 'cause it
23 changed up from the original statement she give
24 police to what she testified to at trial so that
25 wasn't true accounts of actually happened.

PW - C. NEALEY - DIRECT

1 Q Okay.

2 A Pretty much was a hearsay under 801(c).

3 Q And are you saying your attorney should have
4 impeached her with that?

5 A Well, she should have objected to the testimonies
6 that of the account of what she told people due to
7 the fact of state of mind that she was in whenever
8 she was speaking to these people, the high levels of
9 alcohol, 'cause at trial I never denied that we was
10 not drinking. I never denied any of it remotely. I
11 told them what I was drinking. And the judge said I
12 was not credible; that he, just the judge and jury
13 just...

14 Q And that was at sentencing, right?

15 A Right, that was at sentencing. He just thought I
16 wasn't credible, but I told the truth of actually
17 what the accounts had happened.

18 Q Mr. Nealey, all of your pro se filings from
19 before whenever you were self-represented, all those
20 would be considered as part of it so.

21 A Okay.

22 Q I think we pretty much covered every issue you
23 have.

24 A All right.

25 MR. SHAFFER: No further questions.

PW - C. NEALEY - CROSS

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. RATIGAN:

Q So did you review all the evidence in the case with your attorney?

A We reviewed some of it, yes.

Q And did she review with you the charges, you know, kind of what the State was gonna have to prove if you went to trial?

A Yeah. She stated that they would have to prove things, whatever. Like I told her from the beginning that exactly what happened and that she had clearly, clearly understood that Ms. Perkins was highly intoxicated. First she denied even going to the bar drinking, period. Then whenever they went to the bar and found out that we was there so she had to admit that we was actually there.

Q Did your attorney talk to you about the potential sentences you could receive on all these charges?

A Yes, she talked to me some about it. Well, she talked to me the max which was like the max on each one of the charges.

Q Okay. And you told her your version of what happened, that Dorothy and her mother got into a fight, and that they basically cooked this whole thing up because of the DSS issue with the children?

PW - C. NEALEY - CROSS

1 A Yes, ma'am.

2 Q Okay. But you knew that when you went to trial,
3 you knew that the victims would say the opposite,
4 you had been the one who had hit them and threatened
5 them?

6 A Yes, ma'am.

7 Q Okay. And did you know about the truck driver's
8 testimony? Do you know what he was going to testify
9 to before you went to trial?

10 A Yes, ma'am.

11 Q And you talked about all this with your attorney?

12 A That I don't recall. I mean, I don't remember.

13 Q And your testimony today is you never got that
14 ten year offer?

15 A No, ma'am.

16 Q You got that 15 year offer and at that point
17 that's when you countered with the 7?

18 A No, when we had the 15 offer I was asking about
19 the 7.

20 Q Okay.

21 A That's how that come in.

22 Q Okay. So you asked her about the 7, and what'd
23 your attorney say when you asked her about 7?

24 A She told me definitely it would not be -- they
25 wouldn't accept it. It would be, that would be the

PW - C. NEALEY - CROSS

1 only plea agreement that I got was the 15, 10, the
2 10 and the 5.

3 Q And you're not saying today you would have
4 definitely taken the 10, you just wanted to have a
5 chance to think about it?

6 A Yes, ma'am, I never had a chance to even think
7 about it.

8 Q And when you talked about your case with your
9 attorney you told her you wanted to testify?

10 A Yes, ma'am.

11 Q And that was to tell your side of the story?

12 A Yes, ma'am.

13 Q And do you feel like you got a chance to do that
14 at the trial?

15 A Yes, ma'am, I did to an extent. My testimony
16 would have been a lot more strengthened if she would
17 have took and backed up my testimony with the
18 medical reports.

19 Q Okay.

20 A And other things that she just failed to do.

21 Q And do you remember the emergency room doctor
22 testifying at trial that when he examined Dorothy at
23 the ER that she was drunk?

24 A Well, he didn't say drunk. He said he had
25 smelled alcohol.

PW - C. NEALEY - CROSS

1 Q She was intoxicated?

2 A She was intoxicated. He didn't -- I don't know
3 if he run any tests or anything like that at that
4 particular time, but they just knew that she had
5 smelled alcohol on her.

6 Q And your attorney asked Dorothy about the fact
7 that y'all been drinking and taking shots. She
8 asked her about that; didn't she?

9 A Yes.

10 Q Okay. Your testimony today is that you wish just
11 that the actual medical test had come in in addition
12 to just regular testimony?

13 A Well, originally she told the police officers and
14 everyone that she drank two beers earlier in the day
15 which that's one of the reports states. Then it was
16 found out that after the fact that she was at the
17 bar. Then she started admitting to more things of
18 her drinking and that's how all of it come out. It
19 was extracted out of her. But originally she didn't
20 testify to any of that.

21 Q Did your attorney explain to you that she had
22 some concerns about going to trial?

23 A Well, she said, I think that it was a possibility
24 I could lose but which the plea agreement she
25 brought to me anywhere from 15 to 40 years is a

PW - C. NEALEY - CROSS

1 pretty stiff plea agreement to be signed.

2 Q Did she ever tell you you should take the offer?

3 A No, she never requested I take the, that plea.

4 Q So basically she told you she had some concerns,
5 there's a possibility you could lose, but she left
6 it up to you whether to take the plea or go to
7 trial?

8 A Yes.

9 Q And the last thing I'll mention is you testified
10 about that she should have objected to testimony, to
11 hearsay testimony?

