

Trial of Ezekiel M. Austin, for Murder, 1907

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Superior Court Records - Buncombe County, NC

State versus Ezekiel M. "Zeke" Austin - Murder

The original records are in the North Carolina State Archives in Raleigh, NC.

Transcription by Marshall L. Styles, 23 August 1997 -

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Ezekiel was the son of Amos Mack Austin and Martha Anna Grindstaff of Yancey County, NC. He was born in Yancey County, NC, about 1886, and died 21 April 1944 in Buncombe County, NC. He was married to Mollie Gaddy, daughter of Woodfin Gaddy. Mollie Gaddy Austin was born about 1888, and died 30 December 1969 in Asheville, NC.

On Sunday afternoon, March 24, 1907, near the Buncombe County community known as Martel Village, situated at the end of Elk Mountain Road in Woodfin, one George Gaddy was beaten to death with a brake handle from a horse-drawn wagon by one Zeke Austin, following an attempted rape of Zeke's 17-year old wife Mollie Gaddy Austin at their home. Mollie was seven months pregnant at the time. George and Mollie were first cousins, as were Zeke and Mollie. The site of the murder was at top of the power plant dam near the former Martel Mills (referred to below as the "Elk Mountain Cotton Mill"), now a Burlington Industries textile manufacturing facility.

When I first began transcribing the court records, it appeared the event took place on Reems Creek Road near Weaverville. That is because the transcripts of court records which follow, makes mention of the "Old Vance House", of Captain Weaver's Power Company, of Beaverdam, and of an unnamed river. I gave all the available information as to names and geographical references to my brother, Alan Styles, who, because of his occupation, is very knowledgeable about the Western North Carolina mountains. After a period of research, he was able to identify the location of the events described. The Vance House reference is not to be confused with the Zebulon Vance birthplace historical site on Reems Creek Road outside Weaverville. Likewise, reference to Captain Weaver's Power Company has no connection with the town of Weaverville. It more appropriately refers to the power plant at the dam near Burlington Industries in Woodfin.

Beaverdam is not to be confused with the Beaverdam section of North Asheville. The reference is to Beaverdam Creek, which empties into the French Broad River near the Martel Village. The river referred to is the French Broad. Also mentioned is "Burnsville Hill," which is Burnsville Hill Road in Woodfin,

which turns off Riverside Drive as you go south towards the old Martel Village. With that in mind, these are the transcripts of files located in the North Carolina State Archives at Raleigh:

Buncombe County Superior Court Records. INDICTMENT FOR MURDER, State of North Carolina versus Ezekiel Austin:

"State of North Carolina, Buncombe County, Asheville Township, State Vs. Zeke Austin, Defendant} Before M.A. Creasman, J.P. T.F. Hunter being duly sworn, complains and says, that at and in said county and township, or on about the 24 day of March 1907 Zeke Austin did unlawfully and willfully commit an assault on George Gaddy with a deadly weapon to wit, a stick, with intent to kill, against the Statute in such cases made and provided, and against the peace and dignity of the State. {Signed} T.F. Hunter. Sworn to and subscribed before me the 24th day of March 1907. {Signed} M.A. Creasman, J.P."

"To any Constable or other Lawful Officer of Buncombe County, Greeting: You are hereby commanded forthwith to arrest Zeke Austin and him safely keep so that you have him before me at my office in Asheville immediately, to answer the above complaint and be dealt with according to law. Given under my hand and seal this 24th day of March 1907. {Signed} M.A. Creasman, J.P."

"State of North Carolina, Buncombe County} Superior Court, April Term, A.D. 1907. Grand Jury Indictment, Murder: The Jurors for the State, upon their Oath, Present, that Zeke Austin late of the County of Buncombe on the 1st of day of April in the year of our Lord, one thousand hundred and seven, with force and arms, at and in the county aforesaid, willfully, feloniously, and of malice aforethought, did kill and murder George M. Gaddy, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State. {Signed} Marcus W. Brown, Solicitor" Witnesses, Cora Lee Gaddy, Erben Bolden, Ed Jackson.... examined before the Grand Jury, and this bill found, A True Bill."

Between April 23 and April 26, 1907, the following persons were subpoenaed by the Superior Court in Buncombe County, on behalf of the State: R.B. Banks (served); George Sherlin; "works for Rapid Transit R.R." (not found); Vince Laughter "at Sol. Carter's Dairy"; Bascom Sharp (not served); Rome Dockery "Milk Man" (not served); T. Ed Jackson (served); Erwin Bolden (served); Dan Bright (served); Arthur Williams (served); Coralee Gaddy (served); Nick Gaddy (not served).

Between April 25 and April 26, 1907, the following persons were subpoenaed by the Superior Court in Buncombe County, on behalf of the Defendant: Mollie Austin (served); D.E. Sevier, M.D. (served); Sam Johnson, "Elk Mountain Cotton Mills" (served); Mrs. Lacey (sick); Mrs. Bennett (not found); E.W. Morgan (served); Thomas Grindstaff, "lives on Beaverdam, probably on Drummond Place" (served); Ed Dockery (not found); Cordelia Tolley "Golf Links" (served)

"Asheville, NC, April 26th 1907. This is to certify that I made a visit this morning to Mrs. Zeke Austin and found her in bed, and o making a thorough examination I found her to be in an advanced stage of pregnancy and from her statement and all other symptoms it is likely she will be confined some time during the month of May. I found her very nervous and complaining of severe pain of side, supposed to b e produced from pressure and being on her feet when up. this is first pregnancy and the nervous condition is usually more annoying. {Signed} D.E. Sevier, M.D."

"State of North Carolina, Buncombe County. State of North Carolina vs. Zeke Austin} In the Superior Court, April Term, 1907. AFFIDAVIT. ANNIE AUSTIN, 1st being duly sworn, deposes and says: That she is

the mother of Zeke Austin the defendant in the above entitled action, and that she makes this affidavit in his behalf: That said Defendant cannot safely come to trial at this Term of Court on account of the absence of Mollie Austin, the wife of said Defendant, and a material witness in his behalf: That said Mollie Austin is under subpoena and is absent without the consent or procurement of said Defendant; That said Mollie Austin is a material witness for the Defendant, and said defendant expects to prove by Mollie Austin that on the morning of the alleged homicide she was alone in her room near the scene of the alleged homicide; That said deceased, who was her 1st cousin, came into her room and solicited her consent to an act of sexual intercourse; That she refused to so consent, and thereupon the deceased took hold of her and endeavored by force to overcome her opposition to said ac and a struggle ensued in which her waist was badly torn; that Mollie Austin was at the time in an advanced stage of pregnancy, and was thrown into a highly nervous condition by the transaction aforesaid; That her husband, the defendant, came to her room shortly thereafter and found her crying, and upon inquiring the cause of her distress she told him fully what had transpired; That he thereupon went into a great rage and passion, and left the house immediately, going in the direction that the deceased had gone and upon finding the said deceased at a distance of about 200 yards from the house [stricken from the affidavit: "met the deceased and"] struck him the blow that resulted in his death; That only a few minutes had passed from the time that Mollie communicated the occurrence aforesaid to the defendant until said blow was struck, and the few minutes that had so elapsed was entirely insufficient for the defendant's passion to have subsided. [stricken from the affidavit: "and for his reason to have resumed its sway"]

"Affiant says further that the defendant is unable to supply the testimony of the said Mollie Austin by any other witness, and he expects to be able to secure the attendance of Mollie Austin at the next Term of this Court.

"Affiant further says that Mollie Austin is prevented from attending the present Term of Court by the disabilities and infirmities incident to an advanced stage of pregnancy, her lying in being expected within two or three weeks, according to affiants best information and belief; That Mollie Austin lives in the same house with this affiant and it is affiants' belief that she is wholly unable to attend Court; That Mollie Austin was taken with a chill yesterday and suffered great pain and discomfort during the night, and probably slept less than an hour during the entire night; That affiants' family made repeated efforts to secure the presence of physician, but were unable to do so until this morning when Dr. D.E. Sevier was called in, but affiant is unable to state the result of his examination, as she has not seen either him or the patient since such examination.

"Affiant further says that this affidavit is not made for the mere purpose of delay but is made in good faith in order that her son may have the benefit of the evidence of his wife upon his trial for his life, and that justice may be done. {Signed} Annie (Mrs. Mack) Austin. Sworn to and subscribed... this April the 26th, 1907.

"April Term, 1907. For the State, Mark Brown, Esquire. For the Defendant, Frank Carter, Hugh Chedister and Eugene Way, Esquires. April 26 1907

"CORA LEE [Austin] GADDY, a witness introduced on behalf of the State, after being first duly sworn, was examined by the Solicitor, in chief, as follows:

BY THE COURT:

Question: Did you ever go to school any? Answer: No sir, only one time.

