

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Abbeville County

Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2015-UP-066 (S.C. Ct. App. filed 2/4/2015)
11-GS-01-380

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JUN - 1 2015

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JAMES ROSCOE SCOFIELD,

(PETITIONER

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

James Roscoe Scofield, Appellant.

Appellate Case No. 2012-213731

Appeal From Abbeville County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-066
Heard October 15, 2014 – Filed February 4, 2015.

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia; and Solicitor David Matthew Stumbo, of
Greenwood, all for Respondent.

PER CURIAM: In this criminal appeal, James Scofield argues the circuit court erred in denying his motion for a directed verdict on the charge of conspiracy to

commit murder because the State failed to prove the existence of an agreement between Scofield and another party to commit murder. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Crawford*, 362 S.C. 627, 633, 608 S.E.2d 886, 889 (Ct. App. 2005) ("The appellate court may reverse the [circuit court's] denial of a motion for a directed verdict only if there is no evidence to support the [court's] ruling." (citing *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002))); *State v. Galimore*, 396 S.C. 471, 475, 721 S.E.2d 475, 477 (Ct. App. 2012) ("When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." (citation omitted)); *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury." (quoting *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006))); *State v. Needs*, 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998) ("[T]he jury is the judge of which contradictory statement of the witness is the truth." (citation omitted)); *Crawford*, 362 S.C. at 634, 608 S.E.2d at 890 (finding the contradiction between an accomplice's statement to the police and the subsequent trial testimony disavowing knowledge of the defendant's involvement was a matter of weight for the jury to resolve).

AFFIRMED.

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JAMES ROSCOE SCOFIELD,

APPELLANT

APPELLATE CASE NO. 2012-213731

Appeal from Abbeville County

Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2015-UP-066

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for James R. Scofield petitions the Court for rehearing. Counsel respectfully submits that this Court overlooked the fact that there was no direct or substantial circumstantial evidence to prove a conspiracy. The State's evidence of a conspiracy to commit murder was based on the testimony of a co-defendant, John Dylan Calvert. Calvert's statement to police as well as his trial testimony, clarified on cross examination and re-direct examination, failed to prove an agreement between Petitioner and

Calvert required for conspiracy to commit murder. The trial judge erred in refusing to direct a verdict of acquittal for conspiracy to commit murder.

On direct examination, Calvert testified that, "He [Petitioner] called me saying that he wanted me to help him try to murder, I think it's, [the fifteen year old's] mom." (R. p. 68, lines 23-24, Respondent's initial brief p. 6). On cross examination, however, Calvert was questioned about the written statement in which he told police, "Ross Scofield called me Saturday and wanted me to bring knives. I did not ask questions and did. I was going to give them to him and go back home. Last night he was talking about killing her [the fifteen year old's] mother. I don't know who is involved they would not say. They was just talking. I tried to stay out of it." (R. pp. 73 – 77; Defendant's Exhibit #1, R. p. 222). The reference to last night and talking about killing the mother was after Calvert and Petitioner had been arrested. Calvert was asked, "The first time you knew about those knives was when you were sitting in jail. Is that fair to say?" (R. p. 76, lines 2-3). Calvert answered, "Yes, sir." (R. p. 76, line 4). Calvert clarified that when Appellant asked him to bring knives, Calvert did not know why Appellant wanted him to bring knives. (R. p. 75, line 223 – p. 76, lines 1-5). On re-direct examination and consistent with his written statement to police, Calvert confirmed that he did not know what the weapons were for until after both he and Appellant had been arrested and were in jail. (R. p. 76, lines 11-16). Importantly, on re-direct the State asked, "Mr. Calvert, when Mr. Scofield called you and asked you to bring weapons, as you testified earlier, did he tell you what the weapons were for?" (R. p. 76, lines 11-13). Calvert answered, "Not until I was in jail." (R. p. 76, line 14).

Calvert specifically denied knowing of any plan to kill anybody prior to his arrest. Through cross examination and later on re-direct, Calvert confirmed what he initially told police in his statement that he did not know what the weapons were for until after both he and

Appellant had been arrested and were in jail. Calvert's initial testimony indicating that Appellant called and wanted help to murder the mother was based upon what Calvert allegedly learned at the jail **after** the arrest. Respondent's strained reading of Calvert's testimony on direct makes no sense in light of Calvert's specific testimony on re-direct that he did not know what the weapons were for until after he was in jail.

In affirming the conviction this Court relied on State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct.App. 2005) and State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998) for the proposition that a directed verdict of acquittal was not required because the jury is the judge of which contradictory statement made by a witness is the truth. The present case, however, is distinguished from Crawford and Needs because here Calvert did not make contradictory statements. In his statement to police as well as his testimony on cross examination and re-direct examination, Calvert denied knowing why Petitioner wanted him to bring knives.

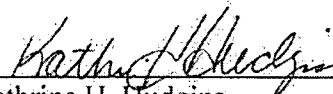
In Crawford, the witness' trial testimony contradicted the sworn statement to the police implicating the defendant. In Crawford the statement to the police constituted substantive evidence of the conspiracy. In the present case Calvert's statement to the police was consistent with his testimony on cross examination and on re-direct. Neither the statement to the police nor Calvert's testimony at trial constitutes substantive evidence of a conspiracy. In Needs the witness gave several conflicting statements and her credibility was an issue for the jury. In the present case, the apparent conflicting statement given on direct was corrected on cross, the corrected version confirmed on re-direct and both were consistent with the written statement provided to police.

In State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) the South Carolina Supreme Court wrote:

On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001) (citing State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)). The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000) (emphasis added). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984).

Viewing the evidence in the light most favorable to the State, the judge erred in refusing to direct a verdict of acquittal for the conspiracy to commit murder charge because the State failed to prove an agreement between Petitioner and Calvert or anyone else to commit murder. While the request to bring knives may have been suspicious, it does not prove an agreement to commit murder. As Calvert testified, at the time of the request by Appellant, Calvert did not know why Appellant wanted him to bring knives

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

This 19th day of February, 2015:

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

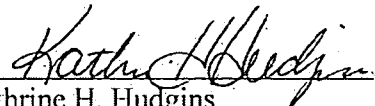
JAMES ROSCOE SCOFIELD,

APPELLANT

APPELLATE CASE NO. 2012-213731

CERTIFICATE OF SERVICE

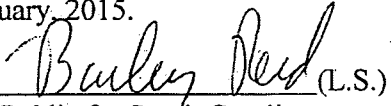
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 19th day
of February, 2015.



Bailey Reed (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.

The South Carolina Court of Appeals

The State, Respondent,

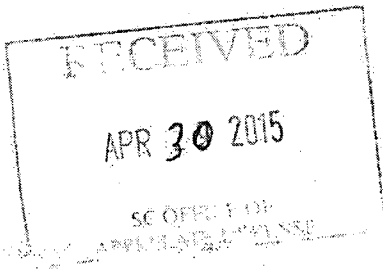
v.

James Roscoe Scofield, Appellant.

Appellate Case No. 2012-213731

ORDER

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



K B Wa J.

John Ooster J.

Stephane P. McQuill J.

Columbia, South Carolina

cc:

- Kathrine Haggard Hudgins, Esquire
- David A. Spencer, Esquire
- Alan McCrory Wilson, Esquire
- David Matthew Stumbo, Esquire
- The Honorable Eugene C. Griffith, Jr.

FILED

April 30, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ROSCOE SCOFIELD,

APPELLANT

APPELLATE CASE NO. 2012-213731

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	IN THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE)	THE COURT OF GENERAL SESSIONS
)	2011-GS-01-00380,00381,00422
THE STATE OF SOUTH CAROLINA,)	
)	
PLAINTIFF,)	
)	
VERSUS)	
)	
)	
JAMES ROSCOE SCOFIELD,)	
)	DATE: AUGUST 28-30, 2012
DEFENDANT.)	ABBEVILLE, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR.

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1 MR. HENDERSON: I've got several motions, Your Honor.
2 I don't know if you want to hear them tomorrow or hear them
3 now. Basically, motions in limine are not evidence.

4 THE COURT: I think we are going to do them today. I
5 want to, when the jury gets here at 9:15, I want all that
6 taken care of and ruled on. All right, tell you what I'm
7 going to do. I'm going to step to the restroom. Let's
8 take a brief break. Let's do it before lunch.

9 (Brief break)

10 PRE-TRIAL MOTIONS

11 THE COURT: All right, Mr. Henderson, you have some
12 motions in limine?

13 MR. HENDERSON: I do, Your Honor. And this will be my
14 first one. (Hands document up to the Judge Griffith) Your
15 Honor, my first motion would be to sequester all witnesses
16 other than the alleged victim, Miss fifteen year old along
17 with the chief law enforcement investigator.

18 THE COURT: As long as it goes both ways.

19 MR. HENDERSON: Absolutely.

20 THE COURT: Not a problem.

21 MR. HENDERSON: Your Honor, in all fairness, under the
22 constitutional amendment of the victim's bill of rights and
23 under the statutory scheme implementing it, fifteen year olds
24 mother, because she is a minor, would also be entitled to
25 be in the courtroom, Your Honor, but that's the only reason

1 she would be allowed to be here and I would ask that if she
2 is allowed in the courtroom, that she and her daughter be
3 kept apart until both of them have testified so that they
4 cannot swap stories and get their testimony together. I
5 have no problem with both of them being in here, but we
6 would ask that until both of them have testified, that they
7 be kept apart.

8 MS. WHITE: Just for clarification, I don't have a
9 problem with that, Your Honor. Would it be all right if
10 ^{fifteen year old} sat on one end of the bench and Kimberly on the
11 other?

12 THE COURT: So as not to attract attention to the
13 jury. They will come in that way when we first start and
14 nobody point it out other than, you know, if you're
15 pointing out the parties, that's fine. We just don't want
16 to alert the jury we've done that.

17 MS. WHITE: Yes, sir.

18 THE COURT: Have them seated as appropriately as you
19 can so they can't communicate efficiently, quietly, or
20 anything like that.

21 MR. HENDERSON: Correct. And, Your Honor, also, none
22 of my witnesses will be here. I've got them all under
23 subpoena, but I will let them know once I call them to stay
24 out of the courtroom until they are called in.

25 THE COURT: All right. Once they have testified, they

1 can remain in the courtroom. I don't want anyone, any of
2 the witnesses passing notes or handing notes in. I mean,
3 y'all know how to try a case. That's a pretty easy rule to
4 follow.

5 MR. HENDERSON: And, Your Honor, my second motion
6 today ---

7 THE COURT: I want to put this on the record. That
8 motion to sequester is granted by agreement.

9 MR. HENDERSON: Thank you. (Hands document to Judge
10 Griffith and Solicitor White) The second one would prohibit
11 anyone from calling fifteen year old or Kim Wagler a victim,
12 anything along those lines. Your Honor, they can be the
13 accuser, they can be the complainant, but I have a problem
14 with anybody referring to them as a victim. They are not a
15 victim in this courtroom or any other courtroom until
16 twelve people have said they are victims. So, Your Honor,
17 we would ask that everybody refer to them either by their
18 name, they can call her ^{fifteen year old}, they can call her Kimberly,
19 they can call them accusers, complainants, they can call
20 them what they want to, but I would ask that anybody be
21 prohibited from referring to either one of them as a
22 victim.

23 MS. WHITE: Your Honor, in the State's theory of the
24 case, she is the victim and so the State would refer to her
25 as the victim. I don't think it constitutes improper

1 vouching. I think that's just what we call her, the same
2 as we call -- it's not so much a comment on the facts, it's
3 just ---

4 THE COURT: I tell you what let's do. I don't want
5 any party addressing the witnesses, call them by Miss,
6 Mrs., by their surname and not by their first name and that
7 will be how the witnesses are handled as they are called.
8 Actually, last weekend at our judicial conference and we
9 spoke about this, personalizing and calling them by their
10 nicknames and I think I never really considered it
11 directly, but we had this conversation last week amongst
12 the judges, and we'll call them by their surname with
13 whatever appropriate salutation in front of that.

14 MS. WHITE: So, for example, Your Honor, the defendant
15 would be Mr. Scofield and Ms. Wagler.

16 THE COURT: Yes. No first names.

17 MR. HENDERSON: That's more than fine, Your Honor.

18 THE COURT: Now, if the mother/parent wants to say,
19 "my mother", my daughter", "my parent", "my father", that's
20 okay in response to questions. Mr. Scofield wouldn't have
21 to call his mother, Mrs. Scofield. He can call her, "my
22 mother". She can call him "my son" if she were to testify,
23 for instance. But y'all are to identify them as "Mr." and
24 "Miss".

25 MS. WHITE: Yes, sir.

1 THE COURT: All right.

2 MR. HENDERSON: And Your Honor, this is just a variety
3 of evidentiary issues and Your Honor, and these are
4 requesting instruction from the Court for the government
5 not to go into certain areas. (Hands document to Solicitor
6 White and Judge Griffith)

7 MS. WHITE: Your Honor, I can -- if I can have just a
8 minute to review this. I know right off the bat that some
9 of these are not an issue.

10 THE COURT: I'd like that. I will give you a moment.

11 (Brief break)

12 MS. WHITE: Your Honor, with regards to numbers
13 1,2,3,4,and 7, I have no intention of going into any of
14 those areas. With regards to number 5, the only issue I
15 have with that is that I would like to elicit testimony
16 from the officer as to what occurred up to the point when
17 he stopped answering questions. There were several
18 questions that were answered prior to his refusing to give
19 a written statement, so I would like to get into that.

20 THE COURT: Well, I think if the testimony were to go,
21 if you asked the defendant Mr. Scofield these questions,
22 answer, and he declined to answer further questions, that's
23 where you stop.

24 MS. WHITE: Yes, sir.

25 THE COURT: And not elaborate any further about the

1 conversation continuing.

2 MR. HENDERSON: Your Honor, there is a handwritten
3 statement allegedly given by my client, that's not in his
4 handwriting.

5 MS. WHITE: Your Honor, it actually was not
6 handwritten by the defendant and I would not be going into
7 that.

8 MR. HENDERSON: A part of it says I don't want to give
9 any more statements and there is a dispute about what was
10 going on, but I don't want to see a written statement ---

11 MS. WHITE: I'll not be getting into that.

12 MR. HENDERSON: --- coming into evidence commenting on
13 his right to remain silent.

14 THE COURT: She said it's not coming in and so she's
15 not going to mention it.

16 MR. HENDERSON: Okay.

17 MS. WHITE: Yes, sir. And with regard to number 6,
18 Your Honor, I think that goes to the contributing, one of
19 the elements I would use for contributing to the
20 delinquency of a minor. The complaining witness and the
21 defendant are running from the police. He is encouraging
22 her to run from the police. That goes to him having her,
23 attempting to keep her from going back to her parents and
24 that goes to proof on the contributing.

25 Mr. HENDERSON: Your Honor, I see it a different way.

1 My client and Ms. fifteen year old were, I guess for the want
2 of a better word, arrested in a Confederate graveyard right
3 up here, right up the street and at that point in time,
4 neither one of them had any reason to believe the police
5 were looking for them. I mean, it's dark, they are
6 running. I mean, there's no evidence here that it was for
7 flight purposes and that's why I'm thinking if somebody
8 testifies that they are running away, it would suggest that
9 it was for flight purposes when there is no evidence being
10 produced as far as I know that they even knew the police
11 were looking for them.

12 THE COURT: I mean, how do you run from someone that
13 you don't know is looking for them? Can you?

14 MR. HENDERSON: I'm not sure of that, Your Honor.
15 That's why I don't want the police to testify they were
16 running from them. They didn't know they were looking for
17 them.

18 THE COURT: All right. I don't know how the testimony
19 will play out, but that would make a difference for me.

20 MS. WHITE: And Your Honor, I think what the testimony
21 -- again, this is something that will come out during the
22 trial, but I think how the testimony is going to play out
23 is that they at least knew that fifteen year old mother was looking
24 for them, because she had attempted to call them throughout
25 the day.

1 THE COURT: All right. I will reserve ruling on that
2 depending on how the testimony plays out, but I caution Ms.
3 White, don't elicit testimony from a law enforcement
4 officer that says they were running from me if they had not
5 identified themselves. You understand, you know the facts
6 better than I do. You understand what his objection is and
7 if you are getting close and you think of a question, let's
8 take a sidebar and you tell me, "I'm about to ask this
9 question," and if I put something on the record, we'll do
10 it then. You know when you're getting close to that
11 factual question that he has an objection to. Alert me to
12 it, we'll take a sidebar and either make a decision or take
13 a break and proffer it or otherwise. We'll just handle it
14 that way, okay? Fair enough?

15 MR. HENDERSON: Absolutely, Your Honor.

16 THE COURT: All right.

17 MR. HENDERSON: And, Your Honor, I think this may be a
18 moot point now from our conversations in chambers, but I
19 don't believe that the solicitor intends to try to
20 introduce the forensic interview or the video tape or a
21 forensic interviewer.

22 MS. WHITE: It's my understanding that I cannot
23 introduce the interview or the tapes. I have no ---

24 THE COURT: All right. That makes it easier for me.

25 MR. HENDERSON: Absolutely. That's what my last

1 motions dealt with, Your Honor.

2 THE COURT: Well, that's agreed to, then. All right.
3 The only thing y'all are alerting me to is the potential
4 testimony regarding the departure or running or failure to
5 listen to a law enforcement officer, so when y'all know
6 that's coming, let me know. Anything else?

7 MS. WHITE: Nothing more from the State, Your Honor.

8 THE COURT: All right, good enough. Folks, we'll see
9 y'all at 9:15 in the morning. I'll try to be here at 9:00.
10 I'll leave Newberry at 8:00, I'll be here at 9:00, so if
11 anything comes up between now and then, let me know. Tell
12 me the bond situation. The jury has not been sworn and so
13 it's not my inclination to hold him.

14 MR. HENDERSON: Your Honor, he's been out on bond.
15 It's around \$20,000.00, Your Honor. He's been out on bond
16 for well over a year under a strict no contact order from
17 the Waglers. He's obeyed all that. He lives with his
18 mother and stepfather. He's gainfully employed.

19 THE COURT: All right. Mr. Scofield, I will remind
20 you of this: you are still under the terms of your bond and
21 the main condition of your bond is to stay out of trouble.
22 The second condition is to come to court when told to do
23 so. I'm sitting here telling you to be in court at 9:00 in
24 the morning, or earlier if your lawyer wants to see you
25 earlier, but if you're not here tomorrow morning at 9:00

1 when I get here, I will issue a bench warrant for your
2 arrest. I will start the trial without you and the jurors
3 will see your empty chair sitting there and I'm certain
4 your lawyer can counsel you on how that will appear to the
5 jury, so you keep being on good behavior and be here in the
6 morning appropriately. I'm certain you will be, but I have
7 to advise you of that as a part of my job. Okay?

8 MR. SCOFIELD: Yes, sir.

9 THE COURT: Very good. See you in the morning.

10 MR. HENDERSON: Thank you, Your Honor.

11 AUGUST 29, 2012 - MORNING

12 THE COURT: Good morning, everyone. Are y'all ready
13 to go to work? All right, are we ready?

14 MS. WHITE: Yes, Your Honor.

15 MR. HENDERSON: Yes, sir, Your Honor. One thing I was
16 thinking of, too, in regards to the sequestration order,
17 Mr. Goranson, who is the assistant public defender, is
18 actually on my witness list and I asked him to stay out of
19 the courtroom. He may need to come in for something, but I
20 told him if he has to come in for something, to get back
21 out as quickly as possible.

22 THE COURT: Okay. I'll put Mr. Bowie on him. Keep
23 Shane out of here, Mr. Bowie.

24 MR. BOWIE: Sir?

25 THE COURT: Shane, Mr. Goranson, don't let him in

1 here.

2 MR. BOWIE: Yes, sir.

3 THE COURT: All right. Bring me the jury.

4 (Jury in at 9:26 a.m.)

5 (Judge Griffith appoints Mrs. Barks as foreperson of
6 the jury, off the record).

7 THE COURT: All right. I'm going to remind y'all of
8 the preliminary comments I made yesterday. The case will
9 proceed, you will take your oath in just a moment. The way
10 it works, the State gives an opening statement and then the
11 Defense gives an opening statement. What the statements
12 are for, it kind of lays out a roadmap what they are going
13 to show, the facts of the case and what y'all can expect to
14 hear. And then, after they do those opening remarks...

15 (Clerk of Court has notepads. They distribute them to
16 the jury.)

17 THE COURT: All right, now. If I see that they work
18 pretty well, when we take a break, when y'all get up to
19 leave, just leave them in your seats. Believe it or not,
20 you will probably go back to these same seats the rest of
21 the trial. Everybody gets comfortable and that's their
22 spot. So, when we take breaks, just put them in your seat
23 unless you want to carry them in the jury room. It doesn't
24 matter, that's your choice. Most people I see on a jury,
25 once they get a seat, that's where they want to sit and

1 they just leave their pads in their seat, but however you
2 want to do it, you can tend to that any way you want to.

3 Anyway, back to the opening statements. The State
4 will give their opening statement first and then the
5 Defense will give their statement, then the State will call
6 their first witness. If, during the questioning, one party
7 or the other party has an objection, "Your Honor, I have an
8 objection," and they will say, "heresay or irrelevant," or
9 something like that and since this is a court of record,
10 any time I need to hear that lawyer, I limit them, I tell
11 them I only want to hear one word, I can make a ruling most
12 of the time right there. Sometimes, I want to hear more.
13 Maybe I missed something that you are talking about or I
14 want you to tell me more, then there is no need for y'all
15 to be in here to hear that legal argument about Rule 34 or
16 Rule 75. That's not y'all's job. Your job is to listen to
17 testimony. So, if I make a determination I want them to
18 tell me more, they want to have a record of it so they'll
19 have a full discussion, and I'm going to break. I'm going
20 to say, "I have a matter of law, y'all step into the jury
21 room, get something to drink, use the restroom." Normally,
22 that's when we'll take a break. Other times are, the first
23 witness is usually a longer witnesses, the last witnesses
24 are shorter witnesses, that's how trials work. If we go
25 thirty minutes, forty-five minutes, we'll take a break. If

1 it gets close to lunchtime, 12:30 or so, we'll take a
2 break. If something happens in the midst of that and y'all
3 need a break, anybody, I want to make y'all comfortable
4 best I can and you let me know or Mr. Manning know or
5 somehow get my attention and you'll get a break. From what
6 the lawyers have told me, they anticipate this trial should
7 be over some time tomorrow morning or midday, something
8 like that. We should be done tomorrow and if it takes
9 tomorrow into tomorrow afternoon, this is one trial we
10 won't have to come back for on Friday so, this is the only
11 trial we'll have this week. Okay?

12 Now, remember, no research, no talking about the case
13 during the trial, listen attentively, if you need
14 something, let me know and I apologize I forgot the candy
15 this morning, but I sent my law clerk, she's gone to get
16 some hard candy for you, so when she gets here, in between
17 witnesses, we'll get it to you. I like a little piece and
18 I'm going to let y'all enjoy some, too. I went to a
19 judge's conference in Reno two falls ago and a judge from
20 Seattle told me that jurors like that and I've found
21 juror's love that. It costs about \$10.00 a day to get a
22 jury candy, so I feel like it's a small thing I can do for
23 you. I appreciate your service and I like to do that.

24 All right, those are my comments, preliminary
25 comments. I'll comment to you during the trial if

1 something comes up and I feel like I need to explain things
2 to you. Y'all met Ms. Rice, she's my court reporter. Ms.
3 McMahan here, she's your Clerk of Court. All right, and
4 y'all know who the bailiffs are, I think. You don't?
5 Mr. Manning is right here, Mr. Bowie is over there, Ms.
6 Webb is back there, Mr. Bonds is over there. Anyway,
7 that's the whole crew.

8 Oh, another thing, I knew I'd think of something. The
9 lawyers know and the witnesses know because we've already
10 told them, this is a small courthouse and when y'all come
11 to and from the courtroom, going outside to lunch and
12 coming back, you may see some of the parties. They are
13 told to stay away from y'all, not because of any other
14 reason other than the appearance of someone talking to you
15 creates an appearance of maybe an impropriety. They are
16 not supposed to. The lawyers know it and they tell all
17 their people involved in the case and so if you know one of
18 the lawyers and they don't speak to you, it's because of
19 the court rules. They are not supposed to. After the
20 trial, they will speak to you. They may say, "Good morning
21 or Good afternoon," but that's the whole conversation.
22 They will avoid you and we want to stop y'all from doing
23 something wrong. They are required to not communicate with
24 you. You know, if one side speaks to you and the other
25 side is on the other side of the square, they wonder what

1 y'all are talking about and we're not going to have that.
2 That's just the way it's done. So, everything is done in
3 here on the record, so without anything further, Ms.
4 McMahan, will you place the jury under oath for me.

5 (Oath is administered to the jury by the Clerk of Court)

6 THE COURT: Ms. White.

7 MS. WHITE: Thank you, Your Honor, may it please the
8 Court.

9 MR. HENDERSON: Your Honor, I have a matter to take up
10 outside the presence of the jury.

11 THE COURT: Very well. All right, that's the way it
12 works. Ladies and Gentlemen, sorry y'all didn't get
13 comfortable. If you'll step to the jury room real quick
14 and we will have you right back out here shortly.

15 (Jury out at 9:35 a.m.)

16 THE COURT: All right.

17 MR. HENDERSON: Your Honor, two things. The first
18 thing I noticed, were you going to give an introductory
19 charge about presumption of innocence?

20 THE COURT: No.

21 MR. HENDERSON: Okay. That just kind of caught my
22 attention right off the get-go, number one. And number
23 two, Your Honor, based upon the indictments that were read
24 to the jury, the three indictments that you published: the
25 CSC, on or about the 28th day of May, 2011; contributing to

1 the delinquency of a minor on or about the 28th day of May,
2 2011; and conspiracy on or about the 28th day of May, 2011.
3 Actually, I'm sorry. The CSC indictment was between the
4 1st day of May, 2011 and the 31st day of May, 2011. Your
5 Honor, I'd ask that the government be instructed to limit
6 any testimony to allegations on those dates, because keep
7 in mind, Your Honor, that's what my client has been
8 indicted for, that's what he's been put on notice to defend
9 against and I just don't want any wild accusations from the
10 past to be coming out, because yesterday I made a motion in
11 limine to prevent any of this stuff. The government agreed
12 to that. The government also agreed to amend the
13 indictments yesterday, which was fine. I just want to make
14 sure that the testimony is limited to those days and any
15 argument by counsel limited to those days.