12 A Yes.

13 Q Who -- which witnesses testified that she should
14 have objected to, do you remember?

15 A Yes, it would be in the transcript at page 176
16 line 10 through page 188 which will be Cedric
17 Gibson.

18 Q So that entire testimony she should have objected
19 to all of it?

20 A Well, she should have objected to it because the
21 state of mind that Dorothy was in at the time.

22 Q Uh-huh.

23 A Because of the account of events as you clearly
24 heard earlier and the forensic toxicologist said
25 that impairs your mind, your ability to think, and

PW - C. NEALEY - CROSS

1 ---

2 Q Okay.

3 A ---different things like that.

4 Q And Cedric Gibson who is the truck driver, right?

5 A Uh, yes.

6 Q So basically that she should have -- right after
7 she fell or was pushed off the bike and the truck
8 driver stopped, because she was under the influence,
9 that counsel should have objected to his testimony
10 about that?

11 A Well, they should have objected to -- see, he
12 never knowed that she had actually taken any
13 medications that was prescribed to her own mother.

14 Q Right.

15 A That was the medication she was on. Actually it
16 was ---

17 Q I understand, but what I'm saying is you just
18 wanted him -- you wanted all that testimony not to
19 come in?

20 A Well, I actually wanted the objection for him to
21 actually know that she was actually under the
22 influence of ---

23 Q Okay.

24 A ---alcohol and drugs because the tricyclic is an
25 antipsychotic drug.

PW - C. NEALEY - REDIRECT

1 Q Okay. Now what other witnesses did you want her
2 to testify to object to hearsay?

3 A Rodney B. Hopkins.

4 Q Okay. Who is that?

5 A I think that's the officer.

6 Q Rodney Hopkins?

7 A Right.

8 Q And the same thing that any testimony about what
9 she may have said when she was under the influence
10 you wanted to be objected to?

11 A Right, because she was not in her right frame of
12 mind.

13 Q Okay. Anybody else?

14 A That's pretty much all.

15 Q Okay.

16 MS. RATIGAN: That's all I have, Your
17 Honor.

18 THE COURT: Okay.

19 MR. SHAFFER: Just a couple of redirect
20 questions.

21 **REDIRECT EXAMINATION**

22 BY THE COURT:

23 Q You mentioned the first plea offer you got was
24 the 15 year recommendation, ---

25 A Right.

PW - C. NEALEY - REDIRECT

1 Q ---okay?

2 A Fifteen open.

3 Q And she brought the form for you to sign,
4 correct?

5 A Right.

6 Q You signed it saying you rejected the offer,---

7 A Right.

8 Q ---right? And the second one that is in dispute
9 here is a 10 year offer. Did you ever sign any form
10 regarding that?

11 A No.

12 Q Did you get a copy of your discovery and the file
13 from the, from the Public Defender's Office after
14 you got the ---

15 A To my Rule 5, Rule 5? Is that you're saying?

16 Q Not just that, did you get any paperwork from the
17 Public Defender's Office?

18 A I got the Rule 5 with the medical reports and
19 statements and stuff like that, but that's the only
20 thing I got. I didn't get no additions or anything
21 they added to it.

22 Q Was there any form in there that had your
23 signature on it saying you reject a 10 year offer?

24 A No.

25 Q Do you know of any form anywhere that has that,

PW - C. NEALEY - REDIRECT

1 has something that says you reject a 10 year offer?

2 A No.

3 Q If your attorney would have came at you and said,
4 Curtis, I don't believe your story, I think you're
5 gonna lose, here's a 10 year offer, you'll be out in
6 eight-and-a-half, you should take it, would you have
7 taken it?

8 A I would have highly considered it considering I
9 have three kids, yes, compared to 40 or 80.

10 Q But you didn't have that offer, did you?

11 A No, sir.

12 Q Did she ever say, I don't believe you, you're
13 gonna lose?

14 A Naw, she never told me them words.

15 Q Did she ever tell you anything like that saying
16 you're not credible?

17 A Naw, I didn't never hear nothing about not being
18 credible. I heard she was saying if everything is
19 panned out we could prove, you know what I'm saying,
20 that she was intoxicated and that DSS records, you
21 know what I'm saying, we could, we could, I had a
22 good defense; but it didn't work out that way
23 whenever I come to trial.

24 Q But your defense was solely based on the jury
25 believing you, right?

PW - C. NEALEY - REDIRECT

1 A Yes, sir.

2 Q Okay.

3 A 'Cause it was nothing but credibility. What the
4 Court, the Court, this case is a great part is going
5 to rely on the credibility and believability of the
6 witnesses who testified. That is transcript page
7 182, lines 10 through 12. It's repeatedly said
8 through my transcript from front to back.

9 Q That it's based solely on credibility?

10 A Yes, sir.

11 Q Okay. And you testified just a second ago and on
12 cross that you believe that your, your testimony
13 would have been more credible if it was backed by
14 medical reports; is that right?

15 A Yes, sir.

16 Q Those medical reports would have said that she
17 was intoxicated?

18 A Correct.

19 Q Those medical reports would have said that she
20 sat with her mom and had a chance to make up all
21 this?

22 A Correct.

23 Q Those medical reports even would have said that
24 they argued right after the incident, right?

25 A Correct.

PW - C. NEALEY - REDIRECT

1 Q And you also think there would be -- do you think
2 it would be more or less credible if it was also
3 backed by DSS records creating motive for her to
4 lie?