Q: Have you ever been to Sunday School? A: Yes.

BY THE SOLICITOR:

Q: What is your husband's name? George Gaddy? A: No sir, my husband is Nick Gaddy.

Q: George Gaddy was your step-father? A: Yes.

Q: And that is the way you got the name of Gaddy? A: Yes.

Q: You were named Gaddy before you were married and you married a Gaddy? A: Yes.

BY THE COURT:

Q: How old are you? A: I don't know how old.

BY THE SOLICITOR:

Q: Where do you live? A: At the old Vance house. I live on the other side of the bridge.

Q: You don't live in the Vance house? A: No sir.

Q: How close to the end of the other side of the bridge is your house? A: I don't know; it's not very far.

Q: Could you point out in here about how far it is? A: I can't tell how far it is but it is not very far.

Q: Is it as far as from here across the street? A: No sir.

Q: Is it as far as from here to the back of the court house? A: I don't know whether it is or not.

Q: Did you see Zeke Austin the morning that your step-father was killed? A: No sir, I did not see him that morning.

Q: You just saw him about the time your step-father was killed? A: Yes

Q: What was he, Zeke, doing at the time you saw him. A: He was not doing anything, he was just coming across the bridge when I first saw him.

Q: When he came across the bridge what did he do? A: Took the brake-stick out of the wagon.

Q: What do you mean by "brake-stick"? A: The handle that goes into the wagon to put the brake on with.

Q: When he got across the bridge did you see him when he pulled the brake-stick? A: He was on the bridge when I first saw him.

Q: How close was the wagon to the end of the bridge from the side of the creek you were on? A: About as far as from here to the back of the Court room.

Q: Would you know that brake-stick if you were to see it? A: Yes.

Q: Look at that, (exhibiting stock to witness), and see what that is. A: That is the brake-stick, that is it.

Q: He went to the wagon and got that brake-stick and then what did he do? A: Went on down to the dam.

Q: That is the dam of the Weaver Power Company? A: Yes.

Q: How far is that dam from where the wagon was, where he got the brake-stick, how far was it from there to the place on the dam that you spoke of? A: I don't know.

Q: Can't you give us some idea? A: No sir.

Q: Was it in your sight? A: Yes.

Q: Where were you standing? A: In the kitchen yard of my house.

Q: That is, where you live? A: Yes.

Q: He went on down to the dam, and state what he did when he got down there.

A: I seen him hit two licks.

Q: Before you saw him hit the two licks, who was down there? A: Pappy and Mr. Jackson and an old woman.

Q: Who was "Pappy"? A: He was Mr. Gaddis [sic], that got killed.

Q: You called him Pappy because he was your step-father? A: Yes.

Q: What was he doing? A: He was squatting down.

Q: In this position, (indicating squatting position)? A: Yes.

Q: You say that Zeke Austin went down to where he was. A: Yes.
Q: As he went up to him, what was their positions, was George's face, back or side towards Zeke as Zeke came up to him? A: His back was towards him.
Q: You say he went up towards where your papa was? A: Yes.
Q: State what then happened. A: Then he struck two licks.
Q: Who struck who? A: Zeke Austin struck George Gaddy two licks.
Q: Where did he hit him? A: Right on the side of his head.
Q: Was that the first or the second lick or were both licks about the same place? A: Both about the same place.
Q: Did you see anything jump when the first lick was struck? A: No sir.
Q: What happened when the second lick was struck? A: He fell.
Q: Did you go down there where he was? A: No sir.
Q: When did you next see George, your Pappy? A: I saw him that evening.
Q: How was he then? A: It was just before he died.
Q: How long did he live after he was hit? A: I don't know how long.
Q: When did he die? A: About 7 or 8 o'clock that evening, I think.
Q: Do you know what time of the day it was that he was hit? A: No sir.

BY THE COURT:

Q: Was it before dinner or after dinner that he was hit? A: It was after dinner.
Q: What became of Zeke Austin? A: That was all I seen of him; didn't see him any more.
Q: Do you know where he went? A: No sir.

CROSS EXAMINATION BY MR. FRANK CARTER, FOR THE DEFENSE:

Q: The first you saw of Zeke he was going across the bridge, from the Vance house, where Zeke lived towards where your father was? A: Yes.
Q: As I understand, Zeke lived on this side and your father lived on the other side? A: Yes
Q: And he was going down towards where your father was? A: Yes.
Q: And the wagon was on the place? A: Yes.
Q: And he took the brake-stick out? A: Yes.
Q: And struck him as soon as he got there? A: Yes.

ED JACKSON, a witness introduced on behalf of the State, after being duly sworn, was examined, in chief, by the Solicitor as follows:

Q: Where were you on the morning of the homicide? A: I was at home.
Q: Where do you live? A: In the Vance house, the same house that Mr. Austin lived in.
Q: Did you see him that morning? A: Yes.
Q: What was he doing? A: He was in bed when I first saw him, and he got up -- some of the boys had some fish, and he got up and asked them to let me have a fist for fifty cents.
Q: What time was that? A: About eight or nine o'clock in the morning.
Q: Do you know what became of him after he went out and saw about your fish? A: No sir.
Q: Where did he go? A: He just went back into the house.
Q: How many people lived in that house? A: Four families lived in the Vance house.
Q: The same house that you and Zeke Austin lived in? A: Yes.
Q: Did you see the defendant's wife that morning? A: Yes.
Q: Where? A: In the house there where we lived.
Q: Was she in bed at the time you saw her, or up? A: She was up.
Q: When did you next see him? A: When he hit Gaddy, I heard one lick.

Q: Where were you and where was Gaddy? A: I was sitting on the bulkhead, on the Weaver Power Dam.

Q: That is the first dam going down the river? A: Yes.

Q: Where was Gaddy? A: He had just come up a minute before that and put his hands on my shoulders, one on each shoulder, and said, "Mr. Jackson, are you ready to come up," and I said "I will be in a minute, as soon as I see them catch another fish."

BY THE COURT:

Q: What time was that? A: Some where not far from two o'clock in the afternoon.

Q: And then he did what after that? A: I told him I would be in a minute. Just a minute after that I heard a lick.

Q: Where did Gaddy go? A: Gaddy was standing right behind me, waiting on me, and as I whirled I saw him strike Gaddy another lick, and as I rose it struck me right across the arm and breast -- the first lick did. I said, "Oh, Zeke, I've not done nothing to you," and he made another lick and struck me across the arm and skinned my arm right sharply.

Q: Then what happened? A: Mr. Austin turned.

Q: What Austin? A: Zeke Austin came right across the channel wall, and I saw him as he went behind that wood-pile a little down the hill and turned to look at somebody. I just sat down on the wheel of those gates, and I sat and looked at him a minute, because I was hurt, and I never noticed where Mr. Zeke Austin went after that. As he went across the dam he turned and looked back across his left shoulder a couple of times.

Q: What became of Mr. Gaddy? A: His brother came and Mr. Dan Bright came and taken care of the deceased, I never touched him myself.

Q: What was the matter with George? A: Nothing, only he had been drinking a little bit.

Q: Was he hurt? A: Yes, and there was a pool of blood there.

Q: What part of his head was hurt? A: Right back there, (indicating the head).

Q: When did you next see George? A: He was at his house, and the doctor was dressing his wounds when I saw him next.

Q: Where were the wounds? A: The one I saw was right across the head here, I never noticed close about it.

Q: Did you stay there? A: No sir; me and my wife went up and stayed at Mrs. George Gaddy's house, she was sick.

Q: How close did she live to the Old Vance House? A: Probably two hundred and fifty or three hundred yards up the branch.

Q: Where was George at the time the doctor was dressing the wounds? A: He was at Mr. Lishe Gaddy's house.

Q: That is, the same old Vance House that Zeke Austin lived in? A: Yes.

Q: Did you see him any more after that evening when the doctor was dressing his wounds? A: No sir, I went home and did not know he was dead until I came down the next morning, about seven o'clock and found that he was dead.

Q: Did you see him then? A: Yes.

Q: Was he living or dead? A: He was dead.

Q: Can you give us some idea of the distances -- first how far was it from the wagon, where this brake-stick was to the dam? A: A couple of hundred yards or two hundred and twenty five yards. It might be 250, I cannot tell exactly.

Q: Which side of the creek is Zeke Austin's house on? A: On this side.

Q: In going from the old Vance House down to the dam, how would you go? A: Right across the bridge and down the road.

Q: How far is it from the end of the bridge, on the other side of the creek, to where the wagon was? A: Not over thirty or thirty-five steps, maybe not that far.

Q: That bridge is not a very long bridge? A: No sir; it is not over a fifty foot bridge.