16 MS. WHITE: Your Honor, the only issue that I foresee
17 with that, with regards to the contributing, I think under
18 common scheme of plan and res gestae evidence, the facts
19 that he had been told prior to this date not to be around
20 her, that he was not supposed to be with her, that there
21 had been a continuing course of them having contact even
22 though he knew she was only fifteen and he knew that her
23 mother did not want them to be together, goes directly to
24 motive, common scheme of plan, goes directly to the
25 contributing to the delinquency of a minor charge.

1 MR. HENDERSON: And Your Honor, pursuant to State
2 versus Gentry, the indictment is the notice document. If
3 they wanted to encompass a whole group of months, weeks,
4 years, they could have indicted Mr. Scofield for that.
5 They opted not to, so again, Your Honor, I would ask the
6 Court to limit any argument and any testimony to what, to
7 the days that occurred as alleged in the indictments.

8 MS. WHITE: Under Lyle, Your Honor, I think it's
9 certainly probative and again, it goes to show knowledge,
10 it goes to show intent, it goes to show common scheme,
11 motive, pretty much all the Lyle factors, Your Honor.

12 MR. HENDERSON: And Your Honor, the prejudicial impact
13 of any of that stuff is going to definitely outweigh the
14 probative value. The government, by their own admission,
15 the probative value is May 28, 2011, and I would ask that
16 all that be excluded and that all witnesses be instructed
17 not to talk about that and the government be prevented from
18 arguing that.

19 MS. WHITE: Your Honor, I think that gives the jury a
20 truncated view of the facts and the evidence. They won't
21 have any understanding of how Mr. Scofield and Miss Wagler
22 came to meet. They won't have any understanding of why she
23 was to be with him that day and no understanding of the
24 course of conduct with Mrs. Wagler and why he would feel
25 the need to threaten Mrs. Wagler.

1 MR. HENDERSON: And whose fault is that, Your Honor?
2 It's not Mr. Scofield's.

3 THE COURT: All right. You're arguing now. Stop
4 that. All right, let me ask you the facts as they are
5 going to play out. Mr. Scofield is not going to present a
6 defense that he was unaware of Ms. Wagler's age?

7 MR. HENDERSON: No, that's not an issue. That issue
8 is not a defense, Your Honor, and I know we are not going
9 to be arguing that. That's the reason I consented to that
10 indictment amendment as factual.

11 THE COURT: All right. Now, is the testimony that the
12 mother said, "I really don't want you seeing my daughter,
13 she's too young." I mean, going out and dating is not
14 against the law. If that's the testimony they are going to
15 elicit, you really can't object to that.

16 MR. HENDERSON: Because that is not illegal.

17 THE COURT: Right.

18 MR. HENDERSON: I agree.

19 THE COURT: So, is there going to be testimony that
20 there was improper -- I mean, being incorrigible,
21 disobedient, violating ordinances or whatnot prior to the
22 28th or is it going to be, "she's too young for you to be
23 going out with." There's a difference in my eyes and I
24 don't know how your testimony is going to play out, but...

25 MS. WHITE: Your Honor, the only testimony that I

1 foresee is the initial, "She's too young. I don't want you
2 seeing her." And then fast forwarding to May the 28th when
3 they were still talking on that date. Now, there is
4 testimony from another witness of a phone call on May 27th
5 that has to do with the conspiracy charge.

6 THE COURT: And that's different. I mean, if that's
7 the way you are going to present it, that's okay as long as
8 you aren't going to talk about the violation of trespassing
9 on the 15th or trespassing on the 1st, something like that.

10 MS. WHITE: There are no specific instances I'm going
11 to get into, Your Honor.

12 THE COURT: All right. Fair enough.

13 MR. HENDERSON: And, Your Honor, I mean may I learn
14 the date that Mrs. Wagler allegedly said this?

15 MS. WHITE: My understanding is, sometime in December
16 of 2010.

17 THE COURT: That doesn't seem to be an element of the
18 offense itself, "My daughter is too young to see someone."

19 MR. HENDERSON: And that's what the testimony is
20 limited to in December of 2010, one time, that's what I'm
21 hearing.

22 MS. WHITE: Also, in thinking this through, I would
23 need to get into the fact that she continued to talk to him
24 between that day and May. Otherwise, I don't think it
25 makes any sense that all of a sudden, out of the blue.

1 THE COURT: I think that can be allowed. I mean,
2 that's a sequence of events.

3 MR. HENDERSON: But as I understand it, the
4 government's theory is that my client and Miss ^{fifteen year old}

were called in and that mom didn't have anything to
6 do with that. I just want to make sure I'm following the
7 government's argument and His Honor's ruling based upon the
8 government's representation.

9 THE COURT: I think that's what Ms. White is saying.

10 MS. WHITE: I think the testimony will be that mom
11 didn't want them talking, but I don't know of any specific
12 instances that I will be bringing up.

13 THE COURT: Okay. I think we're okay. All right. As
14 long as we aren't going to go into a prior incidence where
15 there was a violation of a city ordinance or anything like
16 that. I don't think we have anything to worry about. All
17 right, Mr. Bonds, bring them back in.

18 (Jury in at 9:43 a.m.)

19 THE COURT: All right. Ms. White.

20 MS. WHITE: Thank you, Your Honor. May it please the
21 Court.

22 THE COURT: Yes, ma'am.

23 OPENING STATEMENT - MS. WHITE

24 Ladies and Gentlemen, this is a case primarily about
25 obsession. James Scofield was obsessed with fifteen year old

1 and nothing was going to stop him from being with her,
2 nothing and no one.

3 Now, Mr. Scofield and Miss Wagler met on Black Friday
4 in 2010, and it started out as a normal teenage flirtation
5 when they started texting, started calling, kind of began a
6 boyfriend/girlfriend relationship. The problem was, Mr.
7 Scofield was nineteen and Miss Wagler was only fifteen and
8 Miss Wagler's mother, Kim, did not approve and she let them
9 know that. Well, that didn't stop the relationship. It
10 continued through the winter, through the spring, until
11 finally on May 28, 2011, ^{fifteen year old} disappeared one morning on
12 her bike and Mrs. Wagler didn't think anything of it at
13 first. You know, she's fifteen, out riding her bike, and
14 the time goes on and it goes on and it gets to be later in
15 the afternoon and she starts thinking, "Well, how far can a
16 bike ride possibly be?" So, she eventually calls Abbeville
17 law enforcement, "My daughter's missing," and Abbeville law
18 enforcement gets to investigating the case. They start
19 looking for her and they eventually develop information
20 that some people were seen up near Trinity Church here on
21 the square and so they go and they talk to them and they
22 find these two boys, John Calvert and Justin Fields and
23 they have knives on them and that will come into play later
24 and these aren't kitchen knives, these are hunting knives.
25 So, they talk to them and then continue developing

1 information and eventually find Mr. Scofield and Miss
2 Wagler near the cemetery, again, over here behind Trinity
3 Church, and they take them into custody and get Miss Wagler
4 back to her mother and as they are developing information,
5 as they are investigating everything, it comes out that
6 Mr. Scofield had called someone to bring these knives,
7 because he was intent on killing Kim Wagler that night and
8 it also comes out that while they were in the cemetery, Mr.
9 Scofield had sexual intercourse with Miss Wagler, his being
10 nineteen and her being fifteen.

11 You'll hear from a lot of witnesses this morning who
12 will flesh out all the details for you, but that's
13 essentially the State's case, that's essentially what
14 happened that day and I ask you to keep an open mind, to
15 listen to all the evidence and probably tomorrow, we will
16 ask you to find Mr. Scofield guilty of contributing to the
17 delinquency of a minor, criminal sexual conduct and
18 conspiracy to commit murder. Thank you.

19 THE COURT: Thank you. Mr. Henderson?

20 MR. HENDERSON: Yes, sir, Your Honor. May it please
21 the Court. I'm going to use the podium if that's okay.

22 THE COURT: That's fine.

23 OPENING STATEMENT - MR. HENDERSON

24 Ladies and Gentlemen, again, my name is Carson
25 Henderson. I'm sitting here with Mr. Robert Tinsley and we

1 the pleasure of representing Mr. James Roscoe Scofield. I
2 hope you don't get offended by me standing behind the
3 podium. I'm one of these people, I work off of notes and I
4 keep a pen in my hand and that way I don't forget anything.
5 I can't keep everything in my brain.

6 Ladies and Gentlemen, if this wasn't so serious, the
7 allegations, if Mr. Scofield's life and liberty were not on
8 the line, this would kind of be a laughing matter. Folks
9 you're going to hear evidence and this is just a calamity
10 of misunderstandings, mis-communications, jumping to
11 conclusions, this is a bunch to do about nothing.

12 Later on in the trial, His Honor, Judge Griffith, is
13 going to give you some instructions on what the law is. In
14 every criminal case in the United States and in South
15 Carolina, and in Abbeville County, everybody accused of a
16 crime is presumed to be not guilty. As you sit here, Mr.
17 Scofield is presumed to be not guilty, to be innocent, that
18 he did not do what the government is alleging that he did.
19 He's presumed innocent. And Ladies and Gentlemen, the
20 presumption of innocence is a very big deal to people who
21 are innocent, so I want you to keep that in mind as you
22 listen to this testimony.

23 And Ladies and Gentlemen, the case says The State of
24 South Carolina versus James Roscoe Scofield, but Ladies and
25 Gentlemen, he's not on trial today. What is on trial today

1 is the government's theory of the case. Who is on trial
2 today is **fifteen year old** Who is on trial today is Mrs.
3 Kimberly Wagler. Keep in mind, their allegations are on
4 trial. What they are claiming is on trial. You
5 understand, Mr. Scofield doesn't have to do anything. He
6 doesn't have to say anything, he doesn't have to put up a
7 defense. The burden of proof is solely and strictly on the
8 government. I want you to keep that in mind.

9 Once you've heard all the evidence, the only way you
10 will ever be able to convict Mr. Scofield of anything is
11 that if you are convinced beyond all and any reasonable
12 doubt that the government's allegations are true. That's
13 what it boils down to. Beyond all and any reasonable
14 doubt.

15 And Ladies and Gentlemen, what is a reasonable doubt?
16 That is the highest level of proof that our judicial system
17 recognizes. It's the clearest level of proof, it's the
18 cleanest level of proof. It's way up here. (Indicating)
19 It's as close to 100% as you can get. It is beyond all and
20 any reasonable doubt. So, I want you to keep that in mind
21 as you listen to the testimony. To put that in layman's
22 terms, the benefit of the doubt. When listening to the
23 testimony today, you are required in presuming Mr. Scofield
24 innocent and not guilty, you give him the benefit of every
25 doubt that may arise in your mind during the testimony. I

1 want you to keep that in mind. Again, it goes back to the
2 highest level of proof that our judicial system recognizes
3 and again, Mr. Scofield cannot be convicted of anything
4 unless you twelve people are firmly convinced that the
5 government has proven its allegations beyond all and any
6 reasonable doubt.

7 Now, what do I anticipate the evidence showing at this
8 trial? That Mr. Roscoe Scofield and Miss fifteen year old
9 were good friends. He's a male and she's a female. That
10 doesn't make them boyfriend and girlfriend, but they are
11 good friends. The evidence is going to show that he was
12 not dating her. She was fifteen. And that on Saturday,
13 I'll also submit to you that evidence will show that on May
14 28, 2011, that Miss fifteen year old sent a text to my
15 client, Mr. Ross Scofield, who lives in Greenwood, to come
16 over and see her and Ross brought his friend Justin Fields.
17 The evidence will show, I will submit, that they met up in
18 Abbeville that afternoon, that later a gentleman by the
19 name of Dylan Calvert showed up that afternoon. These
20 folks were out playing in the woods, playing in the old
21 Confederate cemetery, jumping creeks. You are going to
22 find that they were doing what kids tend to do, run around.
23 School's out, they are on summer vacation, they are having
24 a good time.

25 I believe that the evidence will show to you, ladies

1 and gentlemen, as well, that after the police found Miss
2 fifteen year old that night, her mother, under the suspicion
3 that she was having sex, took her to a medical doctor for a
4 physical examination and ladies and gentlemen, I will
5 submit to you that physical examination that night was
6 consistent with her having no sex. It will show that her
7 hymen was intact, no discharge, no fluids, no bleeding, no
8 nothing. I will submit to you that that is what the
9 evidence will show.

10 I will submit to you that a couple days later that
11 this idea about these knives coming into play -- and ladies
12 and gentlemen, you are just going to have to listen to the
13 evidence and I will submit to you that any type of theory
14 or conspiracy to kill is baloney. I want you to keep that
15 in mind.

16 And ladies and gentlemen, I will submit to you that
17 the evidence will show that some 70 days after this is when
18 Mr. Scofield was arrested for allegedly having sex with
19 fifteen year old who, remember, on May 28th had been examined
20 and the doctor said she was consistent with no sex and she
21 told the doctor she hadn't had sex. So, keep in mind,
22 that's where we stand, ladies and gentlemen.

23 My client is facing three charges: contributing to
24 the delinquency of a minor, and I will submit to you that
25 the evidence will not support that. Conspiracy to commit

1 murder, killing Mrs. Kimberly Wagler, and I will submit to
2 you that the evidence will not support that indictment and
3 the third indictment was he allegedly had sexual
4 intercourse with Miss fifteen year old and I will submit to
5 you that the evidence will not support that.

6 And ladies and gentlemen, you will hear all sorts of
7 wild allegations, I will submit to you, about these knives,
8 but keep in mind, I want you to listen and I believe the
9 evidence will back me up, that at no time on May 28th did
10 my client ever have possession of any knives. That on no
11 time on May 28, 2011, did he ever talk to Mrs. Kimberly
12 Wagler. I believe the evidence will show that on that same
13 day, he never went to the Wagler household. Again, I want
14 you to keep all this in mind as you are listening to the
15 evidence presented in this case.

16 Again, this is a case of the government
17 misinterpreting and the Waglers misinterpreting and just
18 blowing stuff up out of proportion and I think that's the
19 conclusion you will come to as well once you hear all the
20 testimony presented on this stand and any documents that
21 may be introduced into evidence.

22 And ladies and gentlemen, I will submit to you that
23 once you hear all of this that the only proper verdict and
24 the only just verdict will be to find Mr. Scofield not
25 guilty of everything and I thank you for your time and just

1 ask that you listen closely.

2 MS. WHITE: The State calls Kim Wagler, Your Honor.

3 THE COURT: All right.

4 (After being duly sworn by the Clerk of Court,
5 Kimberly Wagler testified as follows:)

6 CLERK OF COURT: You may be seated.

7 DIRECT EXAMINATION

8 BY MS. WHITE:

9 Q And if you would just state your full name for the
10 court reporter.

11 A Kimberly C. or Kimberly Carol Wagler.

12 Q And Mrs. Wagler, how are you related to fifteen year old

13 A She's my daughter.

14 Q Okay. And what is her date of birth?

15 A [REDACTED].

16 Q So, in May of 2011, how old was she?

17 A She was 15.

18 Q All right. Are you familiar with the defendant, Mr.
19 Scofield?

20 A Yes.

21 Q How -- What is your understanding of the relationship
22 between your daughter and Mr. Scofield?

23 A They were supposed to be dating and when I found out
24 his age, I said no.

25 Q When did you first find out that your daughter was

1 supposed to be dating Mr. Scofield?

2 A In December.

3 Q And how did you find out about it?

4 A I got her phone and I was reading her text messages.

5 MR. HENDERSON: I object to that, Your Honor.

6 THE COURT: On what basis?

7 MR. HENDERSON: Hearsay. She's going to be telling
8 something of what she's reading.

9 MS. WHITE: I'm not going to get into the substance of
10 any of the messages.

11 THE COURT: Why don't you go ahead and ask your
12 question. I agree with you, but...

13 Q What did you do when you found out she was dating Mr.
14 Scofield?

15 A I called him and told him that I did not want him
16 seeing my daughter, that he was 19 and she was 15.

17 Q What was his response?

18 A He said he would do whatever he had to do -- whatever
19 he wanted to do, he was going to see her and it didn't
20 matter what he had to do.

21 Q All right. Fast forward to May 28, 2011. What
22 happened that morning?

23 A We got up. We started our morning cleaning. Her and
24 her brother usually take a bike ride, but she went by
25 herself that day. She took her phone and her

1 brother's phone with her. Two o'clock, three o'clock
2 rolled around, she wasn't home. I called my husband,
3 and he's a truck driver, and he said go ahead and call
4 and file a missing report and so I called around 5:30
5 or 6:00 and filed a missing report and all of our
6 friends were out riding, looking for her, couldn't
7 find her no where and I was calling her on her phone.
8 She wouldn't answer her phone. I mean, I called her
9 non-stop, back-to-back, both phones, and she wouldn't
10 answer so about 9:00 that night I got a call from the
11 Abbeville Police Department saying that they found
12 her.

13 MR. HENDERSON: I object, Your Honor.

14 THE COURT: All right. The objection is hearsay. She
15 can't tell what she was told.

16 Q Without saying what you were told, what happened --
17 what did you do in response to your phone call?

18 A I went to the police station to pick up my daughter.

19 Q And what did you do from there?

20 A I took her straight to the hospital to get checked
21 because she was rough looking. I asked her ---

22 Q Let me stop you right there. When you say she was
23 rough looking, what was her appearance?

24 A She had scratches all over her. She did not look
25 herself. She just looked like she was wore slap out.

DIRECT EXAMINATION OF KIMBERLY WAGLER BY MS. WHITE

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1 So, I took her to the hospital. I asked for a rape
2 test to be done. He said he was not giving ---

3 Q Without getting into what he said, did he perform a
4 sexual assault kit on her?

5 A No.

6 Q Were you present in the room when he examined her?

7 A They told me to leave the room.

8 Q Did your daughter ever disclose that she had had
9 sexual intercourse ---

10 MR. HENDERSON: I object.

11 Q --- without getting into ---

12 MR. HENDERSON: Your Honor, the only way it's going to
13 be is it's going to be hearsay.

14 MS. WHITE: May we approach, Your Honor?

15 THE COURT: Sure.

16 (Bench conference held off the record)

17 Q Mrs. Wagler, has ^{fifteen year old} ever told you that she has had
18 sexual intercourse?

19 A She was denying it, but finally it came out that she
20 did.

21 Q Okay. And without getting into anything other than
22 where the intercourse allegedly occurred and when it
23 allegedly occurred, what did she tell you about those
24 two things?

25 A I didn't hear you.

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 Q Where did she tell you that it occurred?

2 A In the graveyard on Trinity Street behind Trinity
3 Church.

4 Q When did she say it occurred?

5 A The 28th of May.

6 Q Thank you, Ms. Wagler, answer any questions Mr.
7 Henderson may have.

8 CROSS EXAMINATION

9 BY MR. HENDERSON:

10 Q Hey, Mrs. Wagler. How are you today?

11 A Fine. How are you?

12 Q Good, good, good. I will be moving back and forth
13 because I want to show you some documents. I believe
14 your testimony was that you called the police, I
15 believe you said, around 6:00 or 6:30? I don't want
16 to put words in your mouth.

17 A It was between 5 and 6 or 6:30. I don't know exactly
18 what time, but it was in the evening time.

19 Q So, you are saying between five, six, six-thirty,
20 somewhere around those times?

21 A Yes.

22 Q If I'm not mistaken, that morning ^{fifteen year old} left you a
23 note that she was going out bike riding?

24 A Yes.

25 Q I believe she said something along the lines of,

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 "Mom, I'll be home soon or I'll be home this afternoon
2 to clean up the kitchen."

3 A Uh-huh.

4 Q Is that a yes?

5 A Yes.

6 Q Okay. And I assume that you were not home when she
7 left you this note?

8 A No, sir. I was home.

9 Q Why would she leave you a note if you were home? Why
10 didn't she run in there and say, "Mother, I am ---

11 MS. WHITE: Objection, Your Honor. Calls for
12 speculation.

13 THE COURT: I sustain that.

14 Q Let me ask you, were y'all in opposite rooms of the
15 house?

16 A Yes. I was in my bedroom and she was doing whatever
17 in the house.

18 Q Y'all weren't playing hide and seek, were you?

19 A No. We wasn't.

20 Q She knew you were home?

21 A Uh-huh.

22 Q Is that yes?

23 A Yes.

24 Q And she left you a note and she's got a bike. Doesn't
25 she?

1 A Yes.

2 Q Didn't have a driver's license.

3 A No.

4 Q Not a...

5 A No, sir.

6 Q It's not unusual for her to go out bike riding. Is
7 that fair to say?

8 A No, sir. She rides her bike pretty much every day, or
9 she did.

10 Q Okay. Now, look, there are some documents I have been
11 produced in discovery, Mrs. Wagler, and you are saying
12 you called 911 between five and six-thirty?

13 A I'm thinking -- I don't know exactly what time.
14 That's just what time I'm thinking it was.

15 Q Did you look at any documents to refresh your memory?

16 A No. I sure haven't.

17 Q Let me ask you, who is Patsy?

18 A Patsy Wood?

19 Q I don't know. Who is Patsy, your buddy Patsy.

20 A A friend of mine.

21 Q Okay. If I'm not mistaken, she was the one that
22 called 911 for you. Is that correct?

23 A No. I called and I talked to John Gray or John
24 Garner, one of those.

25 Q Okay. So, Patsy didn't call them?

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 A She did call them. There were several phone calls
2 made.

3 Q All right. Now, again, I haven't seen any statements
4 of that phone call. Is that fair to say?

5 A I guess. I mean, I don't know.

6 Q I'll represent to you that Patsy made this phone call
7 at 8:06 in the evening. Do you dispute that?

8 A I don't know what time it was. I mean, I was guessing
9 it was between five and six-thirty.

10 Q And you would agree that May 28th is good and
11 summertime. Right? Daylight savings time? Do you
12 understand daylight savings time?

13 A Yes.

14 Q Okay. Would you agree that May 28th is daylight
15 savings time, long days?

16 A Yes.

17 Q Okay. And you would agree that when Patsy called the
18 police, that it was still good and daylight outside?

19 MS. WHITE: Objection, Your Honor.

20 THE COURT: What's the basis?

21 MS. WHITE: He's assuming facts not in evidence.

22 MR. HENDERSON: Your Honor, I was just asking if she
23 made this call at 8:00, would it be daylight outside.

24 THE COURT: But she didn't make the call.

25 MR. HENDERSON: Okay.

1 THE COURT: Re-phrase your question.

2 MR. HENDERSON: Okay.

3 Q Assuming that Patsy, your buddy, is it Patsy Wooten?

4 A Wood.

5 Q Wood. Made the call at 8:06 in the evening, it would
6 still be daylight outside, wouldn't it?

7 A Yes.

8 Q Okay. And she was calling on your behalf, wasn't she?

9 A Yes.

10 Q Okay. And at that point in time, you thought ^{fifteen year old}
11 was just out on a bike ride. Didn't you?

12 A I did not think she was out on a bike ride. I knew
13 something was wrong and I was upset.

14 Q Okay. So, that's why Patsy called?

15 A Well, we called several times. I called and she
16 called.

17 Q You being upset, would that be why Patsy told them
18 there were no suspicious circumstances?

19 MS. WHITE: Objection, Your Honor.

20 THE COURT: Y'all come up here.

21 (Bench conference off the record)

22 Q Let me ask you, Mrs. Wagler, were you present when
23 Patsy was making this telephone call?

24 A I don't know. I mean, I don't remember if I was or
25 not. I mean, I can't say I was and I can't say I

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 wasn't.

2 Q And you would agree with me, wouldn't you, that when
3 ^{fifteen year old} left that morning and left that note, she
4 didn't take anything with her, did she?

5 A No, she didn't.

6 Q She didn't pack her bags, did she?

7 A No, she didn't.

8 Q She left you a note that she was coming back home.

9 A Yes.

10 Q And left on her bicycle.

11 A Yes.

12 Q Which was not an unusual occurrence. Is that fair to
13 say?

14 A Yes.

15 Q Mrs. Wagler, did you ever go to Greenwood County where
16 Mr. Scofield lives to seek a restraining order against
17 him?

18 A Yes.

19 Q Do you remember doing that?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes.

23 Q And you remember giving a sworn affidavit in support
24 of that. Didn't you?

25 A Yes.

1 Q And let me -- I'm going to back up a little bit. And
2 you would agree with me, wouldn't you, that your
3 daughter, Miss fifteen year old that she called Mr.
4 Scofield or texted Mr. Scofield that day on May 28th,
5 wouldn't you?

6 MS. WHITE: Objection, Your Honor. Not within the
7 witness' personal knowledge.

8 THE COURT: If she knows.

9 Q If you know. If you don't know, you don't know.

10 A No, I don't know.

11 Q Okay. And you would agree that she talked to Mr.
12 Scofield that day, wouldn't you?

13 A I tried to call both phones and he took both phones
14 away from her.

15 Q And I suppose you were there with them?

16 A No, I wasn't.

17 Q Okay. So, you're speculating, aren't you?

18 A I'm just going by what my daughter said.

19 Q And ^{fifteen year old} left home freely and voluntarily. Is that
20 correct?

21 A Yes.

22 Q And I want to show you this. (Hands witness a
23 document) I don't want you to comment on it, I just
24 want you to read it and see if you recognize it.