5 A Correct, it would have been more backbone to it.

6 Q Do you think it would be more or less credible if
7 she would have had a witness there to say she was
8 intoxicated?

9 A Yes, sir.

10 Q Okay. That she was highly intoxicated?

11 A Correct.

12 Q And do you think it would be more or less
13 credible if she would have had, if she would have
14 impeached them based off of inconsistencies in their
15 story?

16 A Correct, considering there was nothing but
17 credibility whatever, and she would impeached him
18 whatever, it was definitely give me a stronger
19 defense.

20 Q And it would have been more credible if she would
21 have said this, her first story is impossible?

22 A Correct.

23 MR. SHAFFER: No further questions.

24 MS. RATIGAN: Nothing further, Your Honor.

25 THE COURT: You can come down.

1 THE WITNESS: Thank you, sir, I appreciate
2 your time.

3 MR. SHAFFER: Your Honor, the Applicant
4 rests at this point.

5 THE COURT: State have any?

6 MS. RATIGAN: We rest on the record, Your
7 Honor.

8 THE COURT: I'll read the record and let
9 y'all know.

10

11 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 22d day of July, 2015.

S/Frances B. Ray

FRANCES B. RAY, RPR

APPLICATION FOR POST-CONVICTION RELIEF

Page 3(b)

Victoria testified that Nealey struck her with the "whatnot." Tr. 134. Ln 1-5; Tr. 138, Ln 1-12.

The Judge defined ABIK as "an unlawful act of a violent nature to the person of another with malice aforethought." Tr. 292, Ln 11-15. He then added, "Malice may also arise when the deed is done with a deadly weapon." Tr. 293, Ln 22-24. Defense counsel did not object to this charge on inferred malice. Tr. 302, Ln 5-10.

In State v. Belcher, 385 SC 597, 685 SE 2d 802, 809 (2009), the Supreme Court held that "the use of a deadly weapon" implied malice instruction has no place in a murder (or assault and battery with intent to kill [citation omitted]) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with intent to kill.)" This decision was effective at the time of Nealey's trial. 685 SE 2d at 810. Compare In the Interest of Walter M., 386 sc 387, 688 SE 2d 133 (Ct App 2009).

Conclusion

Insofar as defense counsel did not object to this erroneous malice instruction, the Court of Appeals require Nealey to raise this issue at Post-Conviction Relief as an allegation of ineffective assistance of counsel pursuant to Strickland v. Washington, 466 US 668 (1984). See for example Lowry v. State, 376 SC 499, 657 SE 2d 760 (2008). If not, the court would have reversed Nealey's convictions for ABIK and remanded for further proceedings.



STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)
Curtis Ray Nealey,)
S.C.D.C. No. 337988,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-16-0070

ORDER OF DISMISSAL

FILED
2013 SEP -9 PM 2:44
SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 17, 2012. The Respondent made its return on May 8, 2012. An evidentiary hearing into the matter was convened on July 15, 2013 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Wendy Bell and the Applicant's trial counsel, Tonya Copeland-Little, Esquire. The Court had before it the trial transcript, the Darlington County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application and amendment, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. The Applicant was indicted at the June 2009 term of the Darlington County Grand Jury for two counts of assault and battery

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

COPY

with intent to kill (ABWIK) (2009-GS-16-0869, -0874), two counts of possession of a weapon during commission of a violent crime (2009-GS-16-0870, -0871), criminal domestic violence of a high and aggravated nature (CDVHAN) (2009-GS-16-0872), and kidnapping (2009-GS-16-0873). He was represented by Tonya Copeland-Little, Esquire.

The State brought the case to trial before the Honorable J. Michael Baxley. Judge Baxley granted trial counsel's motion for a directed verdict on one of the counts of possession of a weapon during commission of a violent crime (2009-GS-16-0871). The jury found the Applicant guilty of the remaining charges. On November 10, 2009, Judge Baxley levied concurrent sentences of twenty years on each count of ABWIK, ten years for CDVHAN, and thirty years for kidnapping. Judge Baxley levied a consecutive five year sentence for possession of a weapon during commission of a violent crime (2009-GS-16-0870).

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Nealey, Op. No. 2011-UP-574 (S.C. Ct. App. filed Dec. 20, 2011).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. "[F]ailed to present developed medical reports for impeaching testimony factually refuted by the medical reports."
 - b. "[F]ailed to present evidence and/or testimony from a Forensic Toxicologist to establish the physical and mental condition of State Witness Dorothy Perkins – WHEN WITNESS PERKINS WAS DOUCMENTED TO HAVE BEEN UNDER THE INFLUENCE OF ALCOHOL AND PRESCRIPTION MEDICATION."

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

- c. “[F]ailed to adequately cross-examine State Witness Dorothy Perkins.”
- d. Failed to “object to the States improper eliciting of detrimental character evidence involving criminal domestic violence against Applicant at Applicants trial.”
- e. “[F]ailed to adequately cross-examine State Witness Victoria Perkins, and law enforcement Officers, for the purpose of establishing inconsistent and contradicting testimonies which proved damaging and prejudicial to Applicants defense.”