Q: From this end of the bridge to the Vance House on that side how far is it? A: Nearly twenty-five yards I guess.

CROSS EXAMINATION OF MR. JACKSON, BY MR. CARTER, FOR THE DEFENSE:

Q: When was the first time you saw George Gaddy that day? A: It was right smart little bit after noon, about a half or three quarters of an hour before the fracas.

Q: When did you next see him? A: Just below the dam; I had been with him, talking to him.

Q: You say he came up to you a minute or two before he was struck? A: Me and him came up to go to the dam, and he met Jim Gaddy and was talking to Jim, and when he got through talking with Jim he came up and put his hands on my shoulders where I was sitting on the bulkhead.

Q: You met him half an hour before the killing? A: Yes.

Q: Where did you meet him. A: Just below the dam. I was down there where there were some fellows fishing.

Q: You had been in company with him about half an hour before the killing? A: Just part of the time through the hour; there were several down there.

Q: As I understand you, you say you met him about half an hour before the killing? A: Yes, somewhere not far from that.

Q: He had come down there from what direction? A: From towards home.

Q: He lived up Beaver Dam Creek? A: Yes.

Q: And he had come from that direction? A: Yes.

Q: And you don't know from what point he came? A: No sir.

Q: And that was about half an hour before the killing? A: yes.

Q: And it might have been less or more than half an hour? A: It could not be possible above that.

Q: You met him about half an hour more or less, before the killing, when did you next separate from him? A: We had just been talking through the hour.

Q: You said something about meeting him about five minutes before that? A: We had started up towards the house, and walked up, from the bulkhead and met Jim Gaddy.

Q: Were you down there when there were some words passed between him and Woodfin Gaddy? A: Yes.

Q: Was that within this half hour you spoke of? A: Yes.

Q: How long before this blow struck by Zeke Austin was it that he had the trouble with Woodfin Gaddy?

A: Not over ten or fifteen minutes, I guess. I did not pay any attention to the time, I was not thinking about any trouble of that sort.

Q: George Gaddy was related to Zeke Austin by marriage? A: Yes, I think so.

Q: Zeke's wife was George Gaddy's first cousin, was she not? A: I don't know exactly. I know they are related or they say they are.

BY THE COURT:

Q: You say George Gaddy was related to Zeke Austin's wife? A: yes, that is what they all say.

BY MR. CARTER:

Q: Do you know the general character of George Gaddy as a dangerous, violent man? A: No sir; I do not.

Objection by State.

BY THE COURT: At this stage that would not be competent.

Mr. ERWIN BALDWIN, a witness introduced on behalf of the State, after being sworn, was examined by the Solicitor as follows:

Q: Did you see George Gaddy after he was struck? A: Yes

Q: When did you next see him? A: In twenty minutes after he was struck I guess.

Q: Did you see him struck? A: I saw him struck across the shoulder, I did not see him hit in the head.

Q: What was the matter with him twenty minutes afterwards? A: He was lying on the dam, on the bulkhead.

Q: What was the matter with him? A: The side of his head was hit and he was lying on this side and he was bloody all over.

Q: Where was he taken from there? A: Up to Elisha Gaddy's house.

Q: What was his condition then? A: They cleaned him up up there.

Q: Were you at the Coroner's inquest? A: Yes.

Q: At the time his head was examined? A: Yes.

Q: What was the matter with his head? A: The skull was bursted.

Q: How do you mean that it was bursted? A: It was cracked right here, (indicating), and this part was sticking up and one part was knocked in.

CROSS BY MR. CARTER, FOR THE DEFENSE:

Q: Was the blow on the shoulder the first or the second blow? A: It was the first blow.

Q: How did it happen that you did not see the next blow? A: I turned my head off to go down the bank. I saw him hit Mr. Jackson one lick.

Q: You turned back after that and saw him hit Jackson one lick? A: Yes.

Dr. E.R. MORRIS, a witness introduced on behalf of the State, after being duly sworn, was examined in chief by the Solicitor, as follows:

Q: Did you hold the inquest over George Gaddy, charged to be killed by Zeke Austin? A: Yes, I was acting in my official capacity as Coroner.

Q: Please state what you found there in reference to the condition of the person of George Gaddy.

A: I don't remember just which side of the head the injury was on. I would like to have the report of the Coroner's inquest. As well as I remember I think the injury on the head was on the left side. This is the original paper, I see my signature on it. I see that the injury was on the left side, angling over the left ear and slanting backwards to the base of the skull, and also there was another counter fracture extending up. The fracture was about six inches wide. I have it here. "Description of the skull. It was a compound fracture." That is what I mean by a compound fracture -- the injury extended from the bones and the causation was the crushing of the bones into different fragments. There were two openings on the side of the fracture of the bones, about one and a half or two inches apart, caused by whatever was used in producing the injury. This portion of the bone was mashed into the within tissues and the brain was oozing from that fracture when I took the bandages off. The fracture was angling up over the left ear and extending back to the base of the brain, back to the base of the skull here. I measured it and it was about six inches from the front extending back to the base of the skull. Now there was another fracture up here, probably about two and a half or three inches. The crushing of the bones was at the side and base of the skull; that is where the force of the blow was, it was delivered right over the ear and side of the head here. The way the force was received was in this direction, the end of the fracture towards the front commenced at this point and came back to this point at the base of the skull. I did not take the top of the skull entirely off. I have no doubt this fracture extended from the base of the skull back into the orbit, but I am only telling what I saw.

Q: It was the force of the blow that caused all that? A: Yes, it was the force of the blow that caused it.

Q: Did you discover any other injury? A: A bruise on the shoulder.

Q: What caused his death? A: The injury to his head.

Q: That wound was necessarily fatal? A: Yes, beyond any question.

CROSS EXAMINATION BY MR. CARTER FOR THE DEFENSE:

Q: I believe you say there appeared to be but one blow on the head, and those fractures were caused by that? A: No, I do not know whether there were one or two, but it looked to me as though there might have been two blows on the head.

REDIRECT EXAMINATION BY THE SOLICITOR:

Q: If the jury should find that a stick was used in making those injuries, I ask you if you could give an opinion satisfactory to yourself as to the position the assailant was in with respect to the deceased at the time he struck the blow that caused the wound?

A: That would depend upon the position of the man's head; it might have been struck from before or behind and made that wound on the head.

Objection by the Defense.

The Solicitor: At this stage we do not insist upon that evidence.

The following deposition read in evidence to the Court and Jury:

Agreement:

It is agreed by counsel for the State and the defense that A.E. Eve, the Official Stenographer, shall act as commissioner in the taking of the deposition of Mrs. Austin, the wife of the defendant. It now being 1 o'clock P.M., the court takes a recess until 3 o'clock P.M. The above named Commissioner, A.E. Eve, and the counsel proceeded to the home of Mollie Austin, the wife of the defendant and her deposition was taken as follows:

State Vs. Zeke Austin} DEPOSITION of MOLLIE AUSTIN

It is agreed by the counsel representing the State and the defendant in the above stated case, that A.E. Eve shall act as Commissioner in the taking of the deposition of Mrs. Mollie Austin, wife of the defendant. Commission and notice waived by consent.

MOLLIE AUSTIN being first duly sworn, deposes and says:

Examined by Mr. Carter.

Q: What is your name and age? A: Mollie Austin; I am eighteen.

Q: When were you eighteen? A: Last March.

Q: What relation are you to Zeke Austin, the defendant? A: He is my cousin.

Q: What is your present relation to him? A: I am his wife.

Q: When were you married? A: In July.

Q: Where were you living at the time Zeke Austin had the trouble with George Gaddy that resulted in Gaddy's death? A: Down at the old Vance house, near the Weaver Dam.

Q: What day of the week did that trouble occur? A: On Sunday.

Q: Did you see the deceased man that day, and if so, when did you see him, with reference to the time when he got struck? A: He came down home that morning, to my home.

Q: Who was present at the time in your room, when he came to your room? A: I was the only one in there, all by myself.

Q: Please state fully what happened at that time. A: George Gaddy caught me and said he was going to take it away from me. (The last foregoing answer and question withdrawn by counsel for the defendant.)

Q: You saw your husband the way of the homicide, did you? A: Yes.

Q: Where did you see him the last time before he had this difficulty with the deceased man? A: After George came down to the house.

Q: About how long was that before he had the trouble with George Gaddy? A: It was not so awful long. Don't know exactly how long.

Q: Tell all that passed between you and your husband as to what occurred between you and George Gaddy?

OBJECTION: The State objects to the question and any answer that may tend to show that statements were made to the defendant by his wife about or concerning any assault or attempted assault on the defendant's wife, on the ground that such evidence is immaterial, irrelevant, and incompetent. This objection to apply to other questions and answers as well as to the present one.