25 MS. WHITE: Your Honor, may I also see that?

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 (Mr. Henderson hands Ms. White a document)

2 Q Have you read that, Mrs. Wagler?

3 A Yes, sir.

4 Q And that's your signature under that, isn't it?

5 A Yes, sir.

6 Q Okay. And you gave that statement under oath, didn't
7 you?

8 A Yes, sir.

9 Q You understand what under oath means, don't you?

10 A Yes, sir.

11 Q And you're under oath here today.

12 A Yes, sir.

13 Q And you will see that I've highlighted a couple of
14 things. Haven't I?

15 A Yes.

16 Q I just want to read you a couple things and see if you
17 agree with me that that is your statement and I want
18 to read verbatim, I just want you to tell me if I read
19 it correctly. "I told him that I did not feel that
20 ^{fifteen year old} had run away, because she hadn't taken anything
21 with her and because of the note that she left. Did I
22 read that accurately?

23 A Yes. She didn't take nothing.

24 Q Okay. So, you would agree, that's what you told the
25 police.

1 A Yes.

2 Q Okay. Now, I want to read a part of this other
3 statement to you. "We found out that ^{fifteen year old} had been
4 taken while riding her bike." Did I read that
5 accurately?

6 A Yes.

7 Q All right. So, now you are accusing Mr. Scofield of
8 kidnapping your daughter. Is that what you were doing
9 under oath on that affidavit?

10 A Well, he took her and he was 19 and she was 15 and ---

11 Q Okay. And you're telling the trial jury that he was
12 kidnapping her?

13 A I don't know if he was kidnapping -- I mean, no,
14 because he wasn't charged on kidnapping.

15 Q Then why on earth would you say he took her?

16 A That's what I thought.

17 Q Okay. Sometimes thoughts aren't always correct.
18 Isn't that correct?

19 A No, sir.

20 Q That's not correct? Okay. I want to read you the
21 next thing. "She was held at the cemetery, not
22 allowed to leave." Again, you are accusing Mr.
23 Scofield of kidnapping her. Now, he's not charged
24 with kidnapping, is he?

25 A No, sir.

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 Q Okay. And you would agree that you gave that
2 statement under oath, didn't you?

3 A At the time I believed that he was holding her.

4 Q Okay. And you're telling this jury that now you know
5 he wasn't holding her. Is that fair to say?

6 A He wasn't holding her.

7 Q Okay. So, he wasn't kidnapping her.

8 A No, sir. He wasn't charged with kidnapping.

9 Q So, is it fair to say that you gave an improper
10 statement under oath?

11 A I believed this whenever I gave this to them.

12 Q So, you believed it and so it must have been truthful.
13 Is that what you are trying to tell me, trying to tell
14 this trial jury?

15 A Yes, sir.

16 Q Now, Mrs. Wagler, I believe you also testified a while
17 ago that upon getting your daughter from the police
18 department, you took her to the hospital. Is that
19 fair to say?

20 A Yes, sir.

21 Q And you said that her legs were all scratched up. I
22 believe that was your testimony.

23 A Yes, sir. She had scratches on her legs and on her
24 arms.

25 Q Consistent with her running through the woods, playing

1 in the woods?

2 A She was, they was hid out under a bridge and they had
3 crossed over the bridge and ---

4 Q Now, were you there with them?

5 A No, I wasn't.

6 Q How on earth do you know that? I'm curious.

7 A Because my daughter told me.

8 Q Okay. You weren't there. You don't know what was
9 going on.

10 A No, sir.

11 Q Is that fair to say?

12 A Uh-huh.

13 Q Is that a yes?

14 A Yes.

15 Q Okay. And you said sometime that night you took her
16 to the hospital.

17 A I took her to the hospital time we left the police
18 station.

19 Q And I'll represent to you that was around 10:45.

20 A I don't really know what time it was. I mean, I
21 picked her up between nine and nine-thirty at the
22 police department. We talked to her, talked to, I
23 think it was, Officer Garner, for a little bit and
24 then I left there and went straight to the hospital.

25 Q Actually, I think the law enforcement officer went to

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON 76

- 1 the hospital with you. Didn't he? Or met you there?
- 2 A He was there. He ---
- 3 Q Who was he?
- 4 A I don't remember which one was there.
- 5 Q But one of the Abbeville Police Department officers
- 6 went there with you?
- 7 A They didn't go there with me. They was there whenever
- 8 I showed up.
- 9 Q Right. Y'all were all there together.
- 10 A Yes.
- 11 Q And y'all were there and, I think, nurse Edmunds?
- 12 A Who?
- 13 Q Nurse Anna Edmunds, I believe, was there, or do you
- 14 know?
- 15 A There was a nurse, Anna, there. I don't know her last
- 16 name.
- 17 Q Okay. I'll represent to you that was nurse Anna
- 18 Edmunds.
- 19 A Uh-huh.
- 20 Q And I believe y'all were all there with a Dr. James
- 21 Allen McQuown. Is that right to say?
- 22 A Yes. Uh-huh.
- 23 Q Is that a yes?
- 24 A Yes.
- 25 Q And he was on duty that night.

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 A Yes.

2 Q And you would agree with me that ^{fifteen year old} denied any
3 sexual conduct. You would agree with that, wouldn't
4 you?

5 A Yes. She did.

6 Q She was pretty adamant about that?

7 A Yes..

8 Q Okay. And Dr. McQuown actually gave her a physical
9 examination.

10 A I asked for a rape test. He would not give one.

11 Q So, it's your testimony, you are telling these twelve
12 ladies and gentlemen that you asked a doctor to
13 perform a rape test kit and he said no?

14 A He said no. He said he could look at her and tell
15 whether or not she had been raped or touched or had
16 intercourse in any way.

17 Q And that's what you are saying Dr. McQuown said?

18 A He said that he could tell whether or not she has had
19 intercourse by looking, by examining her and he said
20 he was not going to put her through a rape test
21 because it was like four hours long.

22 Q Okay. And that's your testimony?

23 A And they told me to leave the room while they talked
24 to ^{fifteen year old} by herself.

25 Q Okay. And that's your testimony?

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 A Yes.

2 Q And you are absolutely certain about that?

3 A Yes.

4 Q Okay. Are you sure you don't want to change any of
5 that story?

6 MS. WHITE: Objection, Your Honor. Asked and
7 answered.

8 THE COURT: Okay. One time is plenty.

9 Q You would agree that Dr. McQuown did physically
10 examine ^{fifteen year old} Didn't he?

11 A He, yeah, he examined her, but he didn't use any kind
12 of tools or anything to -- as far as a rape test or
13 anything.

14 Q Ma'am, you're not a doctor, are you?

15 A No, sir.

16 Q Where are you getting your medical expertise from, the
17 internet?

18 A No, sir.

19 Q Friends are telling you this?

20 A No, sir.

21 Q Okay. So, you trust Dr. McQuown to give competent
22 medical services, don't you?

23 A I did that night. I don't trust him now.

24 Q You haven't filed any complaints against him, have
25 you?

CROSS EXAMINATION OF KIMBERLY WAGLER BY MR. HENDERSON

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1 A No, sir.

2 Q And you would agree with me that he examined ^{fifteen year old}
3 that night.

4 A Yes, sir.

5 Q And her hymen was intact?

6 MS. WHITE: Objection, Your Honor. Lack of personal
7 knowledge.

8 THE COURT: I am going to sustain that.

9 Q Okay. You would agree with me, Mrs. Wagler, that the
10 physical examination was consistent with your daughter
11 not having had sex?

12 MS. WHITE: Objection, Your Honor. May we approach?

13 THE COURT: Let's take a break. Ladies and gentlemen,
14 y'all step into the jury room. Remember my admonition not
15 to discuss the case. We'll have you back out here in a
16 minute.

17 (Jury out at 10:17 a.m.)

18 (Bench Conference off the record and brief break)

19 (Jury in at 10:29 a.m.)

20 THE COURT: All right, Mr. Henderson. This is still
21 your witness.

22 MR. HENDERSON: Yes, sir, Your Honor, if it pleases
23 the Court.

24 CONTINUED CROSS EXAMINATION

25 BY MR. HENDERSON:

REDIRECT EXAMINATION OF KIMBERLY WAGLER BY MS. WHITE 80

1 Q Mrs. Wagler, on May 28, 2011, you didn't see Mr. Ross
2 Scofield, did you?

3 A I seen him at the police station that night.

4 Q But he didn't come by your house, did he?

5 A No, sir.

6 Q And on May 28, 2011, you weren't hurt by Mr. Scofield,
7 were you?

8 A No, I wasn't.

9 Q You weren't hurt by anybody that day, were you?

10 A No, I wasn't.

11 MR. HENDERSON: One moment, please. (Mr. Henderson
12 confers with Mr. Tinsley) Nothing further, Your Honor.

13 THE COURT: Very well. Ms. White?

14 MS. WHITE: Very briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. WHITE:

17 Q Mrs. Wagler, was it unusual for ^{fifteen year old} to disappear
18 for the length of time she did that day?

19 A No, sir. No, ma'am.

20 Q All right. And Mr. Henderson asked you a number of
21 questions about daytime versus nighttime. Do you,
22 from your own personal recollection, remember if it
23 was daylight or nighttime at 8:00 on May 28th?

24 A I don't remember.

25 Q And finally, I'm going to hand you the affidavit that

DIRECT EXAMINATION OF fifteen year old BY MS. WHITE

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1 Mr. Henderson had you read from and I've just marked
2 one statement right there. Can you read that for me
3 starting there and ending right there? (Indicating)

4 A "When she had left, she had not returned home by
5 6:30 p.m. I contacted the law enforcement to file a
6 missing persons report. I told the officer ---

7 MR. HENDERSON: Hold on. Object. (Withdraws
8 objection)

9 THE COURT: The Court nods head in acknowledgment)

10 Q And you found out on June 1, 2011?

11 A Yes.

12 Q Thank you, Mrs. Wagler.

13 MR. HENDERSON: Nothing, Your Honor.

14 THE COURT: All right. (Witness leaves the witness
15 stand)

16 MS. WHITE: Your Honor, the State calls fifteen year old

17 THE COURT: All right. Miss Wagler, come forward to
18 be sworn.

19 (After being duly sworn by the Clerk of Court, ^{fifteen year old}
testified as follows:)

21 CLERK OF COURT: Be seated, please.

22 DIRECT EXAMINATION

23 BY MS. WHITE

24 Q If you could just give your full name to the Court.

25 A fifteen year old

THE STATE OF SOUTH CAROLINA VERSUS JAMES ROSCOE SCOFIELD

DIRECT EXAMINATION OF fifteen year old BY MS. WHITE

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1 Q fifteen year old, how old are you?

2 A Sixteen.

3 Q All right. How old were you on May 28, 2011?

4 A Fifteen.

5 Q Where do you go to school?

6 A Dixie High School.

7 Q What grade are you in?

8 A Tenth.

9 Q Are you familiar with Mr. Scofield?

10 A Yes, ma'am.

11 Q Is Mr. Scofield present in the courtroom today?

12 A Yes, ma'am.

13 Q Can you point him out for the jury?

14 A He's right there. (Indicating)

15 MS. WHITE: Your Honor, let the record reflect she
16 identified the defendant.

17 MR. HENDERSON: Stipulated, Your Honor.

18 THE COURT: Stipulated. He stood up.

19 Q How do you know Mr. Scofield?

20 A One of his friends contacted me one night ---

21 MR. HENDERSON: I would object to any outside
22 conversation.

23 THE COURT: Very well. No comments from outside, from
24 -- a friend contacted her. Continue the questions.

25 Q When did you meet Mr. Scofield?

THE STATE OF SOUTH CAROLINA VERSUS JAMES ROSCOE SCOFIELD

- 1 A Black Friday.
- 2 Q What year would that have been, if you remember?
- 3 A I don't remember. Twenty-eleven.
- 4 Q Was it the November before May of 2011?
- 5 A Yes, ma'am.
- 6 Q How did y'all meet?
- 7 A We met on Black Friday at the mall.
- 8 Q When you first met, what was your relationship with
- 9 Mr. Scofield?
- 10 A We started dating.
- 11 Q And when you say, dating, what does that mean?
- 12 A We was boyfriend and girlfriend at the time.
- 13 Q Would you go on dates together?
- 14 A Yes, ma'am.
- 15 Q Did your mother know that you were dating Mr.
- 16 Scofield?
- 17 A She did, but she didn't want us to go out and she kept
- 18 trying to stop us.
- 19 Q How did she find out that you were seeing Mr.
- 20 Scofield?
- 21 A Through my phone.
- 22 Q Did you tell Mr. Scofield how old you were?
- 23 A Yes, ma'am.
- 24 Q And how old did he tell you that he was?
- 25 A He told me he was 19.

1 Q And do you know when his birthday is?

2 A [REDACTED].

3 Q Fast forward just a little bit. Were you contacting
4 or was Mr. Scofield contacting you from November
5 through May?

6 A Yes, ma'am.

7 Q And kind of fast forward to May 28, 2011. What
8 happened that day?

9 A Well, he started texting me that morning and we met up
10 at the square. He got a taxi, and his friend got a
11 taxi on the way to the square and we hung out for a
12 little bit and ---

13 Q Let me stop you right there. About what time did you
14 meet up with him on the square?

15 A About, a little bit like the morning.

16 Q Now, you are talking about the square right out here
17 in Abbeville?

18 A Yes, ma'am.

19 Q It was Mr. Scofield, and who did you say was with him?

20 A Justin Fields.

21 Q All right. And what did y'all do from there?

22 A We hung out for a little bit and it started getting
23 later on and my mom started calling and about that
24 time, he -- I had sexual intercourse with him and he
25 knew I was 15 at the time and I knew he was 19.

1 Q Okay. When you say -- about what time did your mom
2 start calling you?

3 A My mom started calling about four or five.

4 Q Okay. And where, what, if anything, did you do with
5 your phone?

6 A I gave them to Mr. Scofield.

7 Q What did he do with them?

8 A I'm not sure.

9 Q And you said that he had sexual intercourse with you.
10 Where was that?

11 A It was in the graveyard behind the Trinity Church.

12 Q Was anybody else with you at the time?

13 A Justin Fields was around the area.

14 Q But he wasn't standing right there?

15 A No.

16 Q Okay. After you had sexual intercourse with Mr.
17 Scofield in the cemetery, what happened after that?

18 A We started hiding out from the police and my mama
19 because we didn't want them to find us.

20 Q Was there ever any discussion with Mr. Scofield about
21 you were trying to evade your mom and the police?

22 A Yes, ma'am.

23 Q And what happened after that?

24 A Until about nine-thirty or so, we was -- we run back
25 to the graveyard and we got caught by the police. We

DIRECT EXAMINATION OF fifteen year old BY MS. WHITE

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1 didn't know who it was at first and we took off
2 running and they told us to get down and we did and
3 they took us to the police station.

4 Q And after that, what happened?

5 A They investigated ---

6 Q Stopping right there, what else happened that night?

7 A We -- that's pretty much what happened.

8 Q Okay. Did your mom take you to the hospital?

9 A Yes, ma'am.

10 Q Okay. And what happened at the hospital?

11 A My mom asked them to do a rape test on me and he said
12 he wouldn't but he would look at me, that he could
13 look at me and tell.

14 Q Was your mom present in the room when the examination
15 occurred?

16 A No, ma'am.

17 Q Who was in the room with you?

18 A Just me and the doctor.

19 Q All right. And when I say examination, what exactly
20 did he do?

21 A He didn't use nothing. He just looked at me.

22 Q Were you in stirrups? Do you know what stirrups are,
23 the things at the bottom of the hospital bed?

24 A That you put your feet on?

25 Q Yes.

1 A Yes, ma'am.

2 Q So, you were in the stirrups?

3 A Yes, ma'am.

4 Q But he didn't use any instruments or anything like
5 that?

6 A No, ma'am.

7 Q All right. Did he do any -- did he use his hands to
8 examine you?

9 A No.

10 Q And you denied that night that you had had sexual
11 intercourse with Mr. Scofield, didn't you?

12 A Yes, ma'am.

13 Q Why did you do that?

14 A I didn't want my mom to know.

15 Q Okay. And what lead you to eventually admit that it
16 happened?

17 A I was -- I felt guilty and I didn't want to keep that
18 from her.

19 Q Miss Wagler, I know this is tough to talk about, but
20 when you say sexual intercourse, what do you mean?
21 Can you explain to the jury what you mean by that?

22 A Pants took off and the thing in and stuff came inside
23 of me.

24 Q Okay. When you say, "the thing," are you referring to
25 his penis?

CROSS EXAMINATION OF fifteen year old BY MR. HENDERSON

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1 A Yes.

2 Q And when you say, "inside of me," are you talking
3 about your vagina?

4 A Yes, ma'am.

5 Q Miss Wagler, did y'all ever meet up with John Calvert
6 that night?

7 A No, ma'am. I didn't.

8 MS. WHITE: Please answer any questions Mr. Henderson
9 may have.

10 CROSS EXAMINATION

11 BY MR. HENDERSON:

12 Q Hey, Miss Henderson, how are you today?

13 A I'm good.

14 Q Let me ask you, on May 28, 2011, that was a Saturday,
15 wasn't it?

16 A Yes, sir. I believe so.

17 Q Yes, I'll represent to you that it was a Saturday.
18 You wouldn't dispute that, would you?

19 A No, sir.

20 Q And, obviously, you're not in school on Saturdays, are
21 you?

22 A No, sir.

23 Q Okay. And I think, probably, school was out for the
24 summer. Wouldn't it have been?

25 A Yes, sir.

1 Q Okay. And the middle of summer, long days, wasn't it?

2 A Yes, sir.

3 Q About what time do you think the sun went down that
4 night?

5 A Probably around nine.

6 Q Kind of late.

7 A Yes, sir.

8 Q You would agree with that, wouldn't you?

9 A Yes, sir.

10 Q And so, you're telling this trial jury that you had
11 sex in the graveyard while the sun was out and another
12 fellow was in the graveyard with you. Did I hear you
13 right?

14 A Yes, sir.

15 Q During the course of this matter, you have talked to
16 the doctor. Correct?

17 A Yes, sir.

18 Q And I believe you also talked to a lady in Greenwood,
19 didn't you?

20 A About what?

21 Q You talked to a lady, Ms. Boyer, in Greenwood?

22 A Yes, sir.

23 Q So, you've given some statements about what you said
24 happened that night. Didn't you?

25 A Yes, sir.

CROSS EXAMINATION OF fifteen year old BY MR. HENDERSON 90

1 Q Okay. And I noticed, Miss Wagler, that when you were
2 apprehended by police that night, you and Mr.
3 Scofield, I think your testimony was, that you heard
4 somebody and y'all took off running and didn't realize
5 that it was the police?

6 A Yes, sir.

7 Q Okay. I assume they yelled "police" or something
8 along those lines?

9 A Yes, sir.

10 Q And when they yelled, "police", y'all stopped?

11 A Yes, sir.

12 Q Okay. Y'all didn't try to escape from the police once
13 you knew they were the police, did you?

14 A No, sir.

15 Q Okay. And once the police had you in their custody,
16 you didn't mention anything to them about having sex,
17 did you?

18 A No, sir.

19 Q And your mother came and picked you up?

20 A Yes, sir.

21 Q Is it fair to say that when she came to pick you up
22 that your legs were all scratched up?

23 A Yes, sir.

24 Q Y'all had been running through the woods, hadn't you?

25 A Yes, sir.

- 1 Q Jumping creeks?
- 2 A Yes, sir.
- 3 Q Climbing trees?
- 4 A We wasn't climbing trees.
- 5 Q Okay. Wrestling?
- 6 A No, sir.
- 7 Q Okay. But you agree y'all were running in the woods.
- 8 A Yes, sir.
- 9 Q I believe you were wearing shorts that day, weren't
- 10 you?
- 11 A Yes, sir.
- 12 Q So, you were good and cut up and scratched up.
- 13 A Yes, sir.
- 14 Q And you'd been out for a good little while doing that.
- 15 Is that fair to say?
- 16 A Yes, sir.
- 17 Q Okay. Earlier in the day, you would agree with me
- 18 wouldn't you, that your first contact with Mr.
- 19 Scofield was that you sent him a text.
- 20 A No, sir. Yes, sir.
- 21 Q And he texted back.
- 22 A Yes, sir.
- 23 Q Okay. And y'all agreed that he was going to meet up
- 24 with you on the square.
- 25 A Yes, sir.

CROSS EXAMINATION OF fifteen year old BY MR. HENDERSON 92

1 Q And that Mr. Fields was going to come with him. Is
2 that correct?

3 A Yes, sir.

4 Q And you don't drive, do you?

5 A No, sir.

6 Q You don't have a car or a driver's license, do you?

7 A No, sir.

8 Q And to the best of your knowledge, Mr. Scofield
9 doesn't drive or didn't drive, did he?

10 A No, sir.

11 Q Okay. So, he called a taxi over here to see you.

12 A Yes, sir.

13 Q He and Mr. Fields.

14 A Yes, sir.

15 Q Y'all met up.

16 A Yes, sir.

17 Q And ate dinner at the Rough House.

18 A We didn't eat there.

19 Q Okay. Where did you eat at? I noticed you saying you
20 ate around six or seven. Where did you eat at?

21 A We ate in a little, I'm not sure what it was, but it
22 was somewhere around the square.

23 Q In a restaurant?

24 A No, sir. We didn't eat inside a restaurant.

25 Q And where do you eat on the square that ---

- 1 A We ate outside somewhere, in a little pit thing.
- 2 Q I mean, did you order your food someplace or did you
- 3 bring your food with you?
- 4 A Justin Fields went to go get the food.
- 5 Q Okay. So, y'all ordered food some place.
- 6 A Yes, sir.
- 7 Q And ate on the square.
- 8 A Yes, sir.
- 9 Q Okay. To the best of your recollection.
- 10 A Yes, sir.
- 11 Q Okay. And I believe you said that was between about
- 12 6:00 or 7:00.
- 13 A Yes, sir.
- 14 Q And I believe that you said that the police found you
- 15 about 10:00?
- 16 A Nine o'clock.
- 17 Q Nine o'clock.
- 18 A Yes, sir.
- 19 Q Okay. Do you remember telling that lady over in
- 20 Greenwood that you think you had sex around 3:00 p.m.?
- 21 A Yes, sir.
- 22 Q And you would agree that's what you told her?
- 23 A Yes, sir.
- 24 Q Now, you left your house on your bike that morning,
- 25 didn't you?

- 1 A Yes, sir.
- 2 Q And you rode your bike up to the square.
- 3 A Yes, sir.
- 4 Q What did you do with your bike? Did you chain it up
5 to a pole?
- 6 A No, sir. I left it behind a little green building.
- 7 Q Okay. You hid it so nobody could find it.
- 8 A Yes, sir.
- 9 Q Okay. Is that typically, when you bring your bike,
10 how you do that?
- 11 A No, sir. I usually just ride it.
- 12 Q Okay. I mean, you rode you bike to the square is what
13 I'm saying.
- 14 A Yes, sir.
- 15 Q And then you hid it so nobody would steal it.
- 16 A Yes, sir.
- 17 Q Okay. Then, y'all took off on foot. Is that fair to
18 say?
- 19 A Yes, sir.
- 20 Q Okay. I want to ask you, that night when you were
21 taken to the doctor, Miss Wagler, you were adamant to
22 the doctor and the nurse you hadn't had any sex.
- 23 A No, sir.
- 24 Q Weren't you?
- 25 A Yes, sir.

1 Q And I think you said that multiple times, from my
2 reading of the record. Is that fair to say?

3 A Yes, sir.

4 Q And Dr. McQuown, and you know who Dr. McQuown is.

5 A Yes, sir.

6 Q Had you ever met him before?

7 A Yes, sir.

8 Q You had?

9 A Yes, sir.

10 Q Okay. So he asked to get a physical examination of
11 you, didn't he?

12 A Yes, sir.

13 Q Put your feet up in the stirrups, I believe you said.

14 A Yes, sir.

15 Q And visually examined you.

16 A Yes, sir.

17 Q And you would agree with me that your hymen was
18 intact?

19 MS. WHITE: Objection, Your Honor. Subject to my
20 earlier objections.

21 THE COURT: I sustain that for the same reasons. If
22 she knows, but the doctor is coming, isn't he?

23 MR. HENDERSON: Oh, absolutely. Okay.

24 Q But the doctor gave you a physical examination.
25 Didn't he?

1 A Yes, sir.

2 Q Okay. And he sent you home.

3 A Yes, sir.

4 Q Okay. Do you remember the doctor telling you, you
5 needed to follow up with your family doctor?

6 A Yes, sir.

7 Q Okay. And who is your family doctor?

8 A I've forgotten her name.

9 Q If I told you it was Dr. Lindsay Wiles, would your
10 agree with that? Does that name mean anything to you?

11 A I'm not sure.

12 Q Okay. Would you agree you go to see a doctor on a
13 regular basis?

14 A Yes, sir.

15 Q And he recommended that you follow up with your family
16 doctor within two days, didn't he?

17 A Yes, sir.

18 Q Did you do that?

19 A No, sir.

20 Q You didn't do that, did you?

21 A No, sir.

22 Q Okay. Miss Wagler, did Dr. McQuown or his nurse, did
23 they give you any medications to take home with you?

24 A No, sir.

25 Q Okay. And they sent you home, to the best of your

1 knowledge, in good health?

2 A Yes, sir.

3 MR. HENDERSON: Nothing further, Your Honor.

4 THE COURT: Ms. White?

5 MS. WHITE: Beg the Court's indulgence. No further
6 questions, Your Honor.

7 THE COURT: All right. You may step down. (Witness
8 leaves the witness stand.

9 MS. WHITE: The State calls John Calvert.

10 (After being duly sworn by the Clerk of Court, John
11 Dylan Calvert testified as follows:)

12 DIRECT EXAMINATION

13 BY MS. WHITE:

14 Q If you could just state your full name for the record.

15 A John Dylan Calvert.

16 Q Mr. Calvert, do you know Mr. James Scofield?

17 A Yes, ma'am.

18 Q All right. And did you receive a call from Mr.
19 Scofield on May 28, 2011?

20 A Yes, ma'am.

21 Q And what did Mr. Scofield state during that phone
22 call?

23 A He called me saying that he wanted me to help him try
24 to murder, I think it's, ^{fifteen year old's} mom.

25 Q All right. Did he say how he wanted you to help him?

DIRECT EXAMINATION OF JOHN DYLAN CALVERT BY MS. WHITE

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1 A He just told me to get what I could and come up there.