In a document captioned “Supplemental Grounds for Post-Conviction Relief” and dated July 15 2013, the Applicant made the following allegations:

- 1. Ineffective assistance of trial counsel:
 - a. Objected to the Applicant’s statement.
 - b. Failed to argue Dorothy Perkins’s blood alcohol level and drug use should come into evidence for the purposes of establishing that she would have been likely to fall off the motorcycle.
 - c. Failed to call a witness to explain Dorothy’s blood alcohol level and drug use.
 - d. Failed to impeach Victoria Perkins when she testified she had been hit with a vase but told police that she was unable to identify what she was hit with.
 - e. Failed to adequately impeach Victoria Perkins on whether she had a knife.
 - f. Failed to call a nurse to testify that Dorothy and Victoria were in contact with each other at the hospital.
 - g. Failed to adequately question the Applicant about the impossibility of Dorothy’s motorcycle story.
 - h. Failed to object to the Belcher charge.
 - i. Failed to argue that a motorcycle cannot be used as a deadly weapon.
- 2. Ineffective assistance of appellate counsel:
 - a. Failed to argue that the blood alcohol level and drug use should have come into evidence to prove it is likely Dorothy would have fallen off the motorcycle.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

Wendy Bell, an assistant lab director at SLED, was qualified as an expert in forensic toxicology. Bell stated she reviewed Dorothy Perkins’s medical records from after the incident and found the blood and urine tests indicated the presence of alcohol and tricyclic antidepressants. Bell stated Perkins’s blood serum level was 0.175 but admitted this was usually higher than the blood alcohol level used to determine the legal blood alcohol concentration. Bell stated impaired balance and memory were a likely result of the combination of alcohol and

tricyclic antidepressants. Bell admitted, however, that she was not aware of the prescribed dosage of the tricyclic antidepressants and that the body could develop a tolerance of a drug.

The Applicant stated he had several meetings with trial counsel and that they reviewed: the discovery materials, his version of events, the charges, the possible sentences, and what the victims and witnesses would testify about at trial. The Applicant stated he never received a ten-year plea offer but that he rejected a fifteen-year offer (because he wanted a seven-year offer). The Applicant stated plea counsel did not discuss hiring an expert such as a toxicologist. The Applicant stated plea counsel should have had Dorothy Perkins's medical records admitted at trial. The Applicant stated Dorothy Perkins's story was impossible and that she changed her story between her statement and trial testimony. The Applicant stated the trial strategy was to argue the victims lied in order to stay out of trouble with DSS and the Applicant admitted he testified at his trial in order to explain his version of events.

Trial counsel testified she filed discovery motions and had several meetings with the Applicant. Trial counsel testified they discussed: the discovery materials, the State's version of the facts, the Applicant's version of events, the elements of the charges, and the sentence ranges for those charges. Trial counsel testified there was a plea offer from the State for a fifteen-year sentence where the kidnapping charge would be dropped and the Applicant would plead guilty to the two ABWIK charges. Trial counsel testified the Applicant rejected this offer and had her make a counter-offer of three years suspended to one year imprisonment and two years probation, which was rejected. Trial counsel testified the Applicant later directed her to make an offer to the State that he would plead guilty to two counts of assault and battery of a high and aggravated nature in exchange for a seven-year sentence, but that the State countered with an offer for a ten-year sentence in exchange for pleading guilty to two counts of ABWIK. Trial

counsel testified she spoke to both victims, the pathologist, and the emergency room doctor. Trial counsel testified the truck driver's statement made the Applicant's story less believable. Trial counsel testified the trial strategy was to argue the victims had a motive to lie because Dorothy Perkins lost custody of her children to DSS due to her problems with alcohol. Trial counsel testified the emergency room doctor testified Dorothy Perkins was intoxicated. Trial counsel testified the Applicant wanted to testify that Dorothy was drunk and fell off the motorcycle and that, while he testified to this at trial, he was not a good witness because he seemed threatening. Trial counsel confirmed Dorothy Perkins's medical records indicated the presence of alcohol and tricyclic antidepressants but stated she did not consult an expert. Trial counsel testified, however, that the emergency room doctor testified Dorothy Perkins was intoxicated. Trial counsel testified she did not impeach Victoria Perkins's testimony that she was hit with a vase (because in her statement she said she could not recall what hit her) but that her story did not change. Trial counsel testified the victims shared a hospital room but she did not recall whether she considered calling the nurse as a witness to testify about a possible argument between the victims. Trial counsel admitted she did not object to the jury charge on the inference of malice from the use of a deadly weapon. Trial counsel testified she told the Applicant she was very concerned about the strength of the State's case.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have retained an expert witness. Based upon the testimony and evidence before this Court, there

was no error in trial counsel's decision not to consult an expert toxicologist. Wendy Bell testified about the results of Dorothy Perkins's lab tests – indicating the presence of alcohol and tricyclic antidepressants. Bell admitted, however, that she did not know the prescribed dosage of the antidepressants. Bell also admitted one's body can develop a tolerance of a drug. Bell merely opined the combination of the alcohol and antidepressants made impaired balance and memory "likely." This Court does not find such speculative testimony would have changed the outcome of the Applicant's trial – especially as trial counsel cross-examined both Dorothy Perkins and the emergency room doctor (who testified Dorothy Perkins was intoxicated upon her admission). (Trial transcript, pp.121-28; pp.172-73). Similarly, this Court finds that the admission of Dorothy Perkins's medical records at trial would not have changed the outcome of the case.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not discuss the ten-year counteroffer received from the State. Trial counsel testified she discussed the ten-year counteroffer with the Applicant and he declined, as he was adamant about not entering a guilty plea to violent offenses. This Court finds trial counsel's testimony is credible. This Court finds trial counsel fulfilled her obligations and responsibilities in conveying and discussing the plea offer. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court notes trial counsel's testimony was corroborated by the Applicant's own admission that he was not sure he would even have accepted a ten-year offer.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly impeach Dorothy Perkins with inconsistencies in her description of how she was thrown from the Applicant's bike (as to whether the front or back wheel came off the ground). Dorothy