Q: [By Mr. Carter] Now just go ahead and tell it.

A: George Gaddy caught me and said he was going to take it away from me and when he caught me I jerked loose from him and he grabbed me again and I commenced crying and jerked loose from him and ran out on the porch.

OBJECTION: The State objects to this answer, and objected to the answer while it was being given on the ground that it was not responsive to the question, and on the further ground that the evidence is incompetent, irrelevant, and immaterial.

Q: [BY MR. CARTER] Please state whether you stated those facts to your husband or not. A: Well, George said it, I told it, he would kill me; George said if I hollered he would kill me, and when Zeke came home I told him what George said and done to me and I commenced crying and he said he would whip George for it.

Q: Please state whether or not when your husband came home and you told him about it, if you made a statement of all that George had said and done to you? A: Yes, because he done that once before.

Counsel asks that the last part of this answer be not recorded, as not responsive to the question, but it is admitted at the request of the State, the state insisting that all of the evidence is incompetent.

Q: [BY MR. CARTER] Please state what clothing you had on at the time of the transaction between George Gaddy and yourself, which you state you told your husband of -- I refer particularly as to what sort of a waist [skirt] you had on. A: It was a sort of light waist.

Q: Please state what was the effect upon the waist, from the struggle between yourself and the deceased, which you related to your husband. A: I told him that George tore it that way and I showed him the waist.

Q: I ask you to examine the waist which I hand you, and ask if that is the waist you had on at the time? A: Yes.

Q: Please state how that waist was torn. A: He caught me under the arm here, and I jerked loose from him and he grabbed me again, and then I jerked loose.

Q: Please state whether that waist was torn that way in that struggle. A: Yes, he done it himself.

Q: Please state whether you had on that waist when your husband came and he saw it. A: No sir, I had pulled it off before he came, but I showed it to him when he came in and I told him.

Counsel for defendant offer this waist in evidence and the same is marked by the Commissioner as Defendant's Exhibit.

Q: Please state where this waist has been since this transaction in which it became torn, as you state. A: I brought it up here to Delia's on Monday, the next day after it occurred.

Q: Who is Delia? A: That lady over there, my sister-in-law.

Q: Has she any other name besides Delia? A: Yes, Tolly.

Q: Do you know where it was taken after that? A: It was taken to Mr. Way's office after that.

Q: Who took it there? A: Me and Mrs. Tolly.

Q: Please examine the waist and see whether its condition has been changed in any respect that you can observe, since that occurrence when you say it was torn. A: No sir; don't reckon it has.

Q: Does it seem to be in the same condition that it was when you took it off after that occurrence? A: Yes, except that little hose in the back, that was made by pinning my skirt to it.

Q: I believe you showed that waist to your husband when he came and told him how it had been torn?

A: Yes, I told him what George had said and done.

Q: When you told him what George had said and done, please state whether it made him angry? A: He said he would whip George for it and it made him mad.

Q: What did he do? A: He did not do nothing, only he went out.

Q: How long was it after he went out before you learned of the difficulty between him and George Gaddy? A: I don't know exactly how long, but I don't think it was a half hour.

Q: Can you give any idea about it? A: No sir.

Q: Did you see the difficulty? A: No sir.

Q: You think it was not over half an hour after that when you heard of the difficulty? A: No sir.

Q: Do you know who told you of the difficulty? A: Some of the young ones. Mr. Gaddy's little girl had told me that George was hurt.

Q: Was that the first you knew of it? A: Yes, and as I started across the bridge Cora hollered that George had killed Nick or Nick had killed George.

Q: What aged man was George Gaddy? A: I don't know exactly how old he was.

Q: Did he have any children? A: Yes, he had four or five children.

Q: Do you know anything of the ages of his oldest children? A: His oldest child is going on twelve years old, I think.

Q: Did you afterwards tell anybody what you had said to your husband as to the occurrence between George Gaddy and yourself? A: No, only Mrs. Tolly.

Q: When did you tell her? A: Monday morning after the occurrence.

Q: You told Mrs. Tolly exactly what you told your husband? A: Yes, and brought the waist up here.

Q: Were you and your husband living together at the time of this occurrence as husband and wife? A: Yes, sir.

Q: Please state what was your condition at the time of this occurrence between the deceased man and yourself, which you related to your husband as stated? A: (No Answer)

Q: I mean were you pregnant? A: Yes, I was about six months gone in pregnancy.

Q: Do you remember about how long it was after this occurrence between George Gaddy and yourself that your husband came to the house? A: No sir; I don't know exactly, but it was not very long until he came in after his dinner.

Q: Can you give any idea how long it was? A: No sir; don't know exactly how long it was.

CROSS EXAMINATION BY THE STATE:

Q: Which room of the Vance house did you occupy? A: I was in the front room when he done that.

Q: Which front room? A: Down stairs.

Q: The front room towards the River? A: No sir; up towards the road.

Q: Were you in the front room up the river or down the river? A: The room was down the river; in the corner room?

Q: Who occupied the room next to you? A: Mr. Gaddy occupied the room next to it.

Q: What Mr. Gaddy? A: A Elijah Gaddy.

Q: Who was living with Elijah then at that time? A: No one at all.

Q: Was that door open? A: No sir, it was fastened, the door that goes into their room was fastened.

Q: How many rooms down stairs? A: Two on the lower side and two on the upper side.

Q: His two were on the upper side? A: Yes.

Q: And you say no one lived with Elijah then? A: No sir.

Q: Who lived down stairs besides you? A: No one.

Q: Is Elijah married? A: Yes, he married my sister.

Q: Well, his wife was there with him, your sister? A: Yes.

Q: Where was she that day? A: She was in her room, I think.

Q: The room was right next to yours? A: Yes.

Q: Did he have any children? A: Yes.

Q: How old are they? A: The oldest one is twelve years old.

Q: How old is the next one? A: I don't know exactly.

Q: Where were the children that day? A: I don't know; guess they were at home.

Q: Did you see them there? A: I did not see them at that time.

Q: Did you see them there that day? A: Yes.

Q: Were they there right after you had that trouble with George? A: I did not see the children until after we had heard about the trouble down there.

Q: Who lived up stairs? A: Mr. Huggins and Mr. Jackson.

Q: Is Mr. Huggins a married man? A: Yes.

Q: Where was his wife? A: Up stairs, I guess.

Q: Did he have any children? A: No sir.

Q: Was anybody but his wife with him? A: His boy stays there with him, I believe, that is Dan Bright.

Q: Who lives on the other side of them, up stairs? A: Mr. Jackson.

Q: Where was his wife that day? A: I don't know whether she was at home or at Mr. George's up the Creek.

Q: Did they have any children? A: Yes, they had a little girl.

Q: How old? A: Ten, going on eleven, I think.

Q: Which is Cora Lee Gaddy? A: She lives in Mr. Jackson's house, in the kitchen.

Q: Was that up stairs or down? A: Up stairs.

Q: Who was her husband? A: Nick Gaddy.

Q: Where was Nick Gaddy that day? A: I think he was at the dam.

Q: Where was Cora Lee that day, before the trouble? A: She was over at Mr. Woodfin Gaddy's. She stayed there most all the time.

Q: What time did your husband get up that morning? A: About seven o'clock, I guess.

Q: You both got up at the same time? A: Yes, he gets up and builds the fire, and then I get up.

Q: Did he leave at seven? A: He was there a right smart bit after he got up.

Q: After he got up, how long was he there at the house? A: I don't know exactly.

Q: Do you know when he first went out and where he went to? A: I don't know where he went to, but he went out.

Q: Which way did he go? A: He went across the bridge; but I don't know whether he went to the dam or over to Mr. Gaddy's.

Q: He went that way? A: Yes.

Q: What time was it he went down there? A: It was towards dinner time.

Q: You don't know whether he had dinner before he left or not? A: No sir; he did not have any dinner before he left.

Q: Were they playing cards there that morning? A: No sir, they did not play cards there at all.

Q: What time was it when you first saw Mr. George Gaddy? A: I did not see him at all after they had the racket.

Q: I mean that morning? A: I don't know what time of the day.

Q: Was it early in the morning, at dinner time or after dinner? A: I don't know what time of the day, but it was that morning some time before dinner.

Q: Can you give us some idea what time? A: No sir.

Q: Was it as early as seven o'clock? A: It was later than seven o'clock, I guess.

Q: Was it later than eight o'clock? A: I guess it was.

Q: Was it later than nine o'clock? A: I don't know. I can't fix the time.

Q: You can't fix any time between seven and twelve o'clock? A: No sir.

Q: Could you say it was before one o'clock? A: I could not say whether it was before one o'clock or not.