2 Q And by, "what you could," what did you understand that
3 to mean?

4 A Weapons.

5 Q And where were you living at the time?

6 A Hodges.

7 Q And how were you going to come -- or where was he
8 telling you to come?

9 A He was telling me to meet him on the square and he's
10 giving me the Southside Cab number and he sent Mr.
11 Fields to the square to pay for the cab.

12 Q All right. So, Mr. Scofield paid for your cab ride
13 from Hodges up here to Abbeville to the square?

14 A Yes, ma'am.

15 Q Okay. Now, did -- what did you do when you got off
16 the phone with Mr. Scofield?

17 A I come up here.

18 Q All right. Did you bring anything with you?

19 A A couple of knives.

20 Q Okay. Can you describe the knives for me, what they
21 looked like?

22 A One of them had a green handle and green sheath and
23 one of them was a case XX and I don't remember.

24 Q All right. About how big were they?

25 A Machete size.

1 Q Machete size. Could you put that in a measure amount
2 like inches or centimeters?

3 A I think about ten inches.

4 Q Did you actually meet up with Mr. Scofield that night?

5 A Not until after we was locked up.

6 Q Did you meet up with Mr. Fields?

7 A Yes, ma'am.

8 Q How were you and Mr. Fields dressed? Do you remember?

9 A I was dressed all in black and I don't remember what
10 Fields was dressed in.

11 Q After you met, after you saw Mr. Scofield that night,
12 did he say anything with regards to having had sex
13 with Miss Wagler?

14 A Yes, ma'am.

15 Q What did he say about that?

16 A He told me that he's had sex with her in a church and
17 in a graveyard.

18 Q And Mr. Calvert, you were also charged with conspiracy
19 in this incident. Correct?

20 A Yes, ma'am.

21 Q And did you plead guilty to that?

22 A Yes, ma'am.

23 Q All right. And was that pursuant to a plea agreement
24 with the State?

25 A Yes, ma'am.

CROSS EXAMINATION OF JOHN DYLAN CALVERT BY MR. HENDERSON 100

1 Q And what sentence did you receive?

2 A Probation.

3 MS. WHITE: Please answer any questions Mr. Henderson
4 may have.

5 CROSS EXAMINATION

6 BY MR. HENDERSON:

7 Q Hey, Mr. Calvert, how are you today?

8 A I'm doing good. You?

9 Q I can't complain. The police caught up with you and
10 Mr. Fields on the Abbeville square, didn't they?

11 A Yes, sir.

12 Q And right off the get-go, they asked you if you knew
13 where Mr. Scofield was at. Didn't they?

14 A Yes, sir.

15 Q They asked you if you knew where Miss fifteen year old
16 was at. Didn't they?

17 A Yes, sir.

18 Q And you lied to them, didn't you? You told them you
19 didn't know.

20 A Yes, sir.

21 Q That's true, isn't it? You lied to the police.

22 A I didn't know where he was at the time. Justin Fields
23 knew where he was, but I didn't.

24 Q The cops finally broke y'all down and y'all finally
25 told them where they were at. Isn't that fair to say?

CROSS EXAMINATION OF JOHN DYLAN CALVERT BY MR. HENDERSON 101

- 1 A Yes, sir.
- 2 Q And y'all were both arrested for giving false
3 information to police, weren't you?
- 4 A Yes, sir.
- 5 Q You were arrested for lying right off the get-go. Is
6 that fair to say?
- 7 A Yes, sir.
- 8 Q Okay. And you were charged with conspiracy. Is that
9 fair to say?
- 10 A Yes, sir.
- 11 Q Okay. And you haven't given a written statement in
12 this matter, have you?
- 13 A No, sir.
- 14 Q Hand-written something out?
- 15 A No, sir.
- 16 Q You haven't done that, have you?
- 17 A I'm not sure.
- 18 Q Okay. You ought to remember. The government hasn't
19 given me one. Have you given a written statement, or
20 do you know?
- 21 A I ain't sure.
- 22 Q Okay. I'll represent to you that you gave some verbal
23 statements to police. Didn't you?
- 24 A Yes, sir.
- 25 Q Okay.

CROSS EXAMINATION OF JOHN DYLAN CALVERT BY MR. HENDERSON 102

1 MS. WHITE: Your Honor, I'm sorry, may we approach?

2 THE COURT: Sure.

3 (Bench conference off the record)

4 THE COURT: We are going to take a quick break. Y'all
5 get a piece of candy and step into the jury room. Don't
6 discuss the case and I'll get you right back out here as
7 quickly as we can.

8 (Jury out at 10:59 a.m.)

9 THE COURT: Mr. Henderson, let's stand at ease for
10 about five minutes while you review that statement. I'll
11 get some coffee and if you want to put something on the
12 record, we will, and then we will get the jury back out
13 here.

14 MR. HENDERSON: I've only just glanced at it but it
15 looks like it's consistent with what the police said he
16 said, but I just wanted to...

17 THE COURT: We'll take a couple of minutes.

18 (Brief break)

19 (Jury in at 11:12 a.m.)

20 THE COURT: All right. You may continue.

21 CONTINUED CROSS EXAMINATION

22 BY MR. HENDERSON:

23 Q Mr. Calvert, again, how are you?

24 A Doing good.

25 Q I will represent to you that you did give a written

CROSS EXAMINATION OF JOHN DYLAN CALVERT BY MR. HENDERSON 103

1 statement to the police and I will show you this and
2 see if it jogs your memory. Just take a minute and
3 read it and let me know when you're done. (Witness
4 complies) Is that your handwriting?

5 A Yes, sir.

6 Q No doubt about that?

7 A Yes, sir.

8 Q I'm going to let you hold it and I'm going to read
9 over your shoulder. I just want to see, make sure I'm
10 reading it right. You said, "Ross Scofield" -- and
11 that's Mr. Scofield right over there, isn't it?

12 A Yes, sir.

13 Q --- 'called me Saturday and told me he wanted me to
14 bring knives." Is that what you wrote?

15 A Yes, sir.

16 Q Okay. And again, this is an accurate statement, isn't
17 it?

18 A Yes, sir.

19 Q You weren't lying then, were you?

20 A No, sir.

21 Q Okay. Just making sure. I'll continue reading it.
22 "I did not ask questions." So, he called you up and
23 said to bring knives and you didn't ask him any
24 questions. Is that fair to say?

25 A Yes, sir.

CROSS EXAMINATION OF JOHN DYLAN CALVERT BY MR. HENDERSON 104

1 Q Okay. "I was going to give them to him and go back
2 home." Is that accurate?

3 A Yes, sir.

4 Q "Last night he was talking about killing her, ^{fifteen year old's}
5 mother." Is that accurate?

6 A Yes, sir.

7 Q Last night, y'all were sitting in the jail, weren't
8 you?

9 A Yes, sir.

10 Q Well, not last night, but the last night you referred
11 to on this statement.

12 A Yes, sir.

13 Q And you wrote this while you were in jail, didn't you?

14 A Yes, sir.

15 Q The next sentence, "I do not know who was involved.
16 They would not say." Did I read that accurately?

17 A Yes, sir.

18 Q "They was just talking." Did I read that accurately?

19 A Yes, sir.

20 Q "I tried to stay out of it." Did I read that
21 accurately?

22 A Yes, sir.

23 Q So, based upon this statement right here that you just
24 swore under oath is accurate, you didn't know what
25 those knives were for, did you?

REDIRECT EXAMINATION OF JOHN DYLAN CALVERT BY MS. WHITE 105

1 A No, sir.

2 Q The first time you knew about those knives was when
3 you were sitting in jail. Is that fair to say?

4 A Yes, sir.

5 Q Okay.

6 MR. HENDERSON: I don't have anything further, Your
7 Honor.

8 THE COURT: Ms. White?

9 REDIRECT EXAMINATION

10 BY MS. WHITE:

11 Q Mr. Calvert, when Mr. Scofield called you and asked
12 you to bring weapons, as you testified earlier, did he
13 tell you what the weapons were for?

14 A Not until I was in jail.

15 Q Okay.

16 MS. WHITE: No further questions, Your Honor.

17 THE COURT: You may step down. (Witness leaves the
18 witness stand)

19 MR. HENDERSON: I may not be done, Your Honor.

20 (Confers with Mr. Tinsley) I do have a little bit of
21 follow-up, Your Honor.

22 THE COURT: All right. Come back around. (Witness
23 returns to the stand)

24 RE-CROSS EXAMINATION

25 BY MR. HENDERSON:

RE-CROSS EXAMINATION OF JOHN DYLAN CALVERT BY MR. HENDERSON¹⁰⁶

1 Q And again, Mr. Calvert, you would agree that was your
2 statement?

3 A Yes, sir.

4 Q That's your handwriting.

5 A Yes, sir.

6 Q And you've told this jury that that is accurate. Is
7 that correct?

8 A Yes, sir.

9 MR. HENDERSON: Your Honor, I would move that in as
10 Defense #1.

11 MS. WHITE: No objection.

12 THE COURT: Admitted as Defense #1. You will get this
13 when you go in to deliberate. This will be marked by the
14 court reporter.

15 (Whereupon, a written statement given by Mr. Calvert
16 is entered into evidence as Defense Exhibit #1, without
17 objection)

18 THE COURT: Is that it? Is that it?

19 MR. HENDERSON: Oh, yes, sir. I'm done with that
20 witness, Your Honor.

21 THE COURT: Okay. Now you can step down. (Witness
22 leaves the witness stand)

23 MS. WHITE: Your Honor, the State calls Halie Owenby.

24 (After being duly sworn by the Clerk of Court, Halie
25 Owenby testified as follows:)

1 CLERK OF COURT: You may be seated.

2 DIRECT EXAMINATION

3 BY MS. WHITE:

4 Q If you would state your full name for the record,
5 please.

6 A My name is Halie Marie Owenby.

7 Q And Miss Owenby, are you, do you know Mr. James
8 Scofield?

9 A Yes. I know him. I've never really met him in person
10 until now.

11 Q Have you ever spoken with him on the phone?

12 A Yes, ma'am.

13 Q Did you have a conversation with him on or about May
14 27, 2011?

15 A I don't really remember dates, but yeah.

16 Q Would it have been a Friday?

17 A Yes, ma'am.

18 Q What did he state during that conversation with
19 regards to Kimberly Wagler?

20 A He called me and he said, "the deed is done." And I
21 was like, "What are you talking about?" He said, "I
22 did it." I said, "What are you talking about?" He
23 said, "I killed Kim."

24 Q Had he, previous to that conversation, ever said
25 anything to you ---

DIRECT EXAMINATION OF HALIE OWENBY BY MS. WHITE

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1 MR. HENDERSON: I'm going to object to that, Your
2 Honor. I'll go back to my motion when the jury went out of
3 the room.

4 MS. WHITE: And this is going to the, immediately the
5 day before, had you ever had any conversations with him.

6 THE COURT: I'll sustain your objection and ask you to
7 re-phrase your question.

8 Q Had you had a conversation with him the day before
9 about Mrs. Wagler?

10 A I didn't know anything about -- again, I thought he
11 was kidding, because, I mean, he just hated her guts,
12 you know, and I guess, because she didn't want ^{fifteen year old}
13 and him together.

14 Q What did he say during that conversation?

15 A I don't really know if you want me to cuss, but it was
16 like, "I hate that bitch. I want her dead," and
17 stuff.

18 Q So, he was making threats towards Mrs. Wagler?

19 A Yes, ma'am.

20 Q Did he ever threaten that he would do something to
21 Mrs. Wagler?

22 A Yes, ma'am.

23 Q And that was, you think, Friday the 27th?

24 A Yes, ma'am.

25 Q Please answer any questions Mr. Henderson may have for

CROSS EXAMINATION OF HALIE OWENBY BY MR. HENDERSON 110

- 1 A No, sir.
- 2 Q Okay. Not in Aiken County. How long, it took you a
3 while to get up here today, didn't it?
- 4 A Yes, sir.
- 5 Q You told them you would come up here and help them in
6 the courtroom, didn't you?
- 7 A I'd tell the truth.
- 8 Q And you've told -- you just said a while ago that
9 you've never laid eyes on Mr. Ross Scofield. Is that
10 right?
- 11 A No, sir. I've seen some pictures of him and
12 everything.
- 13 Q This is the first time you've ever met him?
- 14 A Yes, sir.
- 15 Q Did you go over and shake his hand today?
- 16 A No, sir.
- 17 Q You haven't really met him today, have you?
- 18 A No, sir.
- 19 Q So, you are saying y'all are swapping all these phone
20 conversations. Is that right?
- 21 A Yes, sir.
- 22 Q I guess you brought those telephone records with you,
23 didn't you?
- 24 A No, sir. That was from a pre-paid phone and that
25 happened a long time ago.

1 Q All right. Well, keep in mind, a long time ago you
2 were asked -- did the government ask you to bring
3 those records with you?

4 A No, sir.

5 Q Okay. Nobody wanted you to bring those records, did
6 they?

7 A I don't know.

8 Q Did anybody ask you to get those records?

9 A No, sir.

10 Q So, it's your testimony that y'all were swapping phone
11 conversations back and forth about how he was wanting
12 to kill Kim Wagler.

13 A Yes, sir.

14 Q And you said that you got this phone call on Friday,
15 May 27th, that he had killed Kim?

16 A Yes, sir.

17 Q And you understand, don't you, that the reason we are
18 here is for May 28th, 2011. Do you know that?

19 A Yes, sir. I'm not really good with dates.

20 Q Okay. You would agree with me though, you understand
21 dates well enough to know that May 27th comes before
22 May 28th, don't you?

23 A Yes, sir.

24 Q Well, make sure. You also said, for whatever reason,
25 Miss Owenby, that you thought he was kidding.

REDIRECT EXAMINATION OF HALIE OWENBY BY MS. WHITE

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1 A Yeah. I mean I wouldn't have took him seriously
2 because at first I thought he was just a person that
3 had hate against her.

4 Q But you have never met him?

5 A Exactly.

6 MR. HENDERSON: Nothing further, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. WHITE:

9 Q Miss Owenby, had you talked to Mr. Scofield on the
10 phone before that Friday?

11 A Yes. Me and Ross had actually become really good
12 friends over the phone and got to know each other.

13 Q How did y'all meet on the phone?

14 A Because of Justin Fields.

15 Q Okay. He put y'all in contact with each other?

16 A Yes, ma'am.

17 Q How many times would you say you talked to him?

18 A He called me a lot. A lot. Mostly about ^{fifteen year old}

19 Almost every phone call was about ^{fifteen year old}

20 Q Were you -- would you say you were kind of a
21 confidante to him, somebody he confided in?

22 A Confided. What does that mean?

23 Q Would he tell you about how he felt and that kind of
24 thing?

25 A Yes. I try to help people with their problems. I

1 really do.

2 Q And you said that you get kind of confused on the
3 dates.

4 A Yeah, I really didn't keep up with that at that time.

5 Q But you testified there was a phone call and then the
6 next day there was another phone call.

7 A Uh-huh.

8 Q Is that correct?

9 A Yes, ma'am.

10 Q And I'm not familiar. Does a pre-paid phone, do you
11 get records of phone calls with one of those?

12 A Honestly, I have no clue. I mean, I guess you could,
13 but I mean that phone has been deactivated for the
14 longest time and I guess if it was still in activation
15 we could look back, but...

16 Q Is it something where your phone company sends a bill
17 every month saying who you called and ---

18 A You buy your minutes.

19 Q Thank you.

20 MS. WHITE: Your Honor, I have no more questions.

21 MR. HENDERSON: Just one thing.

22 RE-CROSS EXAMINATION

23 BY MR. HENDERSON:

24 Q Miss Owenby, you said after you understood what a
25 confidante was. And now you understand what a

1 confidante is?

2 A Yes, sir.

3 Q And you're telling this trial jury that you were a
4 confidante for somebody you don't even know?

5 A Like Justin was my best friend. He was my best friend
6 and he wanted me to help Ross out, because when Ross
7 was, he was a mess and stuff, and I'm one person who
8 will talk with somebody and help them with their
9 problems.

10 Q Okay.

11 MR. HENDERSON: Nothing further.

12 THE COURT: Anything else?

13 MS. WHITE: No further questions, Your Honor.

14 THE COURT: All right. You may step down. (Witness
15 leaves the witness stand)

16 MS. WHITE: Your Honor, may we approach?

17 THE COURT: Sure.

18 (Bench conference off the record)

19 MS. WHITE: Your Honor, the State calls John Garner.

20 (After being duly sworn by the Clerk of Court, John
21 Garner testified as follows:)

22 CLERK OF COURT: Have a seat, please.

23 DIRECT EXAMINATION

24 BY MS. WHITE:

25 Q You can state your full name for the record.

- 1 A John Garner, Jr.
- 2 Q How are you employed, Mr. Garner?
- 3 A I'm a lieutenant with the City of Abbeville Police
4 Department.
- 5 Q All right. How long have you been with the Abbeville
6 City Police?
- 7 A Approximately eighteen years.
- 8 Q What are your current duties?
- 9 A I'm on the patrol shift, a lieutenant.
- 10 Q Were you working on May 28, 2011?
- 11 A Yes, ma'am. I was.
- 12 Q Do you recall if you were working the day shift or the
13 night shift?
- 14 A I believe it was the night shift.
- 15 Q How did you come to be involved in this case we are
16 here for today?
- 17 A We received a call from 911 to go to [REDACTED]
18 in the city limits of Abbeville in reference to a
19 missing juvenile.
- 20 Q And did you proceed with trying to locate -- who was
21 the missing juvenile?
- 22 A We spoke with Kim Wagler, the mother, and the juvenile
23 was fifteen year old
- 24 Q And did you proceed with trying to locate the
25 juvenile?

DIRECT EXAMINATION OF JOHN GARNER BY MS. WHITE

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1 A Yes, ma'am.

2 Q All right. What happened after you received the
3 missing person's report?

4 A Well, we were trying to locate Miss Wagler and we
5 received a call that several subjects, young white
6 males dressed in black, were running from the cemetery
7 behind Trinity Church and we went to investigate that
8 and I located two young white males coming onto the
9 square. They were dressed in black and I stopped to
10 speak with them.

11 Q All right. And did you question them about -- who
12 were the two young males?

13 A The two males I spoke to were, let me refer to my
14 notes, a Justin Fields and a John Calvert.

15 Q And did you question them about the whereabouts of
16 Miss Wagler?

17 A While I was questioning them, I asked what they were
18 doing there and they said they were waiting on James
19 Scofield to come back and they basically told us that
20 Mr. Scofield was in the cemetery behind Trinity Street
21 Church with Miss Wagler.

22 Q Did you -- was there anything unusual -- did you find
23 any weapons on Mr. Calvert or Mr. Fields?

24 A Yes. While we were speaking to the two gentlemen, I
25 notice a knife handle sticking out of the pocket of

1 Mr. Calvert. I did retrieve that knife. It was a
2 fairly large knife and there were several other knives
3 that he had in his backpack.

4 Q All right. Can you -- did you measure the knives and
5 can you describe them for the jury?

6 A I can. The knife that was in his pocket that I seen
7 the handle sticking out was eleven inches long with a
8 six inch blade. Inside the backpack, there were three
9 more knives. One was sixteen inches long with an
10 eleven inch blade, a second was seventeen inches long
11 with a nine-and-a-half blade and the third one was
12 nine inch with a five-inch blade.

13 Q So, these weren't kitchen knives they were carrying
14 around. They were fairly large.

15 A No, they were large knives.

16 Q After you spoke with Mr. Calvert and Mr. Fields, what
17 happened next?

18 A Myself and Sergeant McAlister, an officer on our
19 shift, went to Trinity Street Church. He actually
20 went to Bowie Street, which is a little farther down,
21 and we walked down a pathway to the cemetery where
22 they said they were at and located Miss Wagler and
23 Mr. Scofield.

24 Q And when you say Trinity Street Church, that's here in
25 Abbeville County. Correct?

CROSS EXAMINATION OF JOHN GARNER BY MR. HENDERSON

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1 A Yes, ma'am. It's right off the square.

2 MS. WHITE: Beg the Court's indulgence.

3 Q Were Mr. Calvert and Mr. Fields forthcoming with you
4 at first?

5 A No, ma'am, not at first. I believe they told me they
6 were waiting on Mr. Scofield and I asked them where
7 Mr. Scofield was at and they said he was going to get
8 a motel and then after finding knives and detaining
9 the two gentlemen, they then told me that Mr. Scofield
10 was in the cemetery with Miss Wagler.

11 Q And so they did not admit at first that they knew
12 where Miss Wagler was.

13 A No, ma'am.

14 Q Please answer any questions Mr. Henderson has.

15 CROSS EXAMINATION

16 BY MR. HENDERSON:

17 Q Hey, Lieutenant Garner, how are you doing today?

18 A Pretty good, sir.

19 Q You've got something in your hands, don't you?

20 A Yes, sir. It's my incident report.

21 Q And I'm willing to bet it's an incident report for
22 case number 2011-4167.

23 A Yes, sir.

24 Q Okay. And this is a report describing yours and Mr.
25 McAlister's, Officer McAlister's, investigation.

1 A Yes, sir.

2 Q And during the course of your investigation, what did
3 y'all determine the time was that Mr. Scofield arrived
4 on the square in the taxi?

5 A Just a moment. (Looks at document)

6 Q It's on the first page.

7 A It's on the first page? All right.

8 Q I represent that to you.

9 MS. WHITE: Your Honor, I'm going to object to this as
10 hearsay.

11 MR. HENDERSON: Your Honor, it's during the course of
12 their investigation. It's what they learned.

13 MS. WHITE: It's hearsay.

14 MR. HENDERSON: It's not being offered for the truth.

15 THE COURT: You can answer the question, because I'm
16 going to overrule your objection.

17 A Let's see here. I believe Sergeant McAlister called
18 the taxi service and they said they dropped off Mr.
19 Scofield between 1830, excuse me, between 6:30 and
20 7:00 in the afternoon.

21 Q Six-thirty, p.m. and seven, p.m.?

22 A Yes.

23 MR. HENDERSON: Nothing else, Your Honor.

24 MS. WHITE: No further questions, Your Honor.

25 THE COURT: You may step down.

DIRECT EXAMINATION OF JOHN GRAY BY MS. WHITE

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1 MS. WHITE: And, Your Honor, may he be excused from
2 his subpoena?

3 MR. HENDERSON: No problems with that, Your Honor.

4 MS. WHITE: The State calls John Gray.

5 (After being duly sworn by the Clerk of Court, John
6 Gray testified as follows:)

7 DIRECT EXAMINATION

8 BY MS. WHITE:

9 Q If you could just state your name for the record,
10 please.

11 A Lieutenant John Gray.

12 Q And how are you employed, Lieutenant Gray?

13 A With the Abbeville City Police Department.

14 Q How long have you been with Abbeville City?

15 A I've been with them for about four years now.

16 Q How long have you been in law enforcement?

17 A Since 1995.

18 Q How did you come to be involved in this case,
19 Lieutenant Gray?

20 A I was working a bond hearing and -- it was brought to
21 my attention that morning during a bond hearing.

22 Q Okay. Were you called upon to do some investigation
23 in this case?

24 A Yes, ma'am.

25 Q All right. What were you investigating?

1 A The alleged -- Mr. Scofield and some other people were
2 alleged to harm Mrs. Wagler and her daughter.

3 Q Did you speak to Mr. Scofield about that?

4 A Yes, ma'am.

5 Q All right. When you first spoke to him, did you read
6 him his -- well, first of all, explain to the jury,
7 what are Miranda rights.

8 A It's the rights, you know, that you can advise
9 somebody of their rights to remain silent and you
10 don't have to answer any questions, you have a right
11 to an attorney.

12 Q Did he appear to understand the rights as you read
13 them to him?

14 A Yes, ma'am.

15 Q All right. Did -- can you describe the room you were
16 in when you were speaking with him?

17 A It was actually the courtroom, the City Magistrate's
18 courtroom. It's just a room that we use for
19 Magistrate court purposes.

20 Q And was anyone else present with you when you were
21 speaking with him?

22 A No, ma'am. I don't believe so.

23 Q Did he appear to be under the influence of any sort of
24 drugs or alcohol, anything that would impede his
25 abilities?

DIRECT EXAMINATION OF JOHN GRAY BY MS. WHITE

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- 1 A No, ma'am.
- 2 Q Did you -- after you read him his Miranda rights, what
3 did you do next?
- 4 A I just generally asked him what was going on and what
5 happened and he told me and I asked him to write it in
6 a statement.
- 7 Q Well, what did he tell you what was going on with
8 regard to the knives?
- 9 Q After I mirandized him, I asked him what was his
10 intentions with the knives and he basically said it
11 was to harm Mrs. Wagler.
- 12 Q Did you have another meeting with him later that day?
- 13 A Yes, ma'am.
- 14 Q How did that meeting go?
- 15 A The jail called, Abbeville County jail called and
16 notified us that he wanted to talk to us again.
- 17 Q All right. And that's when you went to the jail?
- 18 A Officer Larry Ashley went to the jail and picked him
19 up and brought him back to the police department.
- 20 Q Okay. And did you -- what happened when he came back
21 to the police department?
- 22 A I mirandized him again and he give us another
23 statement, he give us a written statement.
- 24 Q Do you have someone fill out a form when you mirandize
25 them?

DIRECT EXAMINATION OF JOHN GRAY BY MS. WHITE

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1 A Yes, ma'am.

2 Q All right. I'm going to mark this as State's
3 Exhibit #1. (Court reporter marks exhibit) I am
4 going to hand you what has been marked as ---
5 MR. HENDERSON: Without objection, Your Honor.

6 MS. WHITE: All right.

7 Q It's been entered into evidence as State's Exhibit #1.
8 Can you identify that for me.

9 A Yes, ma'am. This is the form that we use that goes
10 over the rights where Mr. Scofield was advised that he
11 had the right to remain silent and he initialed each
12 one as it was read to him that he understood them.