Perkins testified the Applicant “popped one wheeie [sic]” and that he then “kicked it up one more time and reached and shoved me off of it.” (Trial transcript, p.111). This Court finds Dorothy Perkins did not give a specific enough description of the act such that trial counsel should have been alerted that it differed from the description in her statement. Regardless, the Applicant cannot prove he suffered any prejudice because the State presented overwhelming evidence of guilt. Dorothy Perkins testified the Applicant beat her and then hit her mother (Victoria) before threatening her and forcing her onto his motorcycle at knifepoint. Dorothy Perkins then testified the Applicant pushed her off the back of the moving motorcycle then chased her and said he would kill her. (Trial transcript, pp.103-21). Victoria Perkins testified consistently with her daughter. Victoria Perkins stated the Applicant hit her in the head, beat and threatened Dorothy, and was brandishing a knife. (Trial transcript, pp.131-42). A truck driver testified he came upon an accident scene and saw a male chasing a female, grabbing her, and attempting to keep her quiet. The truck driver testified the male tried to pull the female off of the side of his truck and the female told him the male threw her off the motorcycle and tried to kill her. (Trial transcript, pp.176-87). A responding officer testified the victim was “hysterical” at the accident scene and said she had been forced onto the back of a motorcycle and then thrown off. (Trial transcript, pp.190-97). This Court finds the Applicant has failed to prove he suffered any prejudice. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel’s deficient performance could have reasonably affected the result of defendant’s trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel should

have impeached Victoria Perkins because her statement indicated she did not know what hit her and she testified she was hit with a vase. Victoria Perkins's trial testimony indicated the Applicant hit her with a vase and she identified a photograph of the object. (Trial transcript, pp.134-37). Officer Jackie Catoe testified she responded to the victims' residence and Victoria Perkins told her the Applicant "struck her with an object. She couldn't tell me what it was." (Trial transcript, p.201). Officer Catoe identified a photograph of an object – the same object identified by Victoria Perkins – as a "porcelain whatnot" that she found on the couch and was chipped and covered in blood. (Trial transcript, p.202; p.204). This Court finds the conflicting descriptions were before the jury who weighed this information in their deliberations. See State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (noting the jury is "the finder of fact and weigher of credibility"); Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."). This Court finds trial counsel did not err in specifically impeaching Victoria Perkins and that the Applicant cannot prove any resulting prejudice because of the State presented overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. at 570 n. 3, 552 S.E.2d at 722 n. 3; Geter v. State, 305 S.C. at 367, 409 S.E.2d at 346.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective in failing to call the hospital nurse as a witness at trial to recount an alleged conversation between Dorothy and Victoria Perkins. As this alleged witness did not testify at the evidentiary hearing, any discussion regarding what she would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence

at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the jury charge about the inference of malice from the use of a deadly weapon. The trial judge charged the jury that "[i]nferred malice may also arise when the deed is done with a deadly weapon." (Trial transcript, p.293). This Court notes the opinion in State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) was published approximately one month earlier. While trial counsel admitted she did not object to the jury charge, this Court finds there was no resulting prejudice because the State presented overwhelming evidence of the Applicant's guilt. See Franklin v. Catoe, 346 S.C. at 570 n. 3, 552 S.E.2d at 722 n. 3; Geter v. State, 305 S.C. at 367, 409 S.E.2d at 346.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations.

Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

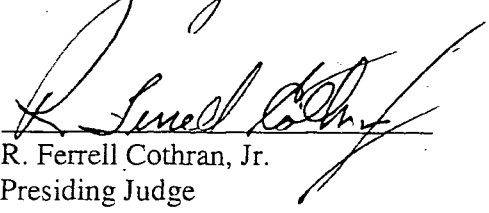
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

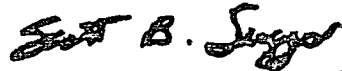
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of Aug, 2013.


R. Ferrell Cothran, Jr.
Presiding Judge

Manning, South Carolina.

TRUE CERTIFIED COPY,


CLERK OF COURT/RMG
DARLINGTON COUNTY, S.C.

SCOTT B. SINGER
CLERK OF COURT/RMG
DARLINGTON COUNTY, S.C.

2013 SEP -9 PM 2:44

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
	)	Case No.: 2012-CP-16-0070
	)	
CURTIS NEALEY #337988,	)	MOTION TO RECONSIDER
	)	
Applicant,	)	
	)	
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

Pursuant to the arguments raised in the Application for Post-Conviction Relief (PCR), the arguments raised in Applicant's pro se filings, the arguments raised at the evidentiary hearing, and the following arguments, Applicant respectfully requests that the court reconsider its Order of Dismissal. *See* Rule 59(e), SCRPC. To support this motion Applicant will show the following:

A. Counsel was ineffective in failing to call an expert to testify concerning effects of the drugs and alcohol in Dorothy Perkins' system.

At the hearing Applicant alleged that counsel was ineffective for failing to call an expert witness that could testify concerning the drugs and alcohol in Dorothy Perkins' system. The Court found there was no deficiency in Trial Counsel's decision not to consult an expert, and that there was no prejudice because the testimony was "speculative."