Q: You don't know whether it was before that morning? A: Yes, he came down that morning.

Q: You had not seen him before he came down there -- I am speaking about the time you told your husband he came down and made that proposal to you? A: No sir; it was before one o'clock.

Q: Can you say how much before one o'clock? A: No sir.

Q: You can't say how much before one o'clock it was or how much after seven o'clock? A: No sir.

Q: When George came down that morning whose room did he go into first? A: He came into my room first.

Q: What were you doing when he came in? A: I had cleaned up the house and was combing my head.

Q: You had just finished cleaning up? A: Yes.

Q: What time did you clean up. A: We clean up after we get through with breakfast, but I had been over home first before I cleaned up. I go over and attend to the cows before I clean up.

Q: What do you mean by "home"? A: Over to Mr. Woodfin Gaddy's, my fathers.

Q: Did you see Mr. Jackson there that morning? A: I don't know whether he was there that morning or not.

Q: When Mr. Gaddy went in, was anyone with him? A: No sir, there was not anyone at all with him, and there was not anyone in the room with me.

Q: Did Mr. Gaddy leave anyone in front or on the porch when he came in? A: No sir; there was not anyone at all with him.

Q: What was it that you told your husband Mr. Gaddy did to you? A: He caught me and said he was going to take it away from me; and when Zeke came in I told him what George had said and done. I had cleaned up the house when he came in.

Q: What were you doing at the time he came in? A: I was combing my head.

Q: Did he catch hold of you? A: Yes, he grabbed me under the arm and said he was going to take it away from me, and I jerked loose and commenced crying and I went out on the porch; and he said if I told it, he would kill me.

Q: When did he tell you that? A: He told me that when he grabbed me.

Q: What did you tell those ladies? A: There was no one on the porch.

Q: Which porch were they on? A: I guess they were in their rooms.

Q: You went on the porch next to the road? A: Yes.

Q: The porch next to the river -- there was always people on that porch? A: No sir; when they pass through, going out doors --

Q: And you did not see anyone on that porch? A: No sir.

Q: When you ran out on the porch, which way did George go? A: He went out the lower door.

Q: then which way did he go? A: I don't know where he went.

Q: Then what was the next thing you did after George went out? A: I pulled off my waist.

Q: Did you go back in your room? A: Yes, and pulled off my waist, and when Zeke came home I told him what George had done and said.

Q: What made George turn you loose when he took hold of you? A: I jerked loose and then he grabbed me again, and I commenced crying and ran out on the porch.

Q: And he was not able to hold you? A: I don't know; I just jerked loose.

Q: That is your father that lives across the street? A: Yes, that is my father that lives across the street.

Q: How long was it from the time George went out until your husband came in? A: It was not so awful long.

Q: About how long? A: I don't know how long it was until he came in.

Q: What were you doing then? A: I can't remember what I was doing when he came in.

Q: Had you had dinner? A: No sir; I did not get dinner that day. I had dinner cooked.

Q: You had not eaten dinner when he came in? A: No sir, we had not had our dinners.

Q: What time did you usually have dinner? A: When he is at work we have dinner at 12 o'clock.

Q: I mean on Sundays. A: On Sundays we have dinner later.

Q: You don't know what time it was he came in? A: No sir.

Q: Was it before one o'clock? A: It was before one o'clock when my husband came in, but I don't know exactly what time it was.

Q: What did he do when he first came in? A: I was crying when he came in and he asked me what I was crying for, and I told him what George had said and done to me.

Q: Then what did he do? A: He did not do anything except that he said he was going to whip George for it.

Q: Did he eat anything or drink anything, take any water? A: I don't know whether he eat anything or not.

Q: Did he sit down or not? A: I don't know. He might have sat down. He did not stay in so awful long after I told him, until he went on out.

Q: Did he stay for as much as an hour? A: No sir.

Q: Did he stay as much as a half hour? A: I don't expect he did.

Q: Did he stay as much as fifteen minutes? A: I don't know.

Q: And you don't know what he was doing while he was in there? A: No sir.

Q: Did he have dinner that day? A: No sir; I did not get any dinner that day. I had done had dinner cooked.

Q: Did George eat any dinner that day? A: I could not tell you that.

Q: I meant to say Zeke. Do you know whether Zeke eat anything that day or not?

A: No sir.

Q: Did he go into the kitchen after you told him about this? A: I cannot tell you whether he did or not.

Q: Which way did Zeke go when he went out? A: He went out across the bridge. He went out at the upper yard and out the upper door.

Q: What did you do after Zeke went out? A: I did not do anything.

Q: Did you stay in the room? A: Yes.

Q: Was anybody else in the room with you? A: No sir; nobody at all with me.

Q: Did any other roomers come in at that time, from the time George Gaddy was in there that morning until your husband came? A: Yes, Mrs. Austin came in that morning after George had been there.

Q: What Mrs. Austin? A: That lady over there...

Q: What relation is she to you? A: She is my mother [-in-law ?].

Q: How long was she there that morning? A: I don't know what time it was.

Q: Did she stay there all morning? A: She stayed there until Monday evening after she came.

Q: So, she was there all the time after she came? A: Yes, but she came after George had said that to me.

Q: And was she there the rest of the day? A: Yes.

Q: She was there when Zeke came in? A: No sir; she had not come when Zeke came.

Q: Was it before or after the trouble in which George was killed? A: She came down after George was there.

Q: How long was it after George was in your house that she came in? A: I don't know exactly how long.

Q: How long was it before Zeke came back that she had been there? Did she come first or did Zeke come first? A: No sir; she had not come when Zeke came.

Q: How long was she there before George was killed? A: I don't know exactly how long.

Q: Can't you tell whether she had been there an hour or two hours? A: No sir.

Q: Did she come before or after dinner? A: She came before dinner.

Q: Did she come there and have dinner, or not, with you? A: Yes, she went into the kitchen and eat.

Q: Did you tell her anything about what George said to you? A: Yes, I told her.

Q: When did you tell her? A: I told her that day, that Sunday evening.

Q: Did you tell her before or after George was killed? A: It was after George had done it.

Q: You have been to the jail to see your husband a number of times since he was arrested? A: Yes.

Q: When did you see him last? A: I don't know what day it was.

Q: When were you in town last? A: It has been two or three days since I went to town.

Q: You have not been to town during the last two or three days? A: No sir.

Q: You were not in town yesterday? A: No sir.

Q: Were you there the day before yesterday? A: I don't remember whether I was there the day before yesterday or not.

Q: You say your husband told you he was going to whip Gaddy? A: Yes.

Q: When did you next see him after he told you he was going to whip Gaddy? A: I did not see him anymore until after the racket came up.

Q: Where was he when you next saw him? A: He was over at Woodfin Gaddy's, my father's.

Q: What was he doing there? A: He was on the porch.

Q: How long did he stay there? A: He stayed there a right smart bit.

Q: Was he doing anything while there? A: No sir.

Q: Where did he go from there? A: I don't know.

Q: Did you hear him say where he was going? A: No sir.

Q: He did not tell you where he was going? A: No sir.

Q: Did any officers come there while he was there? A: No sir.

Q: How long had he been gone when the officers came? A: I did not see the officers.

Q: You don't know where he went to at all? A: No sir.

Q: Did he tell you where he was going to keep the officers from getting him?
A: No sir.

Q: How long was it after that that you saw him? A: I saw him late that evening.

Q: Where was he then? A: I don't know where abouts he was the last time I saw him.

Q: You say you saw him late that evening? A: Yes.

Q: You can't tell us where it was that evening when you saw him? A: No sir.

Q: Where did you next see him? A: I don't know where.

Q: Did you see him any more after that evening? A: No sir.

Q: Did you see him any more from that evening until after he was arrested? A: Yes, I saw him up there at Rome Dockery's.

Q: How far is that from Beaver Dam, how far is it from the Vance House? A: I don't know whether it is a mile or not.