13 Q Again, at your first meeting with him, that's when he
14 gave you that first statement?

15 A Yes, ma'am.

16 Q All right. And what was that statement, again?

17 A The first one was, I asked him what was his intentions
18 with the knives that they had and he said it was to
19 harm Mrs. Wagler and daughter.

20 Q Let me hand you...

21 (Ms. White has document marked as an exhibit)

22 MR. HENDERSON: Without objection, Your Honor.

23 Q This has been entered into evidence as State's
24 Exhibit #2. Can you identify that for me?

25 A Yes, ma'am. This is the same form, basically, as the

DIRECT EXAMINATION OF JOHN GRAY BY MS. WHITE

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1 first one, but the one that we did later on in the
2 evening.

3 Q All right.

4 A Where his rights were read to him and he initialed
5 them as he understood them.

6 Q All right.

7 (Ms. White has exhibit marked and shows it to Mr.
8 Henderson)

9 MR. HENDERSON: Without objection, Your Honor.

10 Q And if you could identify State's Exhibit #3 for me.

11 A Yes, ma'am. This was the statement that was given to
12 me later that evening by Mr. Scofield.

13 MS. WHITE: And Your Honor, I am moving State's
14 Exhibit #3 into evidence as well.

15 THE COURT: All right. And I believe it's without
16 objection.

17 MR. HENDERSON: Without objection.

18 THE COURT: Very well. They are all, 1, 2 and 3, they
19 are all entered into evidence without objection.

20 (Whereupon, an advisory of rights form is entered into
21 evidence as State's Exhibit #1, a second advisory of rights
22 form is entered into evidence as State's Exhibit #2, and a
23 statement from Mr. Scofield is entered into evidence as
24 State's Exhibit #3, all without objection.)

25 Q And the statement that he gave you the second time,

1 was it the same as his first statement?

2 A No, ma'am. It was not.

3 Q Okay. What was his second statement?

4 A The second statement, would you like me to read it?

5 Q Read it as best you can.

6 A As best I can. It says, "I went up there to see

7 ^{fifteen year old} for a few." It says, "When I went up there,

8 she was in tears and ready to hurt herself." He said,

9 "I was mad and upset from everything that was told to

10 me by Justin Fields so I asked Dylan Calvert to bring

11 a couple of knives and he did so I could hurt myself.

12 Also, ^{fifteen year old} said before I was there that she left a

13 note saying that she would be back in a few. Also,

14 Dylan Calvert did not know what the knives were for."

15 Q Approximately, how much time passed between the first

16 statement and the second statement?

17 A The second statement was given at approximately

18 3:26 p.m. and the first statement was given at 10:58

19 a.m. that morning on the same day.

20 Q Did you have any further involvement with this case?

21 Did you ever speak with ^{fifteen year old}

22 A ^{fifteen year old}, being a juvenile, we left that up for

23 our victim's advocate to set her up for an interview

24 with forensics.

25 Q Please answer any questions Mr. Henderson has.

DIRECT EXAMINATION OF JOHN GRAY BY MS. WHITE

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1

CROSS EXAMINATION

2

BY MR. HENDERSON:

3

Q Hey, Mr. Gray. How are you doing today?

4

A Just fine.

5

Q I want to make sure I heard you right, now. Did you
6 say after you mirandized Mr. Scofield on the morning,
7 I believe that was on May 30, 2011?

8

A Yes, sir.

9

Q That you said that he verbally told you that the
10 knives were to hurt ^{fifteen year old} and her mother, did I hear
11 you right, or ^{fifteen year old}'s mother and ^{fifteen year old} ?

12

A Yes, sir.

13

Q Okay. So, that's what he told you.

14

A Yes, sir.

15

Q Have you charged him with trying to hurt ^{fifteen year old} ?

16

A No, sir.

17

Q Okay. And that morning, when you said that you were
18 questioning him in a room by yourselves, is that fair
19 to say?

20

A Yes, sir.

21

Q In the courtroom over there.

22

A Yes, sir.

23

Q He was handcuffed, wasn't he?

24

A I don't think so.

25

Q Okay. Would you dispute whether or not he was

1 handcuffed?

2 A I can't remember, but I don't believe he was.

3 Q How about shackled?

4 A No, sir.

5 Q He wasn't shackled?

6 A No, sir.

7 Q Okay. So, it's your testimony that he wasn't
8 handcuffed or shackled. And it is your testimony that
9 he told you that he had the knives to hurt ^{fifteen year old} and
10 her mother.

11 A Yes, sir.

12 Q And that's not recorded any place is it?

13 A Are you talking about a voice recording?

14 Q Yes. A voice recording.

15 A No, sir.

16 Q Okay. No video recording of that, is there?

17 A No, sir.

18 Q And he didn't write that down, he didn't sign a
19 statement to that effect, did he?

20 A No, sir. When I asked him to do a statement, he said
21 he wouldn't.

22 Q And all that stuff, none of this is in writing or
23 recorded.

24 A Not in his writing or recorded. No, sir.

25 Q Okay. And then later he did give you a written

DIRECT EXAMINATION OF JOHN GRAY BY MS. WHITE

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1 statement.

2 A Yes, sir.

3 MR. HENDERSON: Nothing further, Your Honor.

4 MS. WHITE: No further questions for Lieutenant Gray.

5 THE COURT: All right. You may step down.

6 MS. WHITE: We'd ask that he be excused from his
7 subpoena.

8 MR. HENDERSON: Without objection, Your Honor.

9 THE COURT: All right. Enjoy your afternoon.

10 LIEUTENANT GRAY: Thank you, sir.

11 MS. WHITE: May we approach, Your Honor?

12 THE COURT: Sure.

13 (Bench conference off the record)

14 THE COURT: We're done. Do you remember that witness
15 I told you about that is coming after lunch? At 2:00 they
16 will be here, roughly, so I'm going to let y'all go to
17 lunch and tend to any business you need to tend to and be
18 back in the jury room before two. Y'all come back to this
19 jury room about 2:00 and we'll get started. Fair enough?
20 Remember, you still can't discuss the case. Leave your
21 notepads here and we'll see you at 2:00.

22 (Jury out at 11:47 a.m.)

23 (Lunch Break)

24 AUGUST 29, 2012 - AFTERNOON

25 (Jury in at 2:03 p.m.)

1 THE COURT: All right, folks. Welcome back. I see
2 you left a little of the bag of candy in here. I may bring
3 some chocolate in the morning. All right, Ms. White, call
4 your witness.

5 MS. WHITE: The State calls Dr. Lyle Pritchard.

6 (After being duly sworn by the Clerk of Court, Dr.
7 Lyle Pritchard testified as follows:)

8 CLERK OF COURT: Have a seat, please.

9 DIRECT EXAMINATION

10 BY MS. WHITE:

11 Q Good afternoon. Could you just state your full name
12 for the record, please?

13 A I'm Lyle Lesesne Pritchard.

14 Q And how are you employed, Dr. Pritchard?

15 A I'm a pediatrician working at Self Regional Hospital.

16 Q All right. And could you tell the jury a little bit
17 about your education and your training?

18 A I finished college at William and Mary and then I went
19 to medical school at The Medical University of South
20 Carolina, Charleston, and then I did a pediatric
21 residency training program in Charleston and also at
22 the University of Alabama at Birmingham.

23 Q And do you have any specialized training in the field
24 of child sexual assault or abuse?

25 A I do. I'm a member of the South Carolina Child Abuse

DIRECT EXAMINATION OF DR. PRITCHARD BY MS. WHITE

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1 Medical Response System and as a part of being a part
2 of that team, that's across the state in various
3 cities across the state, we are required to have
4 special training and we, basically, update that
5 training every year.

6 Q And as a part of that, do you also work part-time for
7 the Sexual Trauma Center in Greenwood?

8 A I do.

9 Q And what does that work entail?

10 A Children who are referred to Child's Place, which is a
11 sexual trauma center for children for physical abuse,
12 sexual abuse, any sort of abuse, I do the medical
13 exams on those children.

14 Q And have you ever been qualified to testify as an
15 expert in General Sessions or in Circuit Court?

16 A I have.

17 Q Approximately, how many times?

18 A I'm not sure of the exact number, but it's between ten
19 and twenty.

20 MS. WHITE: Your Honor, the State moves Dr. Pritchard
21 in as an expert in the field of child sexual assault
22 examinations.

23 MR. HENDERSON: Without objection.

24 THE COURT: All right. Ladies and Gentlemen, by way
25 of explanation, Dr. Pritchard has just been qualified as an

1 expert in pediatrics and, sexual abuse?

2 MS. WHITE: Child sexual assault.

3 THE COURT: Child sexual assault. This is a specialty
4 in the field or expertise in medicine for which Dr.
5 Pritchard is specially trained. Because of that, she is
6 allowed to give opinions which a lay witness, earlier on,
7 what you see, what you hear, and they couldn't testify
8 about things that were told to them. This is a little
9 different. An expert is allowed to provide opinions. This
10 lady is an expert in the field of pediatrics and sex abuse
11 examinations. So, you know. All right.

12 Q Dr. Pritchard, can you explain a little bit about the
13 anatomy of or what is the hymen?

14 A The hymen is the tissue that surrounds the opening of
15 the vagina in little girls.

16 Q And is it right there at the opening or a little bit
17 inside?

18 A No, it surrounds the opening itself.

19 Q Would a finding that a hymen is intact be inconsistent
20 with penile penetration of the vagina?

21 A No. The pediatric literature on sexual abuse in
22 children in legally confirmed cases of sexual abuse
23 have shown that more than half of those exams are
24 normal. The hymen has an opening in the middle and
25 that tissue stretches and so something being put into

1 the vagina may or may not cause an injury to the
2 hymen.

3 Q And is there a difference in the nature of the hymen
4 between a small child and a teenager, someone fifteen
5 to sixteen years old?

6 A Yes, there is. As a part of puberty, the female
7 starts producing increased amounts of estrogen which
8 causes the hymen to become much softer and stretch
9 more easily. It has lots of elastic characteristics
10 that a pre-pubertal child would not have.

11 Q So, a hymen, just -- after sexual intercourse, a hymen
12 can remain intact?

13 A Yes. The word intact is sort of not a medical word.
14 The hymen is just tissue that surrounds the opening
15 and that tissue was there. Whether or not it is
16 injured is more the question or is there evidence of
17 an injury.

18 Q But a lack of injury would not necessarily rule it
19 out?

20 A No. The majority of children that have a confirmed
21 finding of sexual abuse, there has not been evidence
22 of injury to the hymen.

23 Q Dr. Pritchard, when you say confirmed cases of sexual
24 abuse, what do you mean by that?

25 A The study, and I brought the study in case the Court

1 was interested, but it was cases that photographic
2 documentation of the genitals was done of the victims
3 and then these cases went on to be that there was a
4 confirmation in courts that sexual abuse did occur.

5 Q Thank you, Dr. Pritchard. Please answer any questions
6 Mr. Henderson may have.

7 CROSS EXAMINATION

8 BY MR. HENDERSON

9 Q Hey, doctor. How are you today?

10 A I'm good, thank you.

11 Q Do you even know what day fifteen year old was examined?

12 A Yes. I have a copy of the medical records.

13 Q So, you got the medical records?

14 A Yes.

15 Q But you've never talked to Miss Wagler, have you?

16 A No.

17 Q And you weren't at the hospital on Saturday, May 28,
18 2011, were you?

19 A No.

20 Q And you have not physically examined Miss ^{fifteen year old}
21 have you?

22 A No. I have not.

23 Q And you understand from reading that report that she
24 was physically examined?

25 A Yes.

- 1 Q And her legs were put up in stirrups?
- 2 A I didn't see that described. I just saw what the
3 physician saw.
- 4 Q I will represent to you that is a fact in evidence.
5 Was that the appropriate way to do a physical
6 examination of the young lady?
- 7 A Yes.
- 8 Q And you know Dr. McQuown, don't you, or at least have
9 heard of him?
- 10 A Yes.
- 11 Q As far as you know, he's got a valid medical license?
- 12 A He does.
- 13 Q Okay. And doctor, is it fair to say that when you are
14 treating patients, or any doctor is treating patients,
15 that you rely on the accuracy of what patients tell
16 you.
- 17 A That's correct.
- 18 Q I mean, you've got to. Is that fair to say?
- 19 A That's correct.
- 20 Q And as a doctor, if what your patient is telling you
21 matches up with what you see, I mean, doesn't that
22 give you further reason to believe that your patient
23 is being honest with you?
- 24 A Yes.
- 25 Q Okay. And doctor, as far as you know, this is not a

1 confirmed case of sexual abuse.

2 A That's correct.

3 Q Okay. I mean, you haven't seen photographs, have you?

4 A No. In this case, no.

5 Q And you haven't seen any other documentation to
6 confirm that sexual abuse happened here, have you?

7 A No.

8 Q Okay.

9 MR. HENDERSON: I don't have anything further, Your
10 Honor.

11 THE COURT: Any redirect?

12 MS. WHITE: No, sir.

13 THE COURT: All right. Thank you very much.

14 MS. WHITE: Your Honor, could I have about five
15 minutes?

16 THE COURT: All right. We'll just sit right here,
17 then.

18 (Brief break)

19 MS. WHITE: Your Honor, the State rests.

20 THE COURT: Ladies and Gentlemen, you've heard all the
21 witnesses the State is going to call on their case. They
22 can call rebuttal witnesses if they choose to, but the
23 State has presented all their witnesses at this time. I
24 have several matters I need to take up outside your
25 presence. I spoke with the lawyers over lunch and Mr.

1 Henderson and the defense team intends to call two, three
2 or four witnesses.

3 MR. HENDERSON: That's correct, Your Honor.

4 THE COURT: Which I would like to take up in the
5 morning so we are going to release y'all for the day. Is
6 9:15 good for y'all in the morning, like we started this
7 morning? (Nodding of heads) Now, assuming three or four
8 witnesses, and I would anticipate they may be a little
9 quicker than the first four witnesses that we had today,
10 but we'll get done before lunch. We'll probably take a
11 lunch break and then we'll give you the summaries to the
12 case and then y'all will have your deliberation after
13 lunch. So, y'all are released for today and still, an
14 admonition, you cannot discuss the case until I tell you
15 to, but you are done for today. All right. Leave
16 everything in your seat if you like.

17 (Jury out at 2:15 p.m.)

18 DIRECTED VERDICT MOTION BY MR. HENDERSON

19 THE COURT: Do you want to go ahead and do the motions
20 right now, Mr. Henderson?

21 MR. HENDERSON: Be glad to, Your Honor.

22 THE COURT: Okay.

23 MR. HENDERSON: Your Honor, my motion is concerned
24 with the charge of criminal conspiracy. That's, and I
25 think the government on the contributing and the CSC has

1 put up, in the light most favorable to the government,
2 evidence that those two crimes occurred.

3 But as it relates to the conspiracy allegation, Your
4 Honor, if I may discuss a little conspiracy law, that a
5 conspiracy is a combination or agreement between two or
6 more persons for the purpose of accomplishing a criminal or
7 unlawful object or of achieving, by criminal or unlawful
8 means, an object that is neither criminal nor unlawful.

9 Your Honor, in this case, even assuming that all the
10 evidence that the government introduced in their case in
11 chief is accurate, assuming that Mr. Scofield did all this
12 bad stuff they are accusing him of, Mr. Calvert has
13 testified that he was not aware of any malicious intent of
14 Mr. Scofield getting those knives or asking for the knives.
15 And again, that is coming out of the government's own
16 witness' mouth, so there was no agreement, there was no
17 meeting of the minds, ergo, there can be no conspiracy.

18 Step number two, to have a conspiracy, you've got to
19 have proof introduced that the defendants intended to act
20 together for their shared, mutual benefit. There has been
21 no evidence put up of that at all. Even assuming all this
22 stuff is true, there's no evidence that Mr. Calvert would
23 have benefitted from my client wanting to kill Miss
24 Wagler's mother, assuming all this was true.

25 And Your Honor, for that proposition, a couple of, or

1 several cases: State versus Crocker, 621 S.E. 2d 890(S.C.
2 Ct. App. 2005). State versus Gunn, G-U-N-N, and that's
3 from our Supreme Court, 437 S.E. 2d 75, and State versus
4 Stuckey, S-T-U-C-K-E-Y, 556 S.E. 2d 403(Ct. App. 2001).

5 And Your Honor, in the typical conspiracy case, there's got
6 to be mutual benefit. Mr. Tinsley and I are selling drugs
7 so we can make us money. We're, you know, and in some of
8 these cases here you've got defendants who kidnap a woman
9 and rape her, I mean, there's the mutual benefit. It's
10 vulgar mutual benefit, or you are trying to scam people for
11 mutual benefit and again, even in the light most favorable
12 to the government, there is no mutual benefit testimony and
13 there would be no way you could even infer that Mr. Calvert
14 would have benefitted from this action, assuming the action
15 even took place or was going to take place.

16 And so, Your Honor, that's my ground for directed
17 verdict on the criminal conspiracy charge.

18 THE COURT: Now, are you, likewise, making your
19 directed verdict motion on the other two, but conceding
20 there are more facts on those than this one?

21 MR. HENDERSON: Your Honor, I'm not even making the
22 motion of the other two charges. I'd be laughed out of
23 court on that. I mean, the government, in the light most
24 favorable to them.

25 THE COURT: Okay. Fair enough. Ms. White, I'll hear

1 you on conspiracy.

2 MS. WHITE: Your Honor, with regards to conspiracy, I
3 think that although -- Mr. Calvert's testimony shifted a
4 bit from direct to cross, obviously, but Mr. Calvert is not
5 the only conspirator under the State's theory of the case.
6 Mr. Fields was also present. Mr. Fields paid the taxi,
7 according to Mr. Calvert's testimony; and I believe
8 testimony from one of the law enforcement officers was that
9 he had one of the knives when they apprehended him and so
10 there is evidence that the jury could infer that Mr. Fields
11 was also involved in the conspiracy.

12 Your Honor, also, a shared mutual benefit -- and I
13 would like a few minutes to review the case law on that. I
14 haven't looked at these cases that Mr. Henderson stated --
15 but I don't know that it has to be of benefit of something
16 tangible and if I could have just a few minutes to review
17 the case law.

18 MR. HENDERSON: Your Honor, just a quick rebuttal.
19 The same thing with Mr. Fields. There was no benefit there.
20 In fact, he didn't even testify. He just happened to be
21 riding around and playing with them.

22 MS. WHITE: And, Your Honor, what I was getting at
23 was, by tangible benefit, their friendship, camaraderie,
24 being that there are plenty of people who get involved in
25 crimes not because they are trying to get anything out of

1 it, but just because they are along for the ride with their
2 friends, so ---

3 MR. HENDERSON: That's not a conspiracy, Your Honor.

4 MS. WHITE: And that's why I would like just a few
5 minutes to review the case law before I respond any
6 further.

7 MR. HENDERSON: That's a different issue. That's
8 aiding and abetting, that's accomplice liability.

9 THE COURT: All right. Let's do this: Let me read
10 these cases, too, and I'll rule in the morning and that
11 will give you time to present something before we get
12 started.

13 MS. WHITE: Thank You, Your Honor.

14 THE COURT: How about that? All right. We'll stand
15 at ease on this until tomorrow morning at 9:00. The jury
16 will be in at 9:15, so y'all hold the jury out there
17 tomorrow morning in case we're here. Okay?

18 BAILIFF: We'll hold them.

19 THE COURT: All right. And that way, we can finish up
20 while they are coming in. All right. See y'all in the
21 morning.

22 AUGUST 30, 2012 - MORNING

23 CONTINUED ARGUMENT AND RULING - DIRECTED VERDICT MOTION

24 THE COURT: Is there anything else on that directed
25 verdict motion?

1 MR. HENDERSON: Your Honor, I passed up another case
2 to your clerk and to Ms. White, State versus Mouzon, from
3 our supreme court, M-O-U-Z-O-N ---

4 THE COURT: I've read that.

5 MR. HENDERSON: --- 485 S.E. 2d 918.

6 THE COURT: Is that case not distinguishable with
7 having a common scheme as to sell drugs, not necessarily to
8 the same person, whereas, conspiracy to commit murder, not
9 to murder people, but a particular person?

10 MR. HENDERSON: Well, keep in mind, Your Honor, all
11 conspiracies have to have a single, at least one single
12 criminal objective that the parties have agreed to. Now,
13 you can have a conspiracy that's got multiple or single
14 criminal objectives, but here in the case at hand, the
15 government has alleged that Mr. Scofield and Mr. Calvert
16 had one single criminal objective and that was to kill Mrs.
17 Kimberly Wagler. And again, Your Honor, Mr. Calvert did
18 not testify to that. He said he had no idea about that
19 until ---

20 THE COURT: But then he said, he talked about the
21 phone conversation, too. His testimony kind of drifted
22 around a little bit.

23 MR. HENDERSON: I cleaned that up for him, Your Honor.
24 I think, and on re-direct, Ms. White cleaned it up.

25 THE COURT: I agree with you, cleaning it up, but he

1 still testified, "I got a phone call. I'm going to kill.
2 Bring me some knives," and that's not clean, that's clean
3 the other way.

4 MR. HENDERSON: No, Your Honor, I think, as I
5 recollect the testimony, his testimony initially on direct
6 was all one long sentence, for want of a better term, that,
7 you know, "I talked to Mr. Scofield. I brought knives. He
8 said he wanted to kill her." I mean, he just ran all that
9 together and on my cross of him, I broke it down.

10 THE COURT: I know, but then Ms. White also elicited
11 testimony that he pled guilty to conspiracy to commit
12 murder.

13 MR. HENDERSON: Your Honor, I can't help what he pled
14 guilty to.

15 THE COURT: I know. I mean, I agree with you. Your
16 version of the facts is what you did, but you can't tell me
17 that he didn't give this version of facts, also.

18 MR. HENDERSON: Your Honor, actually, he has never
19 given that version of the facts.

20 THE COURT: He did today. I mean, yesterday.

21 MR. HENDERSON: Your Honor, actually, again, on my
22 cross and on the redirect, it was clear that ---

23 THE COURT: I agree with you, it got different. It's
24 clear to you, it's not clear to me. I mean, yeah, you went
25 back and cleaned up. That's what lawyers are supposed to

1 do. You're a good advocate, I'll give you that, but he
2 testified a certain way on direct and I think that's in the
3 evidence. I think that's a jury question. I would be
4 doing the same thing if I were in your shoes, but I think
5 there's enough there that that's a jury question, not a
6 directed verdict issue.

7 MR. HENDERSON: Just note my exception for the record.

8 THE COURT: Oh, absolutely. Sure. So, respectfully
9 denied and you may renew it. All right. Are we ready?

10 MR. HENDERSON: Yes, sir.

11 THE COURT: All right. Bring us the jury, Mr. Bonds.

12 MR. HENDERSON: Oh, before they come out, Your Honor.

My first witness, Dr. McQuown, I'm going to move and put
into evidence his treatment records of Miss fifteen year old
that night. There is one reference in here to alleged
prior bad conduct that I have redacted.

MS. WHITE: I don't think that I have any objection on
that coming into evidence.

THE COURT: Y'all have agreed to every document that's
come in. It's been real easy.

MS. WHITE: No objection, Your Honor.

THE COURT: Okay.

MR. HENDERSON: Your Honor, we can mark this as
Defense #2.

THE COURT: You've been very agreeable with one

DIRECT EXAMINATION OF DR. MCQUOWN BY MR. HENDERSON 144

1 another about the documents. Okay. Then, you can just say
2 you agree it's in evidence when you begin your questioning.

3 (Whereupon, Dr. McQuown's treatment letter is entered
4 into evidence as Defense Exhibit #2, without objection)

5 THE COURT: Bring us the jury, please.

6 (Jury in at 9:31 a.m.)

7 THE COURT: Mr. Henderson.

8 MR. HENDERSON: Yes, sir, Your Honor. We would call
9 Dr. McQuown to the stand. I believe he's sitting out in
10 the lobby.

11 (After being duly sworn by the Clerk of Court, Dr.
12 McQuown testified as follows:)

13 CLERK OF COURT: Have a seat, please.

14 DIRECT EXAMINATION

15 BY MS. WHITE:

16 Q Dr. McQuown, good morning.

17 A Good morning.

18 Q If you would, tell the jury your full name and if you
19 would, spell your last name for the court records.

20 A James Allen McQuown, Jr. That's M-C-Q-U-O-W-N.

21 Q And Dr. McQuown, what is your profession?

22 A I'm a physician.

23 Q And how long have you been a physician?

24 A Since 1989.

25 Q Twenty-three years.

1 A Twenty-three years.

2 Q And where do you practice medicine at?

3 A Primarily, in Calhoun Falls, and I work at the
4 hospital here in Abbeville, also.

5 Q Okay. Describe to the jury what your normal work is
6 at the hospital.

7 A I work in the emergency department, usually on twelve
8 hour shifts, and we work there just a few times a
9 month.

10 Q Okay. I want to turn your attention to the night of
11 Saturday, May 28, 2011. Do you remember that night?

12 A Yes, sir.

13 Q Okay. And were you on call at the hospital that night?

14 A Yes. I was working at the hospital that night. Yes,
15 sir.

16 Q Dr. McQuown, I'm going to show you a document that has
17 already been introduced into evidence by agreement of
18 the State and myself. I just want you to take a
19 minute to review that document.

20 A (Witness complies)

21 Q Have you familiarized yourself with that document,
22 doctor?

23 A Yes, sir.

24 Q Were you responsible for creating that document or
25 portions of it?

DIRECT EXAMINATION OF DR. MCQUOWN BY MR. HENDERSON 146

1 A Portions of it. Yes, sir.

2 Q Okay. On that night, did you have the occasion to see
3 Miss fifteen year old Miss Wagler, I'm going to ask you
4 to stand up. (Miss fifteen year old stands)

5 A Yes, sir.

6 Q Okay. And on that night, did you also happen to see a
7 Mrs. Kimberly Wagler? Mrs. Wagler, I'm going to have
8 you stand up. (Mrs. Kimberly Wagler stands)

9 A Yes, sir.

10 Q Doctor, from looking at this report that's been
11 introduced into evidence, what time did Miss fifteen year old
12 arrive at the hospital? And I would ask you to
13 answer all questions based upon the document
14 introduced as Exhibit #2 and not your own copy.