According to Trial Counsel, Applicant's trial was primarily about credibility. Applicant alleged that Dorothy Perkins accidentally fell off the back of his motorcycle. However, Dorothy alleged that she was pushed off the motorcycle.

Wendy Bell testified to a reasonable degree of certainty that Dorothy would have been impaired. They'll also testified to a reasonable degree of certainty that the intoxicants likely

affected Dorothy's memory. Bell's testimony is far from "speculative." Bell based her testimony on blood that was taken the night of the accident. Bell's testimony is analogous to a forensic toxicologist testifying to the likely effects of intoxicants in a felony DUI case.

Bell's testimony supported Applicant's story while also impeaching Dorothy. In a case primarily about credibility, the introduction of this evidence would have likely changed the outcome of the case. Therefore counsel was ineffective for failing to call a forensic toxicologist to testify concerning Dorothy's intoxication.

B. Counsel was ineffective in failing to argue that Dorothy Perkin's blood alcohol level should have been admissible as substantive evidence concerning Dorothy's likelihood of falling off the motorcycle.

Prior to trial, the trial court found that evidence concerning Dorothy's blood-alcohol level and drug use could only be introduced to impeach her credibility. During the hearing, Applicant argued that Trial Counsel was ineffective for failing to adequately preserve this issue.

Alternatively, Applicant argued that Appellate Counsel was ineffective for failing to raise this issue. Had the Trial Court allowed the alcohol and drug use to be used as substantive evidence, the jury would have been able to consider the emergency room doctors' testimony for more than just impeachment, and Trial Counsel would have been able to argue that Dorothy's drug and alcohol use would have made her more likely to have fallen off the motorcycle. Therefore, Appellate Counsel was ineffective for failing to preserve this issue.

These arguments were not directly addressed in the Order of Dismissal. Applicant respectfully requests that this Court reconsider the arguments raised at the hearing and make a finding concerning these issues.

C. Trial Counsel was ineffective for failing to adequately impeach Dorothy Perkins.

During the hearing, in the PCR Application, and in the pro se filings, Applicant alleged that Trial Counsel was ineffective for failing to adequately impeach Dorothy Perkins.

During the hearing Applicant testified about many specific instances where Dorothy's testimony was inconsistent with her previous statements. However in the order, this Court only addressed the testimony concerning the wheelie. This Court found that, "Dorothy Perkins did not give a specific enough description of the act such that Trial Counsel should have been alerted that it differed from the description in her statement." The Court further found that there was no prejudice because "the State presented overwhelming evidence of guilt." However, Trial Counsel testified that the case primarily rested and credibility. Applicant respectfully requests that the Court reconsider all of the inconsistencies testified to at the hearing.

D. Trial Counsel was ineffective for failing to adequately impeach Victoria Perkins.

During the hearing Applicant testified about many specific instances where Victoria's testimony was inconsistent with her previous statements. However in the order, this Court only addressed the testimony concerning the whatnot. The Court failed to make a finding concerning Trial Counsel's failure to address inconsistency regarding whether Applicant had a knife or any other inconsistency raised during the PCR hearing. Applicant had objects to the finding concerning the impeachment of Victoria Perkins, and requests that the Court reconsider the arguments during the PCR hearing concerning the impeachment of Victoria Perkins.

E. Trial Counsel was ineffective for failing to point out that Dorothy's original story was impossible.

Initially, Dorothy told police that Applicant had slammed on brakes lifting the back wheel of the motorcycle all to ground. Dorothy stated "while the rear wheel was in the air, that [Applicant] used his left arm, shoving her very hard off the back of the motorcycle." However,

Trial Counsel did not question Dorothy about this version of the facts. Applicant argued that Trial Counsel was ineffective for failing to make the jury aware of the story.

At the hearing, Applicant testified that it was impossible for him to do a "stoppie" with a rider in the back and only one hand and the handlebars. Moreover, even without this opinion testimony, the jury could have reasoned that this story was at highly unlikely if not impossible. Applicant respectfully requests that this Court make a ruling on this issue.

F. Pursuant to *Belcher*, Trial Counsel was ineffective four failure to object to the inferred malice charge.

Although, the Order of the Dismissal implicitly¹ finds that counsel was deficient for failing to object to the inferred malice charge, the Court finds that Applicant was not prejudiced by this deficiency. The Court found that there was overwhelming evidence of Applicant's guilt. Applicant requests that this Court reconsider its ruling on this issue.

CONCLUSION

Based on the above listed allegations as well as those listed in the application and pro se filings, Applicant respectfully request this Court reconsider its order of dismissal.



Tristan Michael Shaffer
Attorney for Applicant

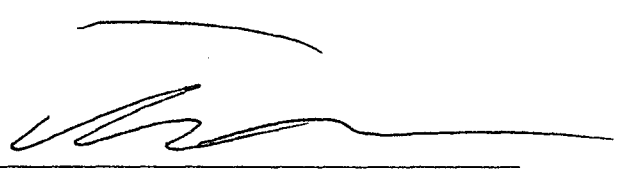
140 Gibson Road
Lexington, SC 29072
SC Bar # 77565

¹ The Court generally finds that there is no deficiency but does not specifically make any finding of deficiency concerning the *Belcher* issue. If the Court's ruling is that counsel was not deficient in failing to object to the *Belcher* issue, then Applicant request that the Court reconsider this finding.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
	)	Case No.: 2012-CP-16-0070
CURTIS NEALEY #337988,	)	
	)	CERTIFICATE OF SERVICE
Applicant,	)	
	)	
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

On September 16, 2013¹, Applicant received a copy of the Order of Dismissal in this case. I certify that on September 26, 2013, the Motion to Reconsider was served Respondent by mailing a copy to the opposing counsel at the below address.