Q: What was he doing up there? A: He just went up there.
Q: What time of the night was it? A: It was before dark.
Q: Did you go up there with him? A: No sir; me and Mrs. Austin went up there.
Q: Did he tell you he would meet you there? A: No sir.
Q: How did you know he would meet you there? A: We did not know that we would meet him there. He came there after we got there.
Q: How long did you stay there, after you got there? A: We stayed there all night.
Q: You and your husband's brother? A: No sir; he did not stay all night.
Q: Where did he go? A: The Sheriff came after him.
Q: Did they arrest him there? A: No sir.
Q: Why did they not arrest him there? A: He was out in the yard, down from the house when they arrested him.
Q: Was he just walking down the yard? A: I did not see it.
Q: Who did you say this lady is over there...? A: My mother-in-law, Mrs. Austin.
Q: And this other lady over here, what is her name? A: Mrs. Tolly.
Q: Both of them have been in while you have been examined here, while you were testifying, they were both present, they have been here and heard your testimony? A: Yes.
Q: Did you tell anybody else about that matter before you told your husband? A: No sir.
Q: How long was it after you told your husband before you told them? A: It was a long time after I told him that I told them.
Q: What do you mean by them, those two ladies that I have been talking about? A: Yes.
Q: Which one did you tell first? A: I told Mrs. Austin.
Q: Did you tell her what you told your husband? A: Yes.
Q: Did you tell here about it before your husband came in? A: No sir.
Q: When did you say you told the other lady? A: Monday evening.
Q: When was it you took this waist into Mr. Way. A: It was that week, I think some time; I don't know what day.
Q: You never told any one else except your mother-in-law and your sister-in-law and your husband? A: No sir.
Q: You say all those holes were made in this waist by him, except this here where you had pinned it? A: Yes.
Q: The others were all made by him? A: Yes.

BY REDIRECT EXAMINATION, BY MR.CARTER [for the defense].

Q: You say that you told your husband that he had caught hold of you and tried to take it from you. Do you mean by that that you told your husband that he tried to have sexual intercourse with you? Do you understand what sexual intercourse is? A: No sir.
Q: By telling your husband what he had said and what he had done, and that he had "tried to take it away from you", what did you mean by that and what did your husband understand by that? A: He knowed what I meant.
Q: What did you mean; did you mean that he had tried to have [blank] to do with you? A: Yes.

And further this deponent saith not.

ZEKE AUSTIN, the defendant, after being duly sworn, was examined in chief by Mr. Carter [for the defense] as follows:

Q: Your name is Zeke Austin and you are the defendant? A: Yes.
Q: How old are you? A: I am going on 21.

Q: You were 20 when? A: I was 20 in June I think it was.

Q: You are going on 21? A: Yes.

Q: Are you a married man? A: Yes.

Q: Now this trouble that you are being tried for occurred something like a month ago? A: Yes.

Q: Go ahead and tell just how that trouble came about; but I want to ask you first, as to what communication, if any was made to you by your wife, what your wife told you as to what occurred between her and the deceased.

Objection by the State to the introduction of this evidence at this stage of the case.

Q: [By Mr. Carter] When you went in your wife's room the last time before this occurrence, what was her condition?

THE SOLICITOR: In view of Your Honor's statement, we will accept the plea of Manslaughter.

[Zeke Austin is allowed to leave the stand. It is unclear as to why the testimony continued after the Solicitor accepted the plea, unless it was for the purpose to determine Zeke's state of mind, and for the court to establish an appropriate term of imprisonment.]

ED DOCKERY, a witness introduced in behalf of the defendant, after being first duly sworn, was examined by Mr. Eugene Way [for the defense], as follows:

Q: Where do you live? A: On the French Broad River.

Q: Do you know Mrs. Austin, the wife of the defendant here? A: I do.

Q: How long have you known her? A: All her life.

Q: Do you know her general character? A: I do.

Q: What is it? A: It is good.

Q: How long have you been knowing Zeke Austin? A: Most all of his life. I lived in the same neighborhood with him about fifteen years.

Q: Do you consider him a boy of good sense? A: I don't think I would, taking his fancies into consideration, I would not think he had good, practical sense.

Q: He can't read or write? A: Not that I know of.

Q: Is he considered a man of good sound mind? A: I have heard men speak of him as a man of not good common sense.

Q: I ask you if it is not the opinion of the neighbors there that he is a boy of not good sense? A: Yes.

CROSS EXAMINATION, BY THE SOLICITOR:

Q: You mean that he is not educated? A: No sir; I don't mean that.

Q: Do you mean to tell the jury that he is insane or crazy? A: I mean that he does not act like a man of good, practical, common sense.

Q: What does he do? A: A common laborer.

Q: He was at the time? A: Yes.

Q: He knows how to work? A: Yes.

Q: How many times has he ever been in trouble down there? A: I don't know.

Q: What do you know about the different things he has been charged with? A: Not anything. I might have heard about his being in some little trouble.

Q: I will ask you if you have not heard of his committing different assaults upon people, assaults like this? A: No sir; not that I have any recollection of.

Q: You heard about the trouble between him and Beauregard Edwards? A: No sir.

Q: Is any akin to you? A: No sir.

Q: Did he go to your house the night after the murder? A: He went to my brother's house.

Q: Did the defendant tell you why he killed this man? A: I never have spoken to him.

Q: You did not see him from the time Gaddy was killed until he was arrested? A: No, I have not seen him for three months until I saw him in Court this morning.

REDIRECT EXAMINATION, BY MR. WAY.

Q: You have never heard of Zeke Austin being accused of dishonesty or untruthfulness? A: He has always been known as truthful and honest.

E.F. MORGAN, a witness introduced on behalf of the defendant, after being first duly sworn, was examined in chief by Mr. Carter [for the defense] as follows:

Q: How long have you known Zeke Austin? A: About 15 or 16 years.

Q: What opportunities have you had for knowing him? A: I had him under my care when he was a boy for about eight or ten months, I suppose he was five or six years of age at that time.

Q: You have known him since? A: I have not been as extensively acquainted with him since then.

Q: What sort of a mind has he, give the Court an idea? A: When he was under my control he was not a bright boy and he lacked a good deal of it.

Q: How have you considered him since that time? A: I said I have not been as extensively acquainted with him since he lived with me, but when he lived with me he was not a bright boy, he was idiotic.

THE COURT:

Q: Was he not bright when he lived with you? A: No sir; he was idiotic. He was not a plumb idiot, but he was not bright by a good deal.

Q: What do you know about his character? A: I never heard anything against his character up to this time. If he has been a bad boy I never heard of it.

CROSS EXAMINATION, BY THE SOLICITOR.

Q: You never heard of his being charged with anything? A: I never heard it. He may have been charged with a hundred things, but I never heard of it.

Q: How far do you live from him? A: I live here in Asheville, and he down at the Cotton Mills about five miles from here.

Q: You do not want to leave the impression that he would not know it was not right to steal? A: I think he knows right from wrong?

THE COURT:

Q: Do you know the man that he killed? A: I do not; don't know anything about him.

Q: You are related to Zeke? A: Not a bit in the world.

Q: By marriage? A: No, not a bit in the world; no relation to him, he is no more to me than any other man.

ZEKE AUSTIN, the defendant, recalled to the stand, was further examined as follows:

Q: Tell his Honor what your wife told you and what you did. A: I come home and when I come home me and Dan Bright come up the road together and met George Gaddy, and I said, "Good evening George", and he never spoke.

Q: Was he coming from the direction of your house? A: Yes, and I went to the house and my wife told me about his trying --- she said that George tried to rape her, and her waist was tore all over. That was all she told me. It flew all over me and I went out.

Q: She was crying? A: Yes, she was crying.

Q: And she was in a family way? A: Yes, and I went out the door, and Mr. Gaddy and Erwin Baldwin was coming up the road, and Mr. Baldwin told me he was trying to cut him down there with a knife, and he said, "I am going to take out a warrant for him" and I come down to the bridge and as I crossed the bridge the wagon was there and I reached up and got the brake stick and I went down there and hit him and come on back.

Q: What effect did it have on you when your wife told you about this thing?

A: I run over me like I had been shocked. When she told me about it, I just turned and walked back down there.

Q: Do you remember what you said to her? A: No sir; I said "I am going to whip him"; that was all I said.

Q: Was there anything between you and George Gaddy at that time? A: No sir; I liked him just as good as a brother.

Q: You and he had been good friends? A: Yes.

Q: What do you know about his fighting and getting into trouble. A: His brother told me that he came to his house once and got a gun to kill a man; and he come to Mr. Gaddy's one night, the night Gaddy married and George tried to get Eliza to go with him and he said, "I have got two guns and a good razor up there, and if I can't fight it out I can cut and shoot it out."

Q: You had been with Mr. Gaddy that morning? A: Yes.

Q: Down at the dam playing cards? A: Yes. And he tried to get me to go off into the river and he said, "Let's push Sam's brother off into the brother."

Q: That was on Sunday? A: Yes.

Q: How long did you all play cards down there? A: I reckon about half an hour.

Q: You and Mr. Gaddy and who? A: Dan Bright and Erwin Baldwin.

Q: You were all drinking down there? A: Yes, Dan had a little whiskey and Jim had a little whiskey, and George had some whiskey.

Q: After playing cards there, where did you go? A: I went home and went to the Meeting House, and Jim and them went to the dam, and when I come to the dam's edge I seen them there, and me and Dan went back up to the house.

Q: I thought you said you saw George coming out of the door? A: No sir; I said I met him.