15 A Yes, sir. The admit time, according to this document,
16 is 23:21 or 11:21 p.m.

17 Q And what was your understanding of why Miss fifteen year old
18 came to the emergency room that evening?

19 A The initial history was that there was concern stating
20 that a sexual assault had occurred, from mother, and
21 that the child needed to be examined. Or the young
22 lady, excuse me. And that -- it's stated there in the
23 history of present illness.

24 Q Okay. And so it's your testimony that Mrs. Kimberly
25 Wagler, the mother, was the one who had the concern?

1 A According to what was put down under history of
2 present illness, yes, sir.

3 Q Okay. Did Miss fifteen year old say whether or not she
4 had had any sex that evening?

5 A No. As I said in my note, I specifically asked her,
6 "Did any sexual contact occur," and she said, "No".

7 Q And did you offer her a physical examination or do a
8 physical examination?

9 A We did a physical examination, yes, sir.

10 Q And tell the jury what type of physical examination
11 you did.

12 A She had a pelvic examination done. It's just, you
13 know, a female examination of the external genitalia
14 and pelvic areas.

15 Q Were her feet placed up in stirrups?

16 A Yes, sir.

17 Q And you were the one that did this examination?

18 A Yes, sir.

19 Q And was this the first female examination you've ever
20 done?

21 A No, sir.

22 Q Okay. So, you know what you are looking at?

23 A Yes, sir.

24 Q You know what you are looking for?

25 A I feel like, yes, sir.

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1 Q Okay. Who was in the room when you did the physical
2 examination on Miss fifteen year old

3 A I had a medical assistant nurse with me and also, the
4 mother.

5 Q Okay. So, Mrs. Kimberly Wagler was in there with you?

6 A Yes, sir.

7 Q Okay. Let me ask you, did anybody ever ask you to do
8 a rape kit analysis?

9 A No. No one ever asked me, specifically, to do a rape
10 kit analysis. What I was asked to do was a medical
11 exam on the young lady.

12 Q If you had done a rape kit analysis -- explain to the
13 jury what a rape kit analysis is, just in laymen's
14 terms.

15 A The best way I can explain this is, the primary job is
16 to do a medical exam to take care of the patient. If
17 there is a concern that a rape has occurred, then
18 secondarily, we will conduct an exam and collect
19 evidence and that is a different procedure. We do a
20 pelvic exam and we take samples. There are blood
21 samples, hair samples, there are samples taken from
22 the pelvic area and that is all collected for a
23 prosecution and that is in addition to the physical
24 exam we do on the patient, which is the primary
25 concern at that time, to take care of that patient

1 medically and also, like I said, then we do the rape
2 exam with the kit.

3 Q If you had done a rape kit examination that night, how
4 long would it have taken you?

5 A The samples are, many times, collected by the nurse
6 ahead of me and then I come in and do the pelvic
7 examination. We take samples in the pelvic exams.
8 Basically, some swabs from the vaginal area and rectal
9 area. We did an examination on her and so as far as
10 time, I mean, it does not take that much more time to
11 do the exam.

12 Q If you had done a rape kit on her that night, would it
13 have taken several more hours to do?

14 A No, sir. Basically, once you start the evidence
15 collection, you continue to collect that evidence
16 until you've collected everything, if you do that
17 correctly, but I would say it just would probably
18 take, I'm guesstimating from what I've done before,
19 probably fifteen more minutes to do all the collecting
20 that I have to do in addition to that pelvic exam.

21 Q And again, your testimony was that nobody asked you
22 for a rape kit examination.

23 A Nobody asked me, specifically, to do a rape collection
24 exam.

25 Q Okay. After treating Miss fifteen year old did you

DIRECT EXAMINATION OF DR. MCQUOWN BY MR. HENDERSON 150

1 recommend that she visit her family physician?

2 A I did. Yes, sir.

3 Q Look through the records here and tell me, who was
4 identified as Miss fifteen year old family doctor or
5 family physician?

6 A Doctor Lindsay Wiles.

7 Q And where is Dr. Lindsay Wiles located?

8 A At Family Medical Associates here in Abbeville.

9 Q So, close by.

10 A Yes, sir.

11 Q And what time frame did you suggest for Miss fifteen year old
12 to go see Dr. Wiles?

13 A Two days is kind of a standard time that we recommend.
14 Certainly, within the next week.

15 Q And did you prescribe Miss fifteen year old any
16 medication that night?

17 A No, sir.

18 Q Dr. McQuown, based upon what Miss fifteen year old told
19 you happened sexually, which was nothing, and your
20 visual examination, keeping those two in mind, is what
21 you saw consistent with what Miss fifteen year old told
22 you?

23 MS. WHITE: Objection, Your Honor. He has not been
24 entered as an expert.

25 THE COURT: Lay your foundation.

THE STATE OF SOUTH CAROLINA VERSUS JAMES ROSCOE SCOFIELD

1 Q Doctor, where did you go to college at?

2 A The University of Georgia.

3 Q Okay. And what year did you graduate?

4 A Nineteen eighty-five.

5 Q And where did you attend medical school?

6 A The Medical University of South Carolina.

7 Q And where is that located?

8 A In Charleston.

9 Q And what year did you graduate?

10 A Nineteen eighty-nine.

11 Q And upon graduation from medical school, what did you
12 do?

13 A I went to residency in family medicine at the Self
14 program for three years.

15 Q And completing it, I guess, in 1992?

16 A In 1992.

17 Q And upon then -- what did you do during your
18 residency?

19 A We trained in, you know, in taking care of patients in
20 many different areas, pretty much what family doctors
21 do.

22 Q And that was your goal, to be a family doctor?

23 A Yes, sir.

24 Q And that is what you concentrated on during your
25 residency?

1 A Yes, sir.

2 Q Is that what you concentrated on post-residency ---

3 A Yes, sir.

4 Q --- in your practice in Calhoun Falls?

5 A Yes, sir.

6 Q And in your practice at the Abbeville Hospital?

7 A Yes, sir.

8 MR. HENDERSON: Your Honor, I would submit him in as
9 an expert in the area of family medicine.

10 MS. WHITE: No objection in the area of family
11 medicine.

12 THE COURT: Very well.

13 Q And doctor, in the area of family ---

14 THE COURT: Just a minute. Just like Dr. Pritchard
15 was qualified yesterday as an expert, Dr. McQuown is now
16 qualified as an expert in the field of family medicine.

17 Q And Dr. McQuown, in the field of family medicine, does
18 that involve examining females?

19 A Yes, sir.

20 Q Okay. Doctor, let me go back to my question. Based
21 upon what Miss fifteen year old told you, that no sex
22 occurred, based upon your physical examination of Miss
23 Wagler, is what she told you, that no sex occurred, is
24 that consistent with what you visually saw?

25 A What I saw and what is in the chart is that I did not

1 see that she had any trauma to the vaginal area or the
2 pelvic area and her hymen was intact at the time of my
3 examination and that is all that I could say at that
4 point as far as any type of assault or anything like
5 that.

6 Q And I believe on your report here, you've got some
7 items listed under the letters GU. Could you tell the
8 jury what that stands for?

9 A That's just General Urinary. It's just giving that
10 category of physical examination.

11 Q And if I'm not mistaken, reading what you've written
12 beside that, you said, normal.

13 A Yes.

14 Q No bruising.

15 A Yes.

16 Q No contusion.

17 A Yes.

18 Q What is a contusion?

19 A A contusion can be a bruise where you see red marking,
20 black and blue or sometimes yellow or brown.

21 Initially, you may see some bruising such as swelling,
22 scraping of the skin, that type of aspect.

23 Q And you also said, no bleeding.

24 A No, sir.

25 Q The hymen is intact.

CROSS EXAMINATION OF DR. MCQUOWN BY MS. WHITE

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1 A Yes, sir.

2 Q No discharge.

3 A No, sir.

4 Q And you didn't see any signs of semen, did you?

5 A No, sir.

6 Q Didn't see any signs of any fluid, did you?

7 A No, sir.

8 MR. HENDERSON: If I may have one moment. Nothing
9 further, Your Honor.

10 CROSS EXAMINATION

11 BY MS. WHITE:

12 Q Good morning, Dr. McQuown.

13 A Good morning.

14 Q I have just a few questions. As I understand Your
15 testimony, when you examined Miss Wagler, she had,
16 essentially, a normal genital -- she presented a
17 normal genitalia.

18 A Right.

19 Q There were no injuries noted.

20 A Right.

21 Q Okay. And also, as I understand your testimony, you
22 can't comment on whether that's consistent or
23 inconsistent with sexual intercourse having taken
24 place.

25 A No, ma'am.

1 Q And you stated that no one requested that a rape kit
2 be performed that night. And just generally speaking,
3 if someone presents to the emergency room with an
4 acute --- well, first of all. What is an acute sexual
5 assault? Are you familiar with that term?

6 A Maybe not the definition that you are looking for, but
7 I would say, we are basically concerned with any type
8 of sexual assault, so if they are coming in
9 complaining of that, then that's the path we go down,
10 so.

11 Q If someone presents to the emergency room and they
12 say, "I have been sexually assaulted within the past
13 twenty-four hours, what is the protocol in handling
14 that patient?

15 A The normal protocol is, number one, law enforcement
16 is, you know, contacted. Number two, we would examine
17 the patient to be sure their medical needs are taken
18 care of for that patient. And number three, we would
19 proceed to collect evidence on that patient and the
20 last thing you do is treat patients for certain
21 specific diseases that can occur with assault to take
22 care of the patient and also, we provide some follow-
23 up counseling and guidance.

24 Q And the patient doesn't have to ask for any of those
25 procedures to be performed. Correct?

1 A If the patient is there to be seen, we are going to
2 see that patient. The rape kit, to me, is done when
3 the patient says, "I was assaulted and a rape has
4 occurred." There are cases with, obviously, young
5 children where, that decision, you are going to go
6 ahead and not depend on the child telling you
7 everything. It does become more difficult as people
8 get a little bit older and they tell you nothing has
9 happened and then you have to make a decision on
10 whether that kit needs to be done.

11 Q And as I understand it, with her telling you nothing
12 happened, you didn't want to put her through the
13 additional trauma, for the lack of a better word, of
14 having a rape kit performed. Correct?

15 A I think that's true. I think she did want -- she did
16 agree to an exam and I think that's very important
17 because, number one, is there something there to find
18 that you didn't expect and number two, just taking
19 care of her in a medical manner to make sure that
20 nothing is wrong.

21 Q And would you agree with me, doctor, that patients
22 don't always give you the complete story when they
23 first come into the ER?

24 A Yes. And I think, specifically, it can be true with
25 young people. We just have to do our best in those

1 situations.

2 Q And would you also agree with me that teenage
3 patients, in particular, seem to be less forthcoming
4 if a parent is present?

5 A Yes.

6 Q Thank you, Dr. McQuown.

7 A Yes, ma'am.

8 MR. HENDERSON: Very briefly.

9 REDIRECT EXAMINATION

10 BY MR. HENDERSON:

11 Q Dr. McQuown, did Miss fifteen year old have any trouble
12 communicating with you on Saturday, May 28, 2011?

13 A No. I mean, she answered questions well.

14 Q She understood the English language?

15 A Yes, sir.

16 Q And y'all communicated with one another?

17 A Yes, sir.

18 Q Talked with one another?

19 A Yes, sir.

20 Q And in your mind's eye, there was no mis-
21 communication, was there?

22 A No, sir.

23 Q And doctor, in your practice, you depend on the
24 accuracy of statements given to you by patients.
25 Don't you?

DIRECT EXAMINATION OF ANNA EDMUNDS BY MR. HENDERSON 158

1 A Yes, sir.

2 MR. HENDERSON: One moment, please.

3 Q So, again, doctor, what Miss fifteen year old told you
4 was consistent with what you saw?

5 A Yes, sir.

6 MR. HENDERSON: I don't have anything further, Your
7 Honor.

8 MS. WHITE: Nothing further, Your Honor.

9 MR. HENDERSON: And, Your Honor, may I ask that he be
10 excused from his subpoena.

11 THE COURT: I think he probably has things he can do.
12 Good afternoon.

13 DR. MCQUOWN: Thank you.

14 MR. HENDERSON: And let me get that Exhibit #2 back
15 from you for Madam Court Reporter. Thank you, sir. Your
16 Honor, I call nurse Anna Edmunds. I believe she's out in
17 the foyer.

18 (After being duly sworn by the Clerk of Court, Anna
19 Edmunds testified as follows:)

20 DIRECT EXAMINATION

21 BY MR. HENDERSON:

22 Q Ms. Edmunds, good morning.

23 A Good morning.

24 Q Please state your full name for the record and spell
25 your last name for the court reporter's convenience.

1 A My name is Anna Louise Edmunds. Edmunds is spelled,
2 E-D-M-U-N-D-S.

3 Q And Ms. Edmunds, what is your occupation?

4 A I am a registered nurse.

5 Q And how long have you been a registered nurse?

6 A For twenty-three years.

7 Q And I guess since 1989?

8 A Yes, sir.

9 Q Okay. Where did you graduate from college?

10 A Lander.

11 Q And what year was that?

12 A Nineteen eighty-nine.

13 Q Okay. And you've been a R.N., registered nurse, since
14 then?

15 A Yes, sir.

16 Q And tell the jury in a few words, what does a
17 registered nurse do?

18 A We do a lot of things: assist the doctor, we do
19 triage, we take assessments, draw blood, give shots, a
20 lot of various things.

21 Q Let me ask you, do you recollect working at the
22 Abbeville Hospital on the night of Saturday, May 28,
23 2011?

24 A Yes.

25 Q I want to show you a document that's been introduced

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1 as an exhibit by consent of the Defense and the State,
2 and I would request that all answers be given using
3 that document.

4 A (Nods head)

5 Q On that night, on the night of May 28, 2011, did you
6 have the opportunity to see a Miss fifteen year old Miss
7 fifteen year old if I may have you stand up. (Miss
8 Wagler complies)

9 A Yes.

10 Q On that night in question, do you recall seeing a Mrs.
11 Kimberly Wagler? Mrs. Kimberly Wagler, I'd have you
12 stand. (Mrs. Wagler complies)

13 A Yes.

14 Q Okay. And can you tell me what your first interaction
15 with Miss fifteen year old was and please refer to your
16 notes.

17 A When a patient comes to the ER the secretary tech can
18 get vital signs, blood pressure and temperature and
19 that sort of thing, but then a nurse is going to go
20 into triage to ask questions about why they are there.
21 So, the information there is what I put as the triage
22 information.

23 Q And you were the nurse that took Miss fifteen year old
24 into triage?

25 A She was taken to the room by a secretary tech and she

1 got her vital signs and then I came into the room to
2 get the information.

3 Q Okay. Did you have a conversation with Miss ^{fifteen year old}

4

5 A No conversation, other than asking triage information.

6 Q Okay. And what triage information did you ask?

7 A Umm.

8 Q From looking at your notes.

9 A Okay.

10 THE COURT: She can answer to her memory, also.

11 MR. HENDERSON: Oh, absolutely.

12 THE COURT: You've directed her to only refer to her
13 notes.

14 MR. HENDERSON: Right. Correct.

15 Q From your memory, as well.

16 A Like I said, we will go in and ask questions as to why
17 the patient is there. They have to register up front
18 at the ER registration and the ER registration clerk
19 will put in the complaint and she may have put in
20 alleged sexual assault or something like that, so
21 that's why the patient was brought back to the room
22 and vital signs were taken. And I went in to ask, you
23 know, why are you here, what's going on, you know,
24 just ask her the questions to clarify why the patient
25 was there.

DIRECT EXAMINATION OF ANNA EDMUNDS BY MR. HENDERSON 162

1 Q Did you ask Miss fifteen year old whether or not she had
2 engaged in sexual intercourse that night?

3 A Yes.

4 Q And what was her response?

5 A Her response was, no. She denied it.

6 Q And was her mother present?

7 A Her mother was present.

8 Q Okay. Anybody else present during this conversation?

9 A If I'm not mistaken, it was just myself, the patient,
10 and her mother.

11 Q Now, were you involved in the physical examination of
12 Miss fifteen year old

13 A No, sir.

14 Q Okay, so you weren't involved with that?

15 A No, sir.

16 MR. HENDERSON: One moment, please. Nothing further,
17 Your Honor.

18 MS. WHITE: No questions, Your Honor.

19 THE COURT: Thank you, ma'am.

20 MS. EDMUNDS: Thank you.

21 MR. HENDERSON: Ms. Edmunds, let me get that exhibit
22 back from you. Thank you, ma'am. One moment, Your Honor.

23 THE COURT: Yes, sir.

24 MR. HENDERSON: Your Honor, could we take about a ten
25 minute break?

1 THE COURT: Sure. All right, ladies and gentlemen,
2 step back into the jury room. Make yourselves comfortable.
3 We'll get you back out here in about ten minutes. You
4 can't begin to discuss the case yet.

5 (Jury out at 9:54 a.m.)

6 THE COURT: All right. We'll stand at ease for ten
7 minutes.

8 (Brief break)

9 MR. HENDERSON: Your Honor, I have a letter from the
10 records custodian of Family Medical Associates here in
11 Abbeville. Ms. White has agreed to this exhibit. I would
12 just like to publish it to the jury. And then, Your Honor,
13 I would also like you to explain to Mr. Scofield his right
14 to testify and his right not to testify.

15 THE COURT: All right.

16 FIFTH AMENDMENT RIGHTS

17 (Clerk of Court administers oath to Mr. Scofield)

18 THE COURT: Mr. Scofield, let me go over with you your
19 rights, your right to testify and not to testify.

20 You understand that it's your decision. Based upon
21 everything that you know from your lawyers, it's still your
22 decision. If you want to testify, you can testify. If you
23 want to remain silent, you won't have to testify. No one
24 can make you. It's solely your decision.

25 Now, if you choose to not testify, I will instruct the

1 jury in my instructions that the prosecutor is not allowed
2 to comment on that, the prosecutor can't say, "Mr. Scofield
3 would have gotten up on the witness stand and said I'm not
4 guilty if that was the case." I will instruct the jury
5 that they cannot even discuss in their deliberations in any
6 manner whatsoever your decision not to testify. They have
7 to make their decision on your guilt or innocence solely on
8 what's been presented and totally not consider your
9 testimony or lack thereof. They can't discuss it. Do you
10 understand that?

11 MR. SCOFIELD: Yes, sir. I'd like to testify.

12 THE COURT: You want to testify. So, you are waiving
13 your right to remain silent?

14 MR. SCOFIELD: That's right.

15 THE COURT: And you are going to waive your right to
16 remain silent freely and voluntarily?

17 MR. SCOFIELD: (Looks at Mr. Henderson)

18 MR. HENDERSON: Is anybody making you testify against
19 your will?

20 MR. SCOFIELD: No, sir.

21 THE COURT: Okay. Now, you also understand that Ms.
22 White or Mr. Andrews will be allowed to cross examine you.
23 Do you understand that?

24 MR. SCOFIELD: Yes, sir.

25 THE COURT: They can ask you questions pertinent to

1 this case.

2 MR. SCOFIELD: Yes, sir.

3 THE COURT: All right. Understanding that, you still
4 want to testify?

5 MR. SCOFIELD: Yes, sir.

6 THE COURT: Very well. Do you need any more time with
7 your lawyers?

8 MR. SCOFIELD: Sir?

9 THE COURT: Do you need any more time with your
10 lawyers?

11 MR. SCOFIELD: No, sir.

12 THE COURT: Very well. Are you ready?

13 MR. HENDERSON: Yes, sir.

14 MS. WHITE: Yes, sir.

15 THE COURT: Bring them out.

16 (Jury in at 10:16 a.m.)

17 THE COURT: All right. Mr. Henderson?

18 MR. HENDERSON: Yes, sir, Your Honor. We have agreed,
19 the State and I, the Defense, to introduce into evidence a
20 letter dated August 22nd of this year from Family Medicine
21 Associates here in Abbeville where Dr. Lindsay Wiles
22 practices. It's a letter from their records custodian
23 regarding fifteen year old .

24 It says, "I, Alicia Woods, medical records custodian,
25 Family Medical Associates, have been unsuccessful in

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1 finding any medical records or information on this patient
2 within the given dates of May 29, 2011 through June 30,
3 2011." It's my understanding, Your Honor, that they were
4 having computer difficulties at the office and she
5 submitted this in lieu of live testimony.

6 THE COURT: That document is admitted by agreement of
7 the parties.

8 (Whereupon, a letter from Family Medical Associates is
9 entered into evidence as Defense Exhibit #3, without
10 objection)

11 THE COURT: All right. You'll have that back in the
12 jury room with you. Traditionally, a witness would be here
13 to say, "I prepared that document," but the lawyers have
14 agreed to that document for your consideration. Very well.

15 MR. HENDERSON: Your Honor, I would call Mr. Ross
16 Scofield to the stand.

17 THE COURT: Mr. Scofield, come forward and be sworn.

18 (After being duly sworn by the Clerk of Court, Roscoe
19 Scofield testified as follows:)

20 CLERK OF COURT: You may be seated.

21 DIRECT EXAMINATION

22 BY MR. HENDERSON:

23 Q Ross, please state your full name for the record.

24 A My name is James Roscoe Scofield.

25 Q And everybody calls you, Ross?

- 1 A Yes, sir.
- 2 Q Mr. Scofield, how old are you?
- 3 A I'm twenty-one years old.
- 4 Q And where do you live at?
- 5 A I live with my parents at 107 Morningside Drive.
- 6 Q And what county is that in?
- 7 A Greenwood.
- 8 Q Okay. And who are your parents?
- 9 A Coetta Lambert and Tony Lambert.
- 10 Q And that's this lady and gentleman sitting behind us?
- 11 A Yes, sir.
- 12 Q Okay. Ross, do you know fifteen year old
- 13 A Yes, sir.
- 14 Q And do you know her mother, Kimberly Wagler?
- 15 A Yes, sir.
- 16 Q I want to turn your attention to Saturday, May 28,
- 17 2011. Do you remember that day?
- 18 A Yes, sir.
- 19 Q Did Miss Wagler, did Miss fifteen year old contact you
- 20 during the day?
- 21 A Could you repeat the question, please?
- 22 Q Did Miss fifteen year old contact you during the day?
- 23 A Yes, sir.
- 24 Q And how did she contact you?
- 25 A By text message.

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1 Q Okay. Did you agree to meet her in Abbeville?

2 A Yes, sir.

3 Q And did anybody else come with you to meet her in
4 Abbeville?

5 A Yes, sir.

6 Q And who was that?

7 A Justin Fields.

8 Q And Mr. Scofield, do you have a driver's license?

9 A No, sir.

10 Q So, did you drive yourself over to Abbeville that
11 night?

12 A No, sir.

13 Q How did you and Mr. Fields get to Abbeville that
14 night?

15 A We took a taxicab up there.

16 Q And do you recall the cab company's name?

17 A Southside Cab.

18 Q Do you recall what time you and Mr. Fields arrived in
19 Abbeville?

20 A We arrived 6:30 to 7:00, around in there.

21 Q Okay. And where were you let off at? Where did you
22 get out at?

23 A In front of the Rough House.

24 Q And what is the Rough House?

25 A A restaurant, just up the street.

- 1 Q Okay. And who, did anyone meet you there?
- 2 A Yes, sir.
- 3 Q And who was that?
- 4 A ^{fifteen year old} met me up there.
- 5 Q And you and Mr. Fields?
- 6 A Yes, sir.
- 7 Q Do you know how Miss Wagler got to the Rough House?
- 8 A She told me she rode her bike up there.
- 9 Q Did you see her bike?
- 10 A No, sir.
- 11 Q Did y'all eat dinner that evening?
- 12 A Yes, sir.
- 13 Q Do you recall what you ate?
- 14 A Yes, sir.
- 15 Q And what was that?
- 16 A I ate a couple of hot dogs and I had a Coke.
- 17 Q Do you recall what Miss Wagler ate that evening?
- 18 A She had a hot dog and also a Coke.
- 19 Q Do you recall whether Mr. Fields ate something that
- 20 night?
- 21 A No, sir.
- 22 Q You just don't recall or he didn't?
- 23 A He didn't.
- 24 Q Do you recall how long you were eating supper or
- 25 eating dinner?

DIRECT EXAMINATION OF ROSS SCOFIELD BY MR. HENDERSON

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- 1 A About an hour.
- 2 Q After y'all finished eating, what did you do?
- 3 A We went around and played some games.
- 4 Q And this is who, now?
- 5 A Me, Justin, and ^{fifteen year old}.
- 6 Q Okay. And what type of games were you playing?
- 7 A We was jumping creeks, climbing trees, trying to scare
- 8 each other. Stuff like that.
- 9 Q Okay. And did you happen to go into what is known as
- 10 the Confederate Graveyard?
- 11 A Yes, sir.
- 12 Q And where is that at?
- 13 A Just up the street behind Trinity Church.
- 14 Q Did all three of you go into the Confederate
- 15 Graveyard?
- 16 A Yes, sir.
- 17 Q Mr. Scofield, do you recollect how you were dressed
- 18 that evening?
- 19 A I had a dark shirt on and dark pants and my black
- 20 cowboy boots.
- 21 Q Do you recall how Miss ^{fifteen year old} was dressed?
- 22 A I believe she had a dark shirt on and she had shorts
- 23 on.
- 24 Q Do you recall how Mr. Fields was dressed?
- 25 A Dark clothes, all black.