September 26, 2013



Tristan M. Shaffer, Esquire
 140 Gibson Road
 Lexington, SC 29072
 O: (803) 575-0384
 F: (803) 403-9965
 SC Bar # 77565
 Attorney for Applicant

Other Counsel of Record:
 Karen Ratigan
 S.C. Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211

¹ Although this order was filed on September 9, 2013, it was mailed to Counsel at P.O. Box 176, Chapin, SC 29036. Counsel no longer uses this as his official address. Counsel received this on September 16, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	2012-CP-16-0070
Curtis Ray Nealey,	)	
S.C.D.C. No. 337988,	)	
	)	
Applicant,	)	
	)	RETURN TO MOTION TO ALTER OR
v.	)	AMEND THE ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, by and through undersigned counsel, making Return to Applicant's Motion to Alter or Amend, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief action filed January 17, 2012.
2. An evidentiary hearing was convened on July 15, 2013 at the Darlington County Courthouse.
3. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Applicant testified in his own behalf. Also testifying were Wendy Bell and the Applicant's trial counsel, Tonya Copeland-Little, Esquire.
4. After a full review of the evidence presented at the evidentiary hearing, the post-conviction relief court issued an order dated August 20, 2013 and filed September 9, 2013 denying the application for post-conviction relief.
5. Applicant – through counsel – submitted a Motion to Alter or Amend Judgment on September 26, 2013 (which was received by Respondent on September 30, 2013). Applicant argues trial counsel was ineffective in this case.

6. Respondent submits Applicant's Motion to Alter or Amend Judgment should be denied. Applicant is not requesting either an alteration or amendment to the final order. Rather, Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

7. Respondent submits the post-conviction relief court fully reviewed and properly ruled upon all issues and that the Motion to Alter or Amend should be denied.

8. Respondent further submits Applicant's request for a hearing on the Motion to Alter or Amend should be denied as unnecessary.

Respectfully submitted,

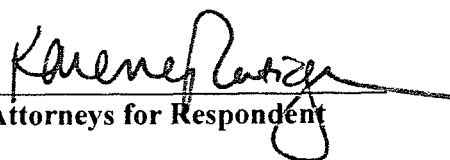
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

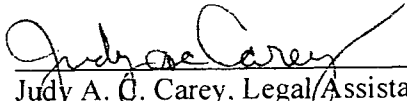
October 1, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-0070
	)	
CURTIS RAY NEALEY, 337988	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Motion to Alter or Amend the Order of Dismissal** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
140 Gibson Road
Lexington SC 29072

DATED this 1st day of October, 2013.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON) IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Curtis Nealey,

Applicant,

vs.

The State of South Carolina,

Respondent.

ORDER
C/A NO. 2012-CP-16-0070

This matter is before the Court pursuant to Rule 59 (e) SCRCF. The Applicant seeks an Order of this Court amending or altering its previous Order.

Pursuant to Rule 59 (f) SCRCF, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Plaintiff, this Court has determined that its original Order is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: March 19, 2015

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit

TRUE CERTIFIED COPY,

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

2015 MAR 23 PM 1:26
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

WITNESSES

Chad McInville

Darlington County Sheriff

Law Enforcement Case #: 200810-0311



000

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights,
I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

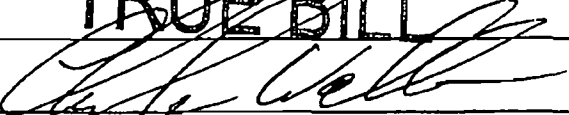
Defendant

ARREST WARRANT NUMBER
J652429

ARRESTED ON: October 14, 2008

ACTION OF GRAND JURY

TRUE BILL



Grand Jury Foreperson

Date JUN 18 2009

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2009-GS-16-0869

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
June 2009

THE STATE

vs.

Curtis Ray Nealey

INDICTMENT FOR

**Assault / Assault and battery with Intent to
Kill (ABWIK)**

§16-03-0620

CDR Code: 0014
TRUE CERTIFIED COPY,

Scott B. Suggs
**CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.**

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)

INDICTMENT FOR

Assault / Assault and battery with Intent to Kill
 (ABWIK)

§ 16-03-0620

At a Court of General Sessions, convened on June 22, 2009, the Grand Jurors of Darlington County present upon their oath:

That **Curtis Ray Nealey** did in Darlington County, South Carolina on or about October 14, 2008, with malice aforethought, willfully and unlawfully commit a violent injury to the person of another, Dorothy Perkins, to wit: in that the defendant, Curtis Ray Nealey, did while traveling at a very high rate of speed push the victim, Dorothy Perkins off his motorcycle. The victim received great bodily injury that required medical attention, in violation of the 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY,

Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

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

William B. Rogers, Jr.
 WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Rion Catoe

Hartsville Police Department

Law Enforcement Case #: 2008-10-233

Maria Bryant

000

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights,
I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J087399

ARRESTED ON: October 24, 2008

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date JUN 18 2009

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2009-GS-16-0870

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
June 2009

THE STATE

vs.