Q: Where? A: At the platform, near the bulkhead.

Q: You and Bright went to the house? A: Yes.

Q: Bright went upstairs? A: Yes.

Q: And you went where your wife was? A: Yes, in the far room, in the kitchen.

Q: Gaddy only stayed a few minutes if he had just come from the house? A: I don't know. It might have been ten or fifteen minutes or it might have been two or three minutes; he might have come right on.

Q: When you went in there what was your wife doing? A: She was crying.

Q: Who was with her? A: Nobody at all.

Q: Where was your mother then? A: I don't know whether she was there or coming down from Beaverdam.

Q: She was there, wasn't she? A: No sir; she came there that evening.

Q: She took dinner there? A: Yes, I guess she did; I did not eat any dinner.

Q: This trouble took place in the afternoon? A: It was about two o'clock I think.

Q: And when you went in she showed you her waist? A: Yes, and she was crying.

Q: Did she show you her waist? A: She had it on and I saw it was torn and she said George done it.

Q: How did you notice it was torn up? A: It was torn all up in the back.

Q: And she had the waist on? A: Yes.

Q: You cannot be mistaken about her having the waist on? A: No sir.

Q: You stayed in there some time after she told you? A: No sir; I guess I stayed in there two or three minutes.

Q: And then just went out? A: Yes.

Q: Did you leave anybody in there with her? A: No sir.

Q: And then you went by this wagon where the stick was? A: Yes.

Q: Weren't you standing in the yard when Gaddy come out? A: No sir; I was walking when he passed me.

Q: That waist that your wife had on that day, did you see that waist after that? A: No sir.

Q: You never have seen the waist off of her? A: No sir.

Q: On you way down there you passed Mr. Woodfin Gaddy? A: Yes and he said "Let's go up to the store and take out a warrant for it."

Q: Didn't you say you were going to do it and he said not to do it? A: No sir.

Q: And when you got down there he had his back to you? A: He had his side towards me.

Q: Which way did you strike him? A: I struck him on the shoulders first like and then I struck him on the head.

Q: Why did you hit Mr. Jackson? A: He ran back there and said, "What in hell you got to do with it?" He was drinking and...

Q: Where did you go then? A: To Mr. Gaddy's and then up to the top of the hill and went to Rome Duckett's.

Q: How long did you stay there? A: I stayed in the pines over there up on the mountain.

Q: What time did the officer's arrest you? A: About half past nine o'clock.

Q: Which Mr. Duckett's did you go to? A: Mr. Rome Duckett's

Q: I ask you if you did not tell Mr. Duckett, that you had killed one of those men and that you ought to have killed the other? A: No sir; I said that I thought I had killed George Gaddy, and I did not say anything about killing anybody. I understood that Jackson went up to Mr. Bryson's and tried to borrow a pistol to kill me with.

Q: That was after the trouble? A: Yes.

Q: You know Mr. Morgan very well? A: Yes.

Q: He did live with your family a good while? A: I heard him say that he did...

Objection by Defendant.

Q: He lived with your mother while your father was in the penitentiary? A: Not that I remember.

Objection by Defendant.

Q: Your father was in the State Prison?

Objection by Defendant.

MR. CARTER: It was reported that his father was shot and killed, and Mr. Morgan, one of the most honorable men in the county, married her when she was supposed to be a widow, and lived with her about a year and after that learned that the man was not dead. As soon as they found it out, they separated and have never lived together since.

THE COURT: How old was old man George? A: About 28 or 29 years old.

Q: Any older than that? A: I don't know.

Q: His wife was older than he? She is a mother-in-law? A: Yes.

Q: How old is that girl that you married? A: She is about sixteen, I think.

Q: You say you met George coming away from that house? A: Yes.

Q: How long had it been since you were playing cards with him? A: It had been that morning, I guess about eight o'clock.

Q: Was this Sunday you killed this man? A: Yes.

Q: And you were all there? A: Yes.

Q: Then where did you go after you bought the fish? A: I don't know; I went to the door and Jim Gaddy had a fish trying to sell it to Mr. Jackson.

Q: He said that was about eight o'clock, and then you went back in the house? A: Yes.

Q: How long did you stay there? A: Not but a little bit.

Q: Then you went down to where they were? A: Yes, for a drink and...

Q: Did you get a drink? A: I got one or two.

Q: Where did you go after you got through there? A: I went home and went up to the new Church House.

Q: Why did you go up there? A: I went up there to see the building; they had not finished it.

Q: What time was it you went up to the new church house? A: It as about 11 o'clock when I came back from the church.

Q: Who was with you? A: Nobody.

Q: Where did you get with Gaddy? A: At the dam.

Q: When you came back from the church you got him at the dam? A: Yes.

Q: What were you doing there? A: Just watching the boys fishing, and Dan Bright and them went in seining.

Q: Then where did you go? A: Me and Dan came up the road and met George at the bulkhead.

Q: How far is that from the house? A: About two hundred yards.

Q: Did he go any further? A: Yes, turned and went up to my house.

Q: Where was your wife when you and Dan got there? A: In the kitchen.

Q: Who was on the place when you got there? A: Nobody that I know of.

Q: Who lived in the house besides yourself? A: There were three families lived upstairs.

Q: Were those there that day? A: I don't know whether they were or not.

Q: Did you see anybody there when you got back except your wife? A: No sir.

Q: When you went into the house what did you do first? A: I asked her what she was crying about and how come her waist tore.

Q: What did you say to Dan? A: I never opened my mouth to him, and Mr. [Woodfin] Gaddy came up the road and said that Gaddy tried to cut him, and Dan put a rock in his pocket and said, "I will help you murder him." I never opened my mouth though.

Q: Why was Dan going down there to help you murder him? A: I never said a word to Dan that I was going to whip George. Jim Gaddy and Dan both went down with me there where I struck this man. They were talking to me and said, "I will help you whip him."

Q: And you never told him that you were going to whip him? A: No sir; I told my wife I was going to whip him.

THE SOLICITOR: That was your father-in-law, the old man you were speaking of? A: Yes.

REDIRECT EXAMINATION:

Q: There was a woman down there with old man George Gaddy? A: Yes.

Q: What sort of woman? A: I don't know, a white woman, I never saw her before in my life, but I think she was one of the Mountain Street women.

Q: Did you notice anything between Gaddy and the woman when you went up there? A: When I went up there he knelt down and kissed the woman.

Q: All of these other persons who were engaged in this card game were older than you were? A: Yes, except Erwin Baldwin.

Q: And George Gaddy has a child of his own at least twelve years old? A: Yes, I think he has a little boy over twelve years old.

WOODFIN GADDY, a witness introduced on behalf of the defendant, after being duly sworn was examined in chief by Mr. Way as follows:

Q: Where do you live? A: Down at the old Vance House at the bridge, across from the bridge.

Q: What relationship are you to the man that was killed? A: He was my nephew.

Q: What relation are you to Zeke Austin? A: He is my son-in-law.

Q: How long have you been knowing Zeke? A: Pretty much all his life.

Q: What sort of a husband has he been to your daughter? A: He could not have been better; he has always treated her well.

Q: Zeke is nothing but a laboring man? A: No sir.

Q: You never saw him come home drunk or anything like that? A: No sir.

Q: Where did you see Zeke Sunday morning? A: I don't know but what he came over to the barn, while I was currying the mules, just a few minutes before I left home on Sunday.

Q: Do you know George Gaddy's reputation for fighting? A: I have heard of right smart rackets of George having.

Q: Did you see George Gaddy down at the dam Sunday morning? A: I was not down at the dam Sunday morning. He came up to the barn before I left; I saw him there that morning.

Q: What was George Gaddy's condition that Sunday morning? A: He was not to say drunk, but he was drinking right smart.

Q: Was he riotous, flashing his knife around? A: I don't know that he did that morning.

Q: When did that trouble come to him? A: He and my son-in-law had just come home. It was a few minutes after 12 when we left Burnsville Hill.

Q: What son-in-law?

A: George Gaddy's brother, my other son-in-law. And I think it was a little after twelve o'clock when we left there and it is two miles and we walked home and got to the barn and seen that the mules were fed, and saw a big crowd at the barn, and me and him walked down to the dam and sat down a few feet off, and some were fishing and some were seining, and I looked around and I saw a crowd there, and I thought they were trying to raise a racket and I spoke to my son-in-law, George's brother, and said, "Come on, let's go to the house," and George throwed off his coat. I did not know that George had anything in the world against me. He throwed off his coat and said, "God damn it, do you want to take it up?" and I kept watching as I walked along, and I said, "George I don't want to have any trouble with you, I have not got anything against you." My instructions are when any trouble occurs to give Mr. Johnson notice and have them arrested. I am watchman and take care of the place, and I started there, and Zeke and Dan Bright were coming out.