1 Q Okay. And I believe your testimony was that y'all
2 were running?

3 A Yes, sir.

4 Q Running through the woods?

5 A Yes, sir.

6 Q Where at?

7 A Across the street, across the street from the
8 graveyard, in the graveyard.

9 Q And during this running around, did Miss Wagler, Miss
10 fifteen year old, were her legs cut up?

11 A Yes, sir.

12 Q And why were they cut up?

13 A She jumped a creek and there were some briars that she
14 landed on and slid down.

15 Q Ross, at any time while y'all are in the graveyard, in
16 the woods, at any time, did you have sexual
17 intercourse with Miss fifteen year old

18 A No, sir.

19 Q And Ross, did there come a time when you received a
20 call from Mr. Dylan Calvert?

21 A Yes, sir.

22 Q And did you answer that call?

23 A It went to voice mail before I answered it.

24 Q Did you return this call?

25 A Yes, sir.

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1 Q And tell this trial jury here what your conversation
2 was with Mr. Calvert.

3 A He told me he was bored and I asked him to come up to
4 play some games, to play with me, Justin, and ^{fifteen year old}
5 and to bring some knives to cut some briars and bushes
6 and stuff because ^{fifteen year old} cut her legs up pretty bad
7 and we needed them so she wouldn't get hurt any more
8 or me or none of us would.

9 Q Okay. After that conversation with Mr. Calvert, did
10 you see him that night?

11 A Could you repeat the question, please?

12 Q You had that phone conversation with Mr. Calvert.

13 A Yes, sir.

14 Q After you had that phone conversation, did you see Mr.
15 Calvert, at all, on the night of Saturday, May 28,
16 2011?

17 A No, sir.

18 Q Okay. And is it your understanding he got arrested?

19 A Yes, sir.

20 Q Did you see any knives that he may have brought with
21 him?

22 A No, sir.

23 Q Did you ever have in your possession any knives that
24 he may have brought with him?

25 A No, sir.

1 Q Mr. Scofield, on that night, did you, the time that
2 you were in Abbeville, did you have any contact with
3 Mrs. Kimberly Wagler?

4 A No, sir.

5 Q Did you go by her house?

6 A No, sir.

7 Q Did you make any threats to Mrs. Kimberly Wagler?

8 A No, sir.

9 Q Did you do anything to even suggest you wanted to hurt
10 Mrs. Kimberly Wagler?

11 A No, sir.

12 Q Did you do anything to suggest that you wanted to hurt
13 Miss fifteen year old

14 A No, sir.

15 Q And Ross, sometime -- well, before we get there.
16 Ross, at anytime did you prevent Miss fifteen year old
17 from leaving?

18 A No, sir.

19 Q Did you prevent her from going home?

20 A No, sir.

21 Q Did you make her leave her home that morning?

22 A No, sir.

23 Q Mr. Scofield, at some point in time during the evening
24 you were apprehended by police, weren't you?

25 A Yes, sir.

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1 Q Do you recall what time that was?

2 A Around 9:00 or 10:00.

3 Q Okay. And who was with you when you were apprehended?

4 A fifteen year old was.

5 Q And you were taken to the police station?

6 A Yes, sir.

7 Q Mr. Scofield, a couple of days later, were you
8 questioned -- Well, specifically, on the morning of
9 May 30, 2011, were you questioned by the Abbeville
10 Police Department?

11 A Yes, sir.

12 Q And by an officer, John Gray?

13 A Yes, sir.

14 Q Okay. At any time during your conversation with
15 Officer Gray that morning, did you tell him that you
16 intended to hurt Miss fifteen year old ?

17 A No, sir.

18 Q At any time during your conversation with Officer
19 Gray, did you tell him you intended to hurt Mrs.
20 Kimberly Wagler?

21 A No, sir.

22 Q Did you give him a written statement that this
23 occurred?

24 A No, sir.

25 Q And to the best of your knowledge, nothing was

1 recorded during your conversation, was it?

2 A No, sir.

3 Q Okay. Mr. Scofield, were you handcuffed during this
4 conversation?

5 A Yes, sir.

6 Q And were you shackled during this conversation?

7 A Yes, sir.

8 Q Were there any witnesses to this conversation?

9 A No, sir. It was just me and the officer.

10 Q Okay. So, did or did you tell him that you intended
11 to hurt anybody?

12 A No, sir.

13 Q Was he persistent in his questioning?

14 A Could you define persistent?

15 Q Did he keep asking you this?

16 A Yes, sir.

17 Q And what was your answer?

18 A No. I was not intending to hurt anyone.

19 Q Okay. Mr. Scofield, later on, on the day of May 30,
20 2011, did you, in fact, give a written statement?

21 A Could you repeat the question, please?

22 Q Mr. Scofield, on the afternoon of May 30, 2011, did
23 you give Officer Gray a handwritten statement? Did
24 you hand write a statement?

25 A Yes, sir.

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1 Q I want to show you what's been marked into evidence
2 and I want you to take a minute to look at it.

3 A (Witness complies)

4 Q Do you recognize that?

5 A Yes, sir.

6 Q Is that in your handwriting?

7 A Yes, sir.

8 Q Was Officer Gray present when you gave this statement?

9 A Yes, sir.

10 Q And during that conversation -- did y'all have a
11 conversation?

12 A He was adamant about me giving a statement.

13 Q Was he still asking you whether or not you intended to
14 hurt ^{fifteen year old} ?

15 A Yes.

16 Q Was he still asking you whether or not you intended to
17 hurt Mrs. Wagler?

18 A Yes, sir.

19 Q Even during the day he was still asking you about it?

20 A Yes, sir.

21 Q Let me ask you, Mr. Scofield, during this question and
22 answer period with the officer, were you handcuffed?

23 A Can you repeat the question, please?

24 Q During this -- at the time that you gave this written
25 statement and were talking with Officer Gray, were you

1 handcuffed?

2 A Yes, sir.

3 Q Were you shackled?

4 A Yes, sir.

5 Q Was anybody else present?

6 A No, sir.

7 Q Okay. And was he adamant that you intended to hurt
8 somebody?

9 A Yes, sir.

10 Q Was he adamant that you intended to hurt ^{fifteen year old}?

11 A Yes, sir.

12 Q Was he adamant that you intended to hurt Kim?

13 A Yes, sir.

14 Q What was your response?

15 A I intended to hurt no one.

16 Q Okay. I noticed in your statement here, you intended
17 to hurt yourself.

18 A I wrote that -- the officer was persistent and adamant
19 of me giving a statement that I was going to hurt
20 ^{fifteen year old} and Kim and I told him, "No", and finally he
21 said, "Hey, did you even want to hurt yourself?" I
22 said, "Well, if it makes you happy, I wanted to hurt
23 myself".

24 Q And so that's why this statement got written?

25 A Yes, sir.

1 Q Ross, let me ask you -- Mr. Scofield, let me ask you
2 again. On this date, did you ever intend to harm
3 anyone?

4 A No, sir.

5 Q Did you intend to harm Mrs. Kimberly Wagler?

6 A No, sir.

7 Q Miss fifteen year old

8 A No, sir.

9 Q Okay. Did you even see Mrs. Kimberly Wagler?

10 A No, sir.

11 Q Did you ever see these knives?

12 A No, sir.

13 Q On that day, did you enter into any type of agreement
14 with anybody to hurt Mrs. Kimberly Wagler?

15 A No, sir.

16 Q And, again, Mr. Scofield, did you have sexual
17 intercourse, at all, with Miss fifteen year old on May
18 28, 2011?

19 A No, sir.

20 MR. HENDERSON: If I may have one moment, Your Honor.

21 Q Mr. Scofield, you understand that you have been
22 indicted for three separate criminal offenses. You
23 understand that, don't you?

24 A Yes, sir.

25 Q Criminal conspiracy.

CROSS EXAMINATION OF ROSS SCOFIELD BY MS. WHITE

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1 A Yes, sir.

2 Q Criminal sexual conduct with a minor.

3 A Yes, sir.

4 Q And contributing to the delinquency of a minor.

5 A Yes, sir.

6 Q Are you guilty of any of those offenses?

7 A No, sir.

8 MR. HENDERSON: I have nothing further, Your Honor.

9 CROSS EXAMINATION

10 BY MS. WHITE:

11 Q Good morning, Mr. Scofield. How are you doing?

12 A Pretty good.

13 Q I want to go back to the beginning. You first met
14 ^{fifteen year old} around November of 2010, ^{fifteen year old} Is
15 that right?

16 A Yes, ma'am.

17 Q And y'all started dating, texting, calling each other
18 around that time?

19 A No, ma'am. We were just close friends.

20 Q You were close friends. Well, did you ever have a
21 conversation with her mother, Mrs. Kimberly Wagler,
22 where she stated she didn't want you to be friends
23 with her daughter?

24 A No, ma'am.

25 Q You never had that conversation with her?

CROSS EXAMINATION OF ROSS SCOFIELD BY MS. WHITE

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1 A No, ma'am.

2 Q So, no one ever told you to stay away from ^{fifteen year old}

3

4 A No, ma'am.

5 Q Officers with the Abbeville Police Department never
6 told you to stay away from fifteen year old

7 A No, ma'am.

8 Q And you knew she was fifteen?

9 A Yes, ma'am.

10 Q And you're aware that in South Carolina that having
11 sex with a fifteen-year-old is against the law?

12 A Yes, ma'am.

13 Q Now, you testified earlier that you got to the square
14 around 6:30 or 7:00 that evening.

15 A Yes, ma'am.

16 Q And did y'all immediately go to the Rough House?

17 A Yes, ma'am.

18 Q Okay. And you said you were there about an hour?

19 A Yes, ma'am.

20 Q So, this is getting to be around 8:00 in the evening
21 in May.

22 A Yes, ma'am.

23 Q Okay. So, it's starting to get sort of dusk outside?

24 A Yes, ma'am.

25 Q But you're running through, running, jumping creeks,

1 climbing trees, with it getting dark outside?

2 A Yes, ma'am.

3 Q Okay. You weren't there earlier in the day?

4 A No, ma'am.

5 Q And you also testified that Dylan Calvert called you
6 first. Correct?

7 A Yes, ma'am.

8 Q And you called him back.

9 A Yes, ma'am.

10 Q And you suggested that he bring knives to help you cut
11 all of this, the undergrowth in the area?

12 A Yes, ma'am.

13 Q As it's getting dark outside.

14 A Yes, ma'am.

15 Q What time did that conversation with Mr. Calvert take
16 place?

17 A I can't remember on that.

18 Q Was it before or after you went to the Rough House?

19 A After.

20 Q So, about 8:00 at night?

21 A Yeah, I'd say around then.

22 Q Did you ask him to bring flashlights?

23 A No, ma'am.

24 Q Did you ask him to bring bandages for Miss Wagler's
25 legs?

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1 A No, ma'am. We was actually going to go to Dollar
2 General and get them and Justin had my money on him.

3 Q And you paid for Mr. Calvert's taxi ride?

4 A Yes, ma'am.

5 Q Now, were you and Mr. Calvert, were y'all friends at
6 the time?

7 A Yes, ma'am.

8 Q And you said that you had on a dark shirt and dark
9 pants.

10 A Yes, ma'am.

11 Q And Mr. Fields had on a dark shirt and dark pants.

12 A Yes, ma'am.

13 Q And you never actually saw Mr. Calvert that evening.

14 A No, ma'am.

15 Q So, you gave Mr. Fields the money to go pay for the
16 taxi?

17 A Yes, ma'am.

18 Q Why didn't you just meet the taxi?

19 A ^{fifteen year old} wanted to keep playing the games and I wanted
20 to play with her, so ---

21 Q So, you were alone with Miss Wagler while you sent Mr.
22 Fields to pay for the taxi?

23 A For about ten minutes. Yeah.

24 Q And all of this is occurring from the space of about
25 8:00 to 9:00 in the evening?

1 A Yes, ma'am.

2 Q Would you agree with me that it was dark outside when
3 the Abbeville Police Department found you in the
4 cemetery?

5 A It was getting dark. Yes, ma'am.

6 Q Did either of Miss Wagler's phones ring during the day
7 while you were with her?

8 A No, ma'am.

9 Q Now, after you were arrested, Mr. Henderson asked you
10 about a statement that you gave to law enforcement.
11 You stated that you never told Mr. Gray or Lieutenant
12 Gray that you intended to hurt ^{fifteen year old} or her mother.

13 A Could you repeat the question, please?

14 Q You told Mr. Henderson that you never told Lieutenant
15 Gray that you intended to hurt anyone.

16 A That's correct, ma'am.

17 Q All right. So, you told him what you just told this
18 jury?

19 A Yes, ma'am.

20 Q That it was all a big misunderstanding?

21 A Yes, ma'am.

22 Q All right. And then, approximately, five hours later,
23 you sent him a message that you wanted to talk to him
24 again.

25 A Yes, ma'am.

CROSS EXAMINATION OF ROSS SCOFIELD BY MS. WHITE

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1 Q And you told him this same story?

2 A Yes, ma'am. That I was intending to hurt no one.

3 Q And that's the story you wrote down for him?

4 A Yes, ma'am.

5 Q Is it? I'm going to hand you what has been marked as
6 State's Exhibit #3 and ask you where on that piece of
7 paper you gave the statement.

8 MR. HENDERSON: Be clear about what statement?

9 THE COURT: Re-phrase your question for clarity.

10 Q Where on that piece of paper did you state that you
11 ate with Miss Wagler and Mr. Fields at the Rough House
12 about 6:30 or 7:00?

13 A I didn't.

14 Q Where on that piece of paper do you state that Mr.
15 Calvert was the one that called you that night?

16 A I didn't.

17 Q Where on that piece of paper do you state that you
18 asked Mr. Calvert to bring knives to cut some
19 undergrowth and bushes?

20 A I didn't.

21 Q Where, on that piece of paper, did you state that you
22 never intended to hurt anyone?

23 A Would you repeat that question, please?

24 Q Where, on that piece of paper, did you state that you
25 never intended to hurt anyone?

1 A No where.

2 Q You testified earlier that you wrote in that statement
3 that you would hurt yourself if it made Lieutenant
4 Gray happy.

5 A Could you repeat that question, please?

6 Q You stated earlier that Lieutenant Gray was
7 questioning you.

8 A Yes, ma'am.

9 Q And you stated that he was pretty adamant in
10 questioning you.

11 A Yes, ma'am.

12 Q And you stated that he eventually suggested that you
13 perhaps had the knives to hurt yourself.

14 A Yes, ma'am.

15 Q And so, you said that's why you put that in the
16 statement.

17 A Yes, ma'am.

18 Q Well, why would you put that in there if it wasn't
19 true?

20 A To be not questioned any more. I was tired. He was
21 being adamant with me, I was sad, I was about to get
22 angry about it and so I just gave him what he wanted.

23 Q But if the whole story is so innocent, just a bunch of
24 teenagers playing games, why didn't you write that
25 story down for him?

CROSS EXAMINATION OF ROSS SCOFIELD BY MS. WHITE

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1 A Because he didn't believe me. I told him it was all
2 just for games and stuff and he didn't believe me and
3 so...

4 Q Mr. Scofield, you said that Lieutenant Gray was pretty
5 forceful with you the first time you talked to him.

6 A Yes, ma'am.

7 Q And yet you asked to talk to him a second time?

8 A Yes, ma'am. I thought maybe I could calm him down and
9 we could talk it out and stuff and I could try to give
10 the statement again that I wasn't intending to hurt
11 anyone.

12 Q You didn't feel the need to make a change in the
13 statement that you had given previously?

14 A No, ma'am.

15 Q Now, in the jail, did you tell anyone that you
16 intended to hurt Kim Wagler?

17 A No, ma'am.

18 Q And you didn't brag to Mr. Calvert about having sex
19 with fifteen year old

20 A No, ma'am.

21 Q In the version you gave to police the second time,
22 State's Exhibit #3, I believe, you stated that when
23 you met up with ^{fifteen year old} she was in tears. Is that
24 accurate?

25 A Yes, ma'am.

1 Q What did you do with her in tears?

2 A I talked to her, listened to her.

3 Q Because she's your friend, right?

4 A Right.

5 Q And you care about her?

6 A Right.

7 Q You are concerned about her.

8 A Yes, ma'am.

9 Q And so you -- in this statement it says you were
10 bringing the knives to hurt yourself?

11 A (Looks at document) Could you repeat that question,
12 please?

13 Q In your statement, and I'll get you to just read from
14 -- well, I'll just read it for you. "I went up there
15 to see ^{fifteen year old} for a few. When I went up there she was
16 in tears and ready to hurt herself. I was mad from
17 everything said to me by Justin Fields and so I asked
18 Dylan Calvert to bring a couple of knives." Clarify,
19 were you bringing those for ^{fifteen year old} to hurt herself or
20 for you to hurt yourself?

21 A I wasn't intending to hurt anyone. This was when the
22 officer was getting adamant and I told him that, "Hey,
23 if that makes you happy ---"

24 Q Okay. But a part of your statement that you say is
25 true now, is that she was in tears.

CROSS EXAMINATION OF ROSS SCOFIELD BY MS. WHITE

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1 A Yes, ma'am.

2 Q All right. So, with her being in tears and being
3 fifteen years old and it getting dark at night, did
4 you call her parents?

5 A No, ma'am.

6 Q Did you call her friends?

7 A No, ma'am. But she tried to call one of her friends.

8 Q Did you ever encourage her that it was time to go
9 home?

10 A Yes, ma'am.

11 Q When?

12 A At the end before we were arrested, I told her, "Hey,
13 it's time to go. I'll take you on home."

14 Q But I thought Mr. Calvert was bringing knives to cut
15 the underbrush so y'all could keep playing.

16 A Yes, ma'am. It was getting dark and we weren't going
17 to run through the creeks or jump the creeks or the
18 woods anymore because I didn't want her to get hurt
19 anymore and, of course, I didn't want to get hurt.

20 Q So, Mr. Calvert was bringing knives just to bring
21 them?

22 A I did call him to not bring them, from one knife, but
23 he never answered his phone.

24 Q So, you didn't tell Mr. Henderson that on direct.

25 A No.

1 Q Did you just remember that?

2 A Yes, ma'am.

3 Q So, all of this is occurring between 6:30 at night and
4 approximately 9:00 or 9:30?

5 A Nine or ten. Yes, ma'am.

6 Q Do you still have that statement in your hand? Can
7 you tell me, how much of that, what part of that
8 statement is true?

9 A What are you asking on that?

10 Q What, that you wrote on that piece of paper on May
11 30th for the police, what is true?

12 A Do you want me to read what is true?

13 Q Read what is true.

14 A Okay. I did go out there to see ^{fifteen year old} for a few.
15 She was in tears and she was ready to hurt herself. I
16 was also upset about what Justin was saying and stuff.

17 Q What was Justin saying?

18 A He was telling her that, suck it up, dah, dah, dah,
19 and trying to make her feel even worse about it.

20 Q Okay. Is there anything else on that page that's
21 true? What about the part where you say Dylan Calvert
22 didn't know what the knives were for?

23 A Yes, ma'am. That is true.

24 Q You stated earlier that he was bringing the knives to
25 cut underbrush.

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1 A Yes. And that's what I told ^{fifteen year old} and Justin.

2 Q Okay. And so it's true that he didn't know what the
3 knives were for?

4 A Yes, ma'am.

5 A So, is there anything else in that statement that you
6 gave police that's true?

7 A Where it stated that she left a note at home, before
8 she left home, I guess.

9 Q Okay. So, she told you she left a note?

10 A Yes, ma'am.

11 Q And you would agree with me that the rest of what's in
12 that statement is wildly different than what you told
13 this jury today?

14 A Yes, ma'am.

15 Q Thank you, Mr. Scofield.

16 THE COURT: Mr. Henderson?

17 MR. HENDERSON: If I could have one moment, Your
18 Honor.

19 THE COURT: Sure.

20 REDIRECT EXAMINATION

21 BY MR. HENDERSON:

22 Q Mr. Scofield, I want to direct your attention back to
23 May 28, 2011. You were 19 years old at that time,
24 weren't you?

25 A Yes, sir.

1 Q You're 20 years old now?

2 A Twenty-one.

3 Q Twenty-one. Back then, were you working?

4 A Yes, sir.

5 Q Where were you working?

6 A I was working at Suggs Enterprises.

7 Q Working full time?

8 A Yes, sir.

9 MR. HENDERSON: I don't have anything further, Your
10 Honor.

11 THE COURT: Very well. You may step down.

12 MR. HENDERSON: The Defense rests, Your Honor.

13 THE COURT: Very well. Any rebuttal, Ms. White?

14 MS. WHITE: May I have a brief recess, Your Honor?

15 THE COURT: Very well. Ladies and gentlemen, the
16 State has the opportunity to present a rebuttal witness.
17 They don't have to. If not, we'll take a break and get
18 ready for the closing summaries and my instructions and
19 we'll try to get that done momentarily, so y'all take a
20 break. Don't discuss the case yet. We'll try to get you
21 right back out here, hopefully, in a few minutes. Thank
22 you for your patience.

23 (Jury out at 10:50 a.m.)

24 (Brief break)

25 (Jury in at 11:06 a.m.)

1 THE COURT: All right, folks. The State has informed
2 me that they do not have a rebuttal witness and we're going
3 to go ahead and allow the attorneys to make their closing
4 summaries. The way it works, the State opens on the law,
5 the relevant view of the law as it applies to this case,
6 and they sit down and the Defense gets to give their
7 closing summary. What the lawyers are doing is, they are
8 advocates for their clients. They are summarizing the
9 evidence shown in this case and after the Defense gives
10 their closing summary, the State is allowed to give their
11 closing summary in full. As soon as that's done, then I
12 give you my closing instructions on the law and how to
13 evaluate and weigh the evidence, consider what you've been
14 told and what you've seen in the evidence, and then you
15 will begin your deliberations. You have an idea of what
16 your task is, so with that brief explanation, we'll now
17 have closing summaries. Ms. White.

18 MS. WHITE: Thank you, Your Honor. May it please the
19 Court.

20 THE COURT: Yes, ma'am.

21 CLOSING ARGUMENT - MS. WHITE

22 Ladies and gentlemen, Mr. Scofield has three
23 indictments. The first indictment is a little tricky.
24 It's contributing to the delinquency of a minor. My burden
25 is to prove beyond a reasonable doubt that Mr. Scofield did

1 in Abbeville County on or about May 28, 2011 -- on or about
2 is just a time frame about May 28, 2011 -- while he was
3 over the age of eighteen, encouraged someone under the age
4 of eighteen to, essentially, become a delinquent, to become
5 outside the control of their parents and there's a lot of
6 different ways that could happen, but that he knowingly
7 aided or caused an act that influenced a minor to become
8 unmanageable by her parents or caused a minor to commit an
9 act or put her in an environment that would endanger her
10 health or morals. So, that's the law on contributing.

11 The next charge is conspiracy, and for that, I again
12 have to prove that here in Abbeville County on or about May
13 28, 2011, he had an agreement with another person or
14 persons, doesn't have to be more than one, and that they
15 had an agreement to carry out an unlawful act or they are
16 acting together for mutual benefit.

17 And then, finally, he's charged with criminal sexual
18 conduct with a minor. To prove that, I have to show you
19 beyond a reasonable doubt that on or about May 28th, here
20 in Abbeville County, that Mr. Scofield, being older than
21 the victim, has committed a sexual battery on someone
22 younger than sixteen years of age and a sexual battery is
23 defined as sexual intercourse or any penetration of any
24 part of her body, however slight, into the genital openings
25 of the victim's body. So, any penetration, however slight,

1 is how sexual battery is defined as.

2 Ladies and gentlemen, that's the law and when I come
3 back and talk to you in a few minutes, I'll talk to you
4 about how I think the facts of this case follow the law and
5 that's the law of the case.

6 THE COURT: Mr. Henderson?

7 MR. HENDERSON: Yes, sir, Your Honor. If it pleases
8 the Court.

9 THE COURT: Yes.

10 CLOSING ARGUMENT - MR. HENDERSON

11 Ladies and gentlemen, thank you for listening
12 attentively. I'd also like to cover a little bit of the
13 law that's applicable to this case and I'll take it in the
14 order that Ms. White addressed the issues.

15 The first one is contributing to the delinquency of a
16 minor that my client, Mr. Scofield, has been indicted for
17 and His Honor will go into this in more detail, but let me
18 tell you what the General Assembly, our group of men and
19 women in Columbia that make the laws, this is what they say
20 that contributing to the delinquency of a minor is: That
21 you helped a minor break the law or municipal ordinance or
22 municipal law, that you helped them become incorrigible,
23 ungovernable, habitually disobedient, beyond the control of
24 his or her parents, that you caused this minor to become
25 and be habitually truant, skipping school, and without the

1 consent of his or her parents, that you made them
2 repeatedly leave their home, run away, that you've helped
3 this minor to engage in an occupation that's against the
4 law, that you've helped this minor associate with immoral
5 or vicious persons, that you've helped this minor frequent
6 a place that's in violation of the law that you can't
7 legally go to, that you've helped this minor habitually use
8 obscene or profane language, that you've helped this minor
9 beg, stand up there on the public square and beg for alms,
10 beg for money, that you've helped this minor do anything
11 else that would injure his or her morals or the health or
12 the morals or health of others. That's what contributing
13 is and His Honor is going to go into more detail than that
14 with you, but I just want you to keep in mind that that is
15 what the law of contributing to the delinquency of a minor
16 is.

17 The second one is conspiracy. What a criminal
18 conspiracy is: two or more people agree, they have a
19 meeting of their minds, that they are agreeing to do
20 something unlawful, to do something illegal, they've got
21 that criminal objective in mind, they know the illegal act
22 that they want to commit and that illegal act that they
23 want to commit, everybody that's in the conspiracy is going
24 usually to benefit from committing that single act or
25 single crime. Keep that in mind.

1 And then also, the law of CSC with a minor. It's
2 pretty straightforward. It's against the law for anybody
3 over eighteen years old to have sex with somebody that's
4 under nineteen years old and the law defines sex as sexual
5 intercourse, what it sounds like. That's the law in this
6 matter and Ms. White covered it and His Honor is going to
7 cover it with you again in great detail.