Curtis Ray Nealey

INDICTMENT FOR

**Weapons / Poss. weapon during violent
crime, if not also sentenced to life without
parole or death**

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

§ 16-23-0490

At a Court of General Sessions, convened on June 22, 2009, the Grand Jurors of Darlington County present upon their oath:

That **Curtis Ray Nealey** did in Darlington County, South Carolina on or about October 14, 2008 knowingly and willfully, visibly display a knife during the commission of a violent crime or attempt to commit a violent crime, to wit: Criminal Domestic Violence of a High and Aggravated Nature, such weapon described as a knife in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

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

William B. French

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Rion Catoe

Hartsville Police Department

Law Enforcement Case #: 2008-10-233

Maria Bryant

000

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights,
I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J087400

ARRESTED ON: October 24, 2008

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date JUN 18 2009

VERDICT

Directed Verdict in favor of

Defendant at the close of the

State's case. This charge dismissed.

Petit Jury Foreperson

Date

John Long
Circuit Judge
11/10/09

DOCKET NUMBER:
2009-GS-16-0871

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
June 2009

THE STATE

vs.

Curtis Ray Nealey

INDICTMENT FOR

**Weapons / Poss. weapon during violent
crime, if not also sentenced to life without
parole or death**

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF DARLINGTON

) Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

§ 16-23-0490

At a Court of General Sessions, convened on June 22, 2009, the Grand Jurors of Darlington County present upon their oath:

That **Curtis Ray Nealey** did in Darlington County, South Carolina on or about October 14, 2008 knowingly and willfully, visibly display a knife during the commission of a violent crime or attempt to commit a violent crime, to wit: Assault and Battery With Intent to Kill, such weapon described as a Knife in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

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

William B. Reed

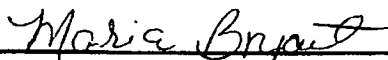
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Rion Catoe

Hartsville Police Department

Law Enforcement Case #: 2008-10-233



000

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights,
I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J087397

ARRESTED ON: October 24, 2008

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date **JUN 18 2009**

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2009-GS-16-0873

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
June 2009

THE STATE

vs.

Curtis Ray Nealey

INDICTMENT FOR

Kidnapping / Kidnapping

§16-03-0910

CDR Code: 0095

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

INDICTMENT FOR

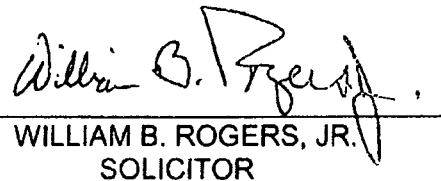
Kidnapping / Kidnapping

§ 16-03-0910

At a Court of General Sessions, convened on June 22, 2009, the Grand Jurors of Darlington County present upon their oath:

That **Curtis Ray Nealey** did in Darlington County, South Carolina on or about October 14, 2008, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Dorothy Perkins by any means whatsoever without authority of law, and without her consent, to wit: did use a knife and force Dorothy Perkins to leave her residence with him on his motorcycle, in violation of § 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

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


WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Rion Catoe

Hartsville Police Department

Law Enforcement Case #: 2008-10-233

Maria Bryant

000

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights,
I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J087396

ARRESTED ON: October 24, 2008

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date JUN 18 2009

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2009-GS-16-0872

485

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
June 2009

THE STATE

vs.

Curtis Ray Nealey

INDICTMENT FOR

Domestic / Criminal domestic violence of a
high and aggravated nature

§16-25-0065

CDR Code: 2988PV
TRUE CERTIFIED COPY
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF DARLINGTON	)	Domestic / Criminal domestic violence of a high and aggravated nature

§ 16-25-0065

At a Court of General Sessions, convened on June 22, 2009, the Grand Jurors of Darlington County present upon their oath:

That **Curtis Ray Nealey** did in Darlington County, South Carolina on or about October 14, 2008, did unlawfully cause physical harm or injury to a person's own household member; 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, did beat the victim, Dorothy Perkins, about her face and head with a ceramic ornament causing her to seek emergency medical attention; in violation of § 16-25-65 and punishable under Section 17-23-30 of South Carolina Code of Laws (1976), as amended

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

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr.

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Rion Catoe

Hartsville Police Department

Law Enforcement Case #: 2008-10-233

Maria Brant

000

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights,
I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J087398

ARRESTED ON: October 24, 2008

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date: **JUN 18 2009**

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2009-GS-16-0874

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
June 2009

THE STATE

vs.

Curtis Ray Nealey

INDICTMENT FOR

**Assault / Assault and battery with Intent to
Kill (ABWIK)**

§16-03-0620

TRUE CERTIFIED COPY
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF DARLINGTON	)	Assault / Assault and battery with Intent to Kill (ABWIK)

§ 16-03-0620

At a Court of General Sessions, convened on June 22, 2009, the Grand Jurors of Darlington County present upon their oath:

That **Curtis Ray Nealey** did in Darlington County, South Carolina on or about October 14, 2008, with malice aforethought, willfully and unlawfully commit a violent injury to the person of another, Victoria Perkins, in that the defendant, Curtis Ray Nealey, did beat the victim, Victoria Perkins, about her face and head with a ceramic ornament causing her to seek emergency medical attention. He also was brandishing a knife while threatening to do bodily harm to her, in violation of the 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY,

*Scott B. Suggs*CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

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

William B. Rogers, Jr.

 WILLIAM B. ROGERS, JR.
SOLICITOR