Q: Which direction was Zeke coming when you met him? A: Right to the bridge. I up and told him, and he asked me why I was going in, and I told him that George was up there drinking and I told the he tried to cut me and I turned up there to telephone for Mr. Johnson.

Q: What did Zeke do? A: Went on down there.

Q: How long after you left Zeke before you heard of this man Gaddy being killed? A: It was just a few minutes. I know I came up to the store and it was before I got away from the store where I was telephoning.

Q: Do you know how old George Gaddy was? A: Not exactly; he was pretty close to thirty, maybe a little over that.

Q: Was he a strong, vigorous man? A: Yes, he was a big stout man.

CROSS EXAMINATION:

Q: What did Zeke say when you told him you were going up to notify Mr. Johnson? A: I understood Zeke to say, "let's go back down there," and I told him, "No." I was going to telephone Mr. Johnson, and I think I said not to go down there.

Q: I ask you if Zeke's wife did not tell you that the deceased and Zeke had some trouble that morning?

A: No sir, not until afterwards.

Q: I ask you if afterwards she did not tell you that Zeke and George Gaddy had some trouble that morning? A: No sir; I don't recollect her saying that Zeke and George had any trouble; she told me about this other matter afterwards.

Q: When did she tell you about this other matter? A: It was the next day or so.

Q: What did she tell you? A: About as near as I can recollect she told me what you have heard here.

Q: You have charge of that pond there? A: Yes.

Q: Do you fish down there? A: No sir.

Q: Do you let them? A: No sir.

Q: Do you play cards? A: No sir.

Q: Do you know of their playing cards? A: I have heard tell of it.

Q: How long have you been living at that place? A: Going on five years.

Q: All that land belongs to Capt. Weaver? A: Yes.

Q: I ask you if you have not had charge of everything down there except the machinery, the mechanical mechanism? A: Yes. I would tell the Captain when I would go to the office how they were doing down there, and I would tell him great crowds were coming down from the city and drinking, shooting and cutting up.

Q: Doesn't the public road, the city road run along by the side of that pond? A: Yes.

Q: And most of the people that raise disturbances there come from Asheville? A: Yes.

Q: And would stand there in the road and fish? A: Yes.

RE-CROSS EXAMINATION, BY THE SOLICITOR:

Q: Both Zeke, the deceased, and yourself were employed there by Capt. Weaver? A: I worked for him by the month.

Q: And Zeke and George Gaddy did too? A: No sir; they worked for the cotton mill company.

Q: The cotton mill has nothing to do with the work you have? A: No sir not at all.

MRS. DELIAH TOLLEY, a witness introduced on behalf of the defendant, after being duly sworn, was examined, in chief by Mr. Carter as follows:

Q: I believe you are the sister of Zeke? A: Yes.

Q: Did Zeke's wife tell you about this occurrence between her and George Gaddy, and if so, when did she tell you? A: She told me Monday morning.

Q: What did she tell you Monday morning? A: She told me that George grabbed her and she pulled loose and he grabbed her again and she commenced crying and jerked loose and ran out on the porch.

Q: Did she tell you what he said he was going to do? A: Yes, she said he said he was going to take it away from her.

Q: Did she show you the waist she had on? A: Yes.

Q: What condition was it in? A: The waist was torn.

CROSS EXAMINATION:

Q: You heard Mrs. Austin's statement that she made awhile ago to the Commissioner, out at home? A: Yes.

Q: Did she say she went out on the porch? A: Yes.

Q: What did she say she did next? A: She never said any more.

Q: You heard her state awhile ago that when she came back into the house she pulled off that waist and put on another waist, and that she had on another waist when her husband came in?

A: Yes, I was in the house when she said it, but I was attending to the baby.

Q: Is that the way she told you? A: Just the way I told it is the way she told me.

Q: Did she tell you that she had the waist on when her husband came back or that she had pulled it off?

A: She never said whether she had it on or not.

Q: She also stated that she could not tell what time it was? A: She said it was some time before one o'clock.

Q: She said it was after seven and before one o'clock? A: Yes.

Q: And I will ask you if she did not state that her husband came in and stayed there some time? A: She said that he came in there and just stayed a few minutes.

Q: But she said that she did not know how much less than half an hour? A: Yes.

RE-DIRECT EXAMINATION:

Q: She also said she did not know how much less than fifteen minutes it was? A: Yes.

S.A. JOHNSON, a witness introduced on behalf of the defendant, after being duly sworn, was examined in chief as follows:

Q: What is your business? A: Superintendent of the Weaver Power Company's plant.

Q: How long have you known Mrs. Zeke Austin? A: I have known here since she was a very small girl.

Q: Do you know here general character? A: Yes... it is good.

Q: What do you know about Zeke Austin's general character? A: Zeke came as a water boy and worked for me several years ago. He was truthful and honorable, and he could borrow money whenever he wanted to, he was a good boy.

CROSS EXAMINATION:

Q: You say his character for truth and honesty is good; what is his character in other respects? A: I don't know that I can say anything against his character in other respects. He was always obedient and not bad tempered. I never had a more obedient man than Zeke Austin.

Q: You say that you never heard of his being in any trouble? A: Yes, I have known of his being in some little fights.

Q: You have gone on his bond in this case? A: No sir; I never went on his bond in my life.

DAN BRIGHT, a witness introduced on behalf of the defendant, after being duly sworn was examined as follows:

BY THE COURT:

Q: How old are you? A: Will be 22 the first day of August.

Q: Were you sober that morning? A: I had had a drink of whiskey.

Q: How much? A: I don't know exactly how much.

Q: You went down there and played cards with them? A: Yes.

Q: Did they have any trouble down there? A: No sir.

Q: And after you got through playing cards where did Zeke Austin go? A: Me and Zeke went seining, and I went in pretty deep and got cold and came out and Zeke came out, and I got in the buggy and took the horses and the buggy to the barn and came back.

Q: Did you see Austin when you came back? A: No sir, but when I came down Zeke was in the room with his wife.

Q: Did you go into the room where Zeke and his wife were? A: No sir.

Q: Did you hear them talking in there? A: No sir; not that I could hear.

Q: Did he come out? A: Yes.

Q: Did his wife come out with him? A: No sir, I did not see her if she did.

Q: When he came out, did he seem mad? A: I did not pay much attention to him. Zeke said, "Come and go back with me."

Q: Mr. Gaddy said that George had been down there trying to raise a racked down there; did he say he threatened to cut him? A: He said that he had his knife out.

Q: What did Zeke say then? A: Me and Erwin Baldwin followed down, and I went out about fifty steps above there to a little building. I had to step aside.

Q: Did you tell him you had a rock in your pocket? A: Yes.

Q: Did you tell him you would see him out in it? A: No sir.

Q: Did he tell his father-in-law about what his wife had told him? A: He said something, but I did not listen to what he said.

Q: You did not hear anything that Zeke said? A: No sir; he just said to come and go back with him; so when I came out from behind the building Jimmy called for me to go for the doctor that George Gaddy was killed over there on the bulkhead.

Q: Did you see Zeke after that? A: Yes, over at Mr. Gaddy's house.

Q: Did you say anything to him? A: No sir.

Q: Did you have any conversation with him? A: No sir; I have never talked with him about it; I started off for the doctor, as they told me."

[End of court proceedings in the file]

Zeke Austin was sentenced by the Superior Court at Asheville to a prison term of four years at labor on the state roads. Whether someone interceded on Zeke's behalf with then-governor of North Carolina, W.W. Kitchen, or through other avenues is not known. At any rate, the Governor's Office issued the following document, bearing the seal of office and signed by Governor Kitchen:

"STATE OF NORTH CAROLINA W.W. Kitchin, Governor and Commander-in-Chief. To all who shall see these Presents - GREETING: Whereas, Zeke Austin at the April Term, one thousand nine hundred and seven, of the Superior Court of Buncombe County, was convicted of manslaughter, and by judgment of said Court sentenced to four years on the public roads. And Whereas, It has been made to appear to me that the case is one fit for the exercise of Executive clemency:

Now, Therefore, I, W.W. Kitchin, Governor of the State of North Carolina, in consideration of the premises, and by virtue of the power and authority in me vested by the Constitution of the State, do by these presents, COMMUTE THE SAID SENTENCE to three years on the public roads instead of four, upon the condition that this commutation shall not extend to any other offence whereof the said Zeke Austin may be guilty.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed. Done at our city of Raleigh, this 3rd day of May in the year of our Lord one thousand nine hundred and nine, and in the one hundred and thirty third year of our American Independence.

By the Governor: {Signed} W.W. Kitchin;

{Signed} Alex J. Fried, Private Secretary."