8 Now, ladies and gentlemen, as I mentioned in my
9 opening, I believe that the evidence that you listened to
10 and you've heard and that you will be reading back there in
11 the jury room with you, take with you, is, again, just a
12 calamity of misunderstandings and people jumping to
13 conclusions. Again, the presumption of innocence. As I
14 told you yesterday before this trial started, Mr. Scofield
15 is presumed innocent. Right now, as you are sitting here,
16 he is still presumed innocent. Right now, you still need
17 to presume that the government's allegations that have been
18 presented are just untrue. Right now, as he sits here,
19 that's got to be your starting point, that the government's
20 allegations are untrue because my client, again, is
21 presumed innocent. He's presumed not guilty of anything
22 that the government accuses him of doing.

23 Again, it's not my client that's on trial. It wasn't
24 Mr. Scofield that was on trial. It was the government's
25 case that was on trial. It was the government's witnesses

1 that were on trial. It was Miss fifteen year old that was on
2 trial. It was Mrs. Kimberly Wagler that was on trial, not
3 Mr. Scofield. Again, Mr. Scofield has nothing to prove to
4 you. He has nothing to disprove to you. Again, all the
5 burden of proof in this matter is solely on the government
6 in this matter.

7 And again, His Honor, is going to go into more detail
8 about it, but again, my client is presumed guilty, presumed
9 not guilty of all these charges unless you are convinced,
10 firmly convinced, beyond all and any reasonable doubt that
11 my client committed these crimes and again, reasonable
12 doubt is the highest standard that our law, our judicial
13 system, recognizes. It's the cleanest proof, it's the
14 clearest proof, it's the firmest proof. It's that you know
15 it. It's not I think it, it's not I might believe it,
16 could be. Ladies and gentlemen, the simplest way to put
17 it, if you can't figure out what happened, not guilty.
18 Because again, my client is entitled to the benefit of
19 every doubt that may enter into your mind, that may enter
20 into your discussions when you begin deliberating here
21 shortly. And again, I want you to keep that in mind, that
22 benefit of a doubt, and that the presumption of innocence,
23 as I told you yesterday, it's a big deal for people who are
24 actually innocent.

25 Let me cover a little bit of testimony the way I heard

1 it, the way I took notes on it, but keep in mind, you are
2 the final deciders of the facts. Again, if I tell you
3 something wrong, don't hold it against me. I think I've
4 tried to take good notes and be a good listener and I know
5 all twelve of you have and let's start off with the order
6 of witnesses, Mrs. Kimberly Wagler, the mother, who was the
7 first one to testify here. I noticed that she said that it
8 wasn't unusual for ^{fifteen year old} to be gone as long as she was on
9 Saturday, May 28, 2011, and again, I'm not exactly sure how
10 long that was, but however long it was, it wasn't unusual
11 for ^{fifteen year old} to be gone and the reason that she thought
12 ^{fifteen year old} looked rough, turns out, ^{fifteen year old} had been running
13 through the briars, jumping creeks, climbing trees, doing
14 stuff that kids do in the summer out in the woods. ^{fifteen year old}
15 was in shorts that day.

16 And ladies and gentlemen, I will submit to you that
17 the evidence showed that when Miss Kimberly Wagler
18 testified, she said that Dr. McQuown refused to do this
19 rape kit. I submit to you that she testified that Dr.
20 McQuown made her leave the room during this physical
21 examination. And ladies and gentlemen, you heard her
22 testify about this affidavit she gave for the restraining
23 order in Greenwood, ^{fifteen year old} was kidnapped, held against her
24 will in the graveyard, her bike taken from her. Ladies and
25 gentlemen, that just wasn't true. She finally admitted it

1 wasn't true. And she knows that her daughter denied having
2 sex that night. I mean, the daughter was adamant about it,
3 told the doctor that it didn't happen. Ladies and
4 gentlemen, I just want you to keep that in mind. And also,
5 she testified that she had no contact with Mr. Scofield at
6 all on May 28th. She wasn't hurt on May 28th, Mr. Scofield
7 didn't go to her house on May 28th. I want you to keep
8 that in mind, ladies and gentlemen and you know, she didn't
9 say anything about knives in her testimony.

10 I think it's fair to say, ladies and gentlemen, that
11 this Kim Wagler is just an overprotective mother who jumped
12 to a lot of conclusions and now has jumped out too far and
13 is just refusing to listen to what actually happened, what
14 the objective evidence was from her daughter and the doctor
15 and the nurse.

16 And you heard fifteen year old you heard ^{fifteen year old} say she
17 initiated contact with Mr. Scofield on Saturday, May the
18 28th. She said she sent him a text message. She's saying
19 that they went to the cemetery, the three of them, Mr.
20 Justin Fields, my client, and her, and all of a sudden she
21 and Mr. Scofield decide to have sexual intercourse. Folks,
22 that had to be the most boring sex that's ever occurred. I
23 mean, there wasn't any foreplay, no kissing, no nothing.
24 Folks she sounded a little like a robot giving that
25 testimony. Y'all know what that means, folks. And you

1 heard her say that they had sex at 3:00 in the cemetery and
2 that this other fellow, this Mr. Justin Fields, was
3 standing nearby in the cemetery.

4 You heard her admit that she was wearing shorts, that
5 they were all out playing, jumping creeks, running through
6 the woods, cutting up her legs. You heard her say that
7 when the police finally showed up and caught her and Mr.
8 Scofield in the graveyard, that they didn't know it was the
9 police. When they learned it was the police, they stopped
10 running.

11 And you know Miss fifteen year old denied having sex to
12 her mother. When she went to the doctor and saw Dr.
13 McQuown, she denied having sex. Her feet got put up in
14 stirrups, given a physical exam by a medical doctor, and
15 hymen intact, no bruising, no contusions, no discharge, no
16 semen, no nothing, folks, and that's what Dr. McQuown does
17 for a living. And you heard Miss fifteen year old also
18 testify that Dr. McQuown refused to do a rape kit, that it
19 would take too long. You also heard her testify that Dr.
20 McQuown made her mother leave the room during the physical
21 examination and you also heard Miss fifteen year old testify
22 that she did not follow up with her family physician, Dr.
23 Lindsay Wiles, within two days as Dr. McQuown wanted her
24 to. Now, Miss fifteen year old she wasn't prescribed any
25 medication that night.

1 If you noticed, in her testimony, she didn't say a
2 darn word about any knives. She didn't say anything about
3 it at all. My concern, ladies and gentlemen, wading
4 through this, is that if Mom was shading her testimony,
5 looks like she might have been encouraging her daughter to
6 shade her testimony a little bit, too.

7 And then you heard from Mr. Dylan Calvert, who
8 testified from the stand up there that he had no idea why
9 the knives should be brought over there. You know, he
10 brought them and he got arrested. I mean, his testimony
11 was that he didn't learn what the knives were for until he
12 was in jail with Mr. Scofield. And again, Mr. Calvert
13 admitted on the stand that he was a liar, so I don't know
14 what to believe about what he said, but obviously, he was
15 charged with giving false information to police, so I know
16 he lies, and ladies and gentlemen, I think you know he
17 lies, but again, I don't know what's in the kid's mind.

18 Then we heard from Miss Halie Owenby, who is like a
19 sister to Miss **fifteen year old** close to the Mom, and yet
20 she's never met my client, never met Mr. Scofield. She
21 doesn't even know what county she lives in. How much
22 credibility are you going to give a witness who doesn't
23 even know what county and state that they live in? And
24 yet, she's claiming that my client called her on Friday,
25 May 27, 2011, saying that he had killed ^{fifteen year old}s mother,

1 you know. And keep in mind that he's allegedly made a
2 phone call that he's killed somebody before these kids ever
3 met up on Saturday, May 28th. Folks, the stories just
4 don't add up. Ms. Owenby hasn't presented any call records
5 of this. I mean, you can take that for what it's worth.
6 And how is she going to be a confidante to somebody she's
7 never met? Think about that. If you want to stretch the
8 truth with your buddies, at least get the dates right.

9 Then you heard from Officer John Garner of the
10 Abbeville Police Department. He was the first adult that
11 had any contact with **fifteen year old** on Saturday, May 28th.
12 He ran into her and Mr. Scofield in the graveyard. You
13 didn't hear him say anything about sex, looked like she had
14 had sex, anything along those lines, that she had been
15 complaining about having sex. He's an experienced police
16 officer. He picks up on stuff. He would have learned
17 that, and he didn't, folks. As best I can tell, everyone
18 was fully dressed when he found them and you'll also notice
19 that through his investigation into this matter, he
20 established that my client arrived in Abbeville by taxi at
21 about 6:30 or 7:00 on Saturday, May 28, 2011. And again,
22 that's some three-and-a-half to four hours after Miss
23 **fifteen year old** said this sex occurred in the graveyard. One
24 thing I was wondering, too, when Officer Garner testified,
25 where are these knives today? He didn't bring them to

1 court with him.

2 And then you heard from Officer John Gray saying my
3 client told him that he wanted to harm Mrs. Kimberly Wagler
4 and Miss fifteen year old None of that's reported, not
5 recorded, not on air recorded, not handwritten, no
6 witnesses to that conversation. Again, my client has given
7 a written statement. Ladies and gentlemen, you know he can
8 read and write. Just think about that, whether or not that
9 first statement actually happened.

10 And then you had Dr. Lyle Pritchard, who testified for
11 the government. She agreed that this was no confirmed case
12 of sexual assault. I mean, there is no physical evidence
13 of sexual assault. I mean, there are no photographs,
14 there's nothing else. You heard Dr. Pritchard, the State's
15 own witness agree that doctors have to rely on what their
16 patients tell them. I mean, doctors have to, that's what
17 doctors do. Doctors are not mind readers. They have to
18 rely upon what their patients tell them. You heard Dr.
19 Pritchard agree that if what the patient is telling me
20 matches up with what I see, that gives me further reason to
21 believe what my patient is telling them. Also, Dr.
22 Pritchard never saw Miss fifteen year old She never talked
23 to her, never examined her and she agreed that that Dr.
24 McQuown is actually a doctor.

25 And then you heard from Dr. McQuown this morning. His

1 report or his medical records indicating his treatment of
2 Miss fifteen year old is in here (indicating), and ladies and
3 gentlemen, I want you to read this report real carefully.
4 You heard him testify, nobody asked him to conduct a rape
5 kit exam, nobody prevented Mama from being in the room with
6 her. Miss fifteen year old was adamant that no sex occurred.
7 No signs of trauma, no nothing. It's all in here, ladies
8 and gentlemen. Read it. Dr. McQuown also testified that
9 he instructed Miss fifteen year old to go see Dr. Lindsay
10 Wiles, her treating physician, within two days or at the
11 most, a week, he said. After May 29th is when she was let
12 out of the hospital and so two days or a week of that date,
13 go see your family doctor and make sure everything's okay.
14 And again, folks, look through this. There is no evidence
15 that Miss fifteen year old was in pain, she wasn't complaining
16 of anything, adamantly denying that any sex had occurred,
17 doing that for her mother. And then you heard from nurse,
18 Anna Edmunds, who agreed that Miss fifteen year old didn't say
19 anything or actually denied having any sex or any assault
20 at all. It didn't happen.

21 And then, ladies and gentlemen, you've got this
22 document here (indicating) from Miss Alicia Woods, who is
23 the records custodian at Family Medicine Associates here in
24 Abbeville, that Miss fifteen year old who was recommended by
25 Dr. McQuown to go see these people within two days or a

1 week, at least didn't go see them through June 30, 2011. I
2 don't know if she ever went back and saw them or ever went
3 to see them. We know for at least a thirty day period she
4 didn't go. Nothing was wrong with that child.

5 And then you heard my client, Mr. Scofield, testify.
6 Mr. Scofield is adamant that no sex occurred. He didn't
7 intend to hurt nobody, didn't want to hurt anybody and that
8 he's done nothing to hurt or injure or endanger Miss ^{fifteen year old}

9 's morals. This was a friendship between a nineteen
10 year old male and a fifteen year old female and there's
11 nothing against the law about that at all.

12 So ladies and gentlemen, again, it all comes down to
13 my client being presumed not guilty of these charges.
14 You've got to take that back into the jury room with you.
15 As you sit here, he's not guilty. He is presumed innocent
16 unless the government has convinced you of anything beyond
17 all or any reasonable doubt. Ladies and gentlemen, I would
18 submit to you that you know what to do. Go back there in
19 that room and do it and keep this one key point in mind,
20 Miss ^{fifteen year old} was adamant that this sex happened at
21 3:00 in the afternoon on May 28, 2011. My client and an
22 independent police officer both confirmed that he didn't
23 arrive in Abbeville until 6:30 or 7:00 that same day. I
24 tell you, ladies and gentlemen, that's why Miss ^{fifteen year old}

denied having sex and why it looked like she didn't

1 have sex, because she didn't have any sex.

2 Ladies and Gentlemen, again, go back there and do the
3 right thing and come back with the right verdict. Thank
4 you.

5 CLOSING ARGUMENT - MS. WHITE

6 Ladies and Gentlemen, I'm going to start with a few
7 points that Mr. Henderson just said while it's fresh in my
8 mind. He described a few minutes ago, this as a calamity
9 of misunderstandings and that's not what I just heard him
10 talk about. What I heard him talk about was some kind of
11 massive government conspiracy to frame Mr. Scofield. He
12 just talked about lying to police officers, he talked about
13 a mother, who for no apparent reason, has decided to frame
14 Mr. Scofield. That is not a calamity of misunderstandings.
15 That's not what he just described, at all.

16 Taking the points as he did, from the view of the
17 witnesses, he, Mr. Henderson, was concerned about Kim
18 Wagler's testimony, that she was confused about whether or
19 not ^{fifteen year old} had been kidnapped, that she signed the
20 affidavit saying that she thought ^{fifteen year old} had been
21 kidnapped. Well, remember, she signed that affidavit in
22 June of 2011 and we know that her daughter, ^{fifteen year old} was not
23 being very forthcoming with her at first. She didn't tell
24 y'all anything on the stand on direct about ^{fifteen year old} being
25 kidnapped, because she knows at this point, that's not what

1 happened, but she signed the affidavit at that time based
2 on what she thought had happened at that time.

3 And ladies and gentlemen, I know Mr. Henderson talked
4 to her a lot about time frames and who called the police
5 and did this and that. This is a mother who was panicking.
6 Her daughter was missing, she was panicking, she had
7 friends out looking for her, everything is a jumbled mess
8 in her mind at that point.

9 Turning to Miss Wagler's, fifteen year old testimony.
10 Mr. Henderson commented on her demeanor on the stand. She
11 is a now sixteen-year-old girl having to tell twenty
12 something strangers about her first sexual encounter.
13 Ladies and gentlemen, I submit that it's hard for a fifty-
14 year-old to get up there and talk about a sexual encounter.
15 There's a reason she wasn't forthcoming with details. It's
16 very hard for a fifteen-year-old to talk about or a
17 sixteen-year-old to talk about. And Mr. Henderson kept
18 saying that she was adamant that it was 3:00. No, that's
19 not what I heard. And again, y'all are the ultimate fact
20 finders. It's what y'all heard that matters, but what I
21 heard was that she wasn't sure about the times. She knew
22 it was daylight, it was after they got up there, but she
23 wasn't certain about the times and he tried to pin her
24 down, I think it was 3:00, and she might have ultimately
25 agreed, probably around 3:00, but she wasn't certain about

1 the time frame. And again, she didn't follow up with her
2 medical provider. Well, why would Dr. McQuown want her to
3 follow up with a medical provider if there was nothing
4 wrong with her?

5 Mr. Henderson talked about Halie Owenby's testimony,
6 that she, implying that she could not possibly have been
7 close with Mr. Scofield because they had never met
8 personally. Well, I don't know how familiar Mr. Henderson
9 is with teenagers, but they can be best friends with
10 someone they just meet on Facebook or talk to on a
11 telephone. She's living in North Augusta, he's living in
12 Greenwood. It's not like they can meet up and talk and so
13 the fact that they never met in person -- the quality of
14 the friendship is determined by how often you talk and the
15 type of things you talk about. It's not determined by how
16 often you see each other.

17 And John Garner. If John Garner can look at a
18 teenager and tell if they have had sex, I know a lot of
19 parents who are going to want to be talking to him. Of
20 course, an experienced law enforcement officer can't look
21 at someone and tell if they've had sex four hours
22 previously, two hours previously, even thirty minutes
23 previously. No one can do that. At the time, no one was
24 making allegations and so he doesn't ask any questions, but
25 to imply that he somehow, because he doesn't immediately

1 hone in on the fact that she looked like she had had sex,
2 that somehow she didn't have it, ladies and gentlemen, I
3 submit that's utterly ridiculous.

4 Also, in my recollection of Lieutenant Garner's
5 testimony, he never stated definitively that Southside Taxi
6 dropped Mr. Scofield off between 6:30 and 7:00. He stated
7 that Southside Taxi reported that they had dropped someone
8 off, but that's my recollection of the testimony and,
9 ladies and gentlemen, I submit they did drop someone off.
10 They dropped off John Calvert. From his testimony, he
11 would have gotten there around that time frame.

12 Lieutenant Gray, according to the Defense's theory is
13 just one big liar, I guess. He made up the statement about
14 the intent to hurt ^{fifteen year old} and her mother, badgered him into
15 giving this other version of events that we later found out
16 that, again, is also not true and so to believe the
17 defense's theory, you would also have to believe that
18 Lieutenant Gray made all that up.

19 And those are just hitting just a few of the high
20 points of things that stood out to me from the Defense's
21 closing.

22 Now, going back to the facts of the case and how they
23 apply to the law. First of all, the contributing charge.
24 Mr. Henderson read off a litany of elements and he kind of
25 made it sound like you have to do all of those things and

1 when you listen to the Judge's charge, you don't have to do
2 all of those things. It's an either, or. You do this or
3 you do this or you do this.

4 And the things I'm particularly focusing on are from
5 Kim Wagler's testimony and from **fifteen year old** testimony,
6 it's clear that Mr. Scofield knew or should have known she
7 did not want him dating or being around her daughter. They
8 were texting, they were calling, all from November of 2010
9 through May of 2011. The testimony showed that he was
10 encouraging her. ^{fifteen year old} testified, they were hiding out
11 from the police, they were hiding out from her mom in the
12 cemetery. He is encouraging her, he is aiding her to hide
13 from her parents and from legal authorities, engaging in
14 sexual intercourse with her. That's certainly harming her
15 morals and, potentially, her health.

16 Also, and again, we aren't really sure what Mr.
17 Scofield's story is, because he's given, by my count, three
18 different versions, but his second statement, the one that
19 he actually wrote down, he stated that he was bringing the
20 knives, I guess to hurt himself, in front of ^{fifteen year old}. Well,
21 that's hurting, that's a position that harms her, her
22 morals, her health, watching someone cut themselves.

23 So, ladies and gentlemen, I submit to you that from
24 all the testimony, there's more than enough evidence that
25 Mr. Scofield caused, encouraged Miss Wagler to become

1 ungovernable by her mother, by lawful authorities, to hurt
2 her morals and engage in activities that were harmful to
3 her health.

4 Turning to the conspiracy charge. Now, remember
5 Halie's testimony, the day before, he's already talking
6 about he wants to hurt Kim Wagler. That's the day before.
7 Then, the morning of the 28th, he calls her and tells her
8 the deed is done. Well, why do you call someone and say
9 that if you're not intending to follow through with it?

10 And then, going to the elements of conspiracy, the
11 agreement, well what evidence do we have that there was an
12 agreement? We have Mr. Calvert's testimony and it was a
13 little all over the place. His first testimony was that
14 Mr. Scofield called him and asked him to bring weapons to
15 kill ^{fifteen year old}s mom and then he walked that back out a little
16 bit and said he just called him to bring knives and he
17 didn't know about it until the next day. Ladies and
18 gentlemen, he's friends with Mr. Scofield. I think we know
19 why he backed out of that a little bit. The important
20 thing to remember is he plead guilty to conspiracy. He
21 admitted that he conspired with someone to kill Kim Wagler.
22 He was wearing dark clothing. Justin Fields was wearing
23 dark clothing. Justin Fields was in on it as well. He's
24 the one who paid the taxi for John Calvert. And he had
25 four knives. These aren't little bitty knives. These are

1 machetes, four of them. Why would he need four machetes?
2 Why was he bringing the knives? And I know Mr. Henderson
3 brought up mutual benefit. It doesn't have to be, we are
4 all going to make money from this. I mean, mutual benefit
5 can be friendship, comradery. Everyone doesn't have to get
6 the same thing out of a crime.

7 And Mr. Scofield, he admitted it at first, that he was
8 going to hurt Mrs. Wagler and then he had about five hours
9 to think about it. He thought, well, that's not going to
10 sound good and so he calls Lieutenant Gray back. He
11 admitted that. He called Lieutenant Gray back. Lieutenant
12 Gray did not go back to him. He called Lieutenant Gray
13 back and gives him this written statement that he tries to
14 explain the knives and make it all sound like he wasn't
15 going to hurt anyone. But then, I guess he's been thinking
16 about it since then and he's come up with this third theory
17 that he came in and told y'all about today and he was very
18 all over the place about it. According to him, all of this
19 occurred between 6:30. They had dinner for an hour, he
20 called Dylan Calvert, they played in the woods, they were
21 jumping creeks, climbing trees, all of this occurred in
22 about an hour. That time frame just doesn't work. There's
23 no way. Now, if they get there around lunchtime, that
24 works perfectly. They have all day to play in the woods,
25 but there's no way they did that in an hour.

1 You also heard both Halie Owenby and Dylan Calvert
2 testify that Mr. Scofield was obsessed with fifteen year old
3 They both thought they were boyfriend/girlfriend, that he
4 just talked about her constantly. Halie Owenby said every
5 conversation she had with Mr. Scofield was about fifteen year old

6 And finally, turning to the criminal sexual conduct
7 charge, that night she said it didn't happen. Her mama is
8 sitting in the room with her. She's fifteen years old and
9 she knows what's going to happen to her if she tells her
10 mom that she just had sex. Even Dr. McQuown said,
11 teenagers are not forthcoming when their parents are
12 sitting right there. Dr. Pritchard testified that the fact
13 that her hymen was intact is in no way inconsistent with
14 having had sex. Mr. Calvert testified that Mr. Scofield is
15 in the jail, in the jail, bragging about having had sex
16 with Miss Wagler. He was in the Abbeville Detention Center
17 bragging about it. He also testified he was in the
18 Abbeville Detention Center and wanting to kill Miss
19 Wagler's mother. Dr. McQuown testified he didn't want to
20 put her through a rape kit because of what she was telling
21 him at the time. Would his decision have been different?
22 Probably so. But at that point, there was no point putting
23 her through the rape kit.

24 Mr. Scofield. According to him, they were just good
25 friends. I don't think anybody believes that. And he never

1 could quite explain the knives. We were bringing them for
2 the undergrowth, but then we weren't bringing them for the
3 undergrowth, but then we were done playing, but we weren't
4 done playing. He was all over the place on that.

5 Ladies and Gentlemen, the Judge is going to charge you
6 that the State has to prove its case beyond a reasonable
7 doubt. That doesn't mean without all doubt, because we could
8 never do that. It means that when you go back there and you
9 add up all the facts, all the evidence, everything you've
10 heard from that witness stand, that you believe that he did
11 it, and there's nothing that causes you to hesitate, then you
12 find him guilty. That's what beyond a reasonable doubt
13 means.

14 Ladies and gentlemen, this is not a case of a mother who
15 is out to get blood and I don't know why she would be out to
16 get blood from him under the Defense's theory. This is a
17 case of a young man who was so obsessed with a girl that he
18 was ready to, Romeo and Juliet style, take out anyone who was
19 getting in their way. Thank you.

20 CHARGE OF THE COURT

21 All right, ladies and gentlemen, I'm going to give y'all
22 instructions and then explain to you about your
23 deliberations. It's getting near lunchtime and you might get
24 to eat lunch, also, and that will be, y'all will decide when
25 I finish these instructions.

1 Mrs. Barks and members of the jury, the State of South
2 Carolina is charging the defendant, James Roscoe Scofield,
3 with the crimes of conspiracy, contributing to the
4 delinquency of a minor, and criminal sexual conduct with a
5 minor under the age of sixteen. You will, of course, bear in
6 mind that Mr. Scofield has pled not guilty and by the plea,
7 he denies all the charges against him alleged in the three
8 indictments.

9 Now, Mr. Scofield comes to this courtroom clothed with
10 the presumption of innocence. This presumption of innocence
11 continues throughout this trial, throughout this case, and
12 entitles him to a verdict of not guilty until or unless it is
13 dispelled by evidence satisfying you, the jury, beyond a
14 reasonable doubt, that he is guilty of the offenses charged.
15 Now, the State has to prove each and every element of the
16 alleged crimes beyond a reasonable doubt.

17 Now, the same constitution and law that makes you, the
18 jury, finders of the facts in evidence, as I discussed with
19 you earlier, makes me, the judge, the only instructor of the
20 law. You must accept as true and correct the law which I
21 instruct to you, apply it to the evidence which has been
22 presented, and evidence and facts as you find them, and reach
23 a verdict. Now, if I should make an error in the law as I
24 instruct it to you, there is another time and another place
25 for that error to be considered and, if necessary, corrected.

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1 For the purposes of the case today, you must accept the law
2 as I instruct it to you and in that regard, I tell you that
3 neither you nor I should be concerned about what we believe
4 or think the law ought to be, but only concern ourselves with
5 what the law is as I instruct it to you today, actually is.

6 Now, in a criminal prosecution such as the case before
7 us, the State has the burden of proof. The Defense has no
8 burden whatsoever. Mr. Scofield is considered innocent. In
9 the State of South Carolina, according to our constitution,
10 the prosecution must prove their case to a standard of proof
11 called, beyond a reasonable doubt, before a finding of guilt
12 can occur. Now, if the State fails to meet this high burden,
13 then Mr. Scofield will be entitled to a verdict of not
14 guilty.

15 Now, the State has the burden of proving beyond a
16 reasonable doubt. What is a reasonable doubt? I must tell
17 you simply this: A reasonable doubt is the kind of doubt
18 which would cause a reasonable person to hesitate to act.
19 Now, the very fact that a jury such as yourselves engages in
20 full and free discussion on the issue of guilt and non-guilt
21 in this case does not automatically mean that a reasonable
22 doubt exists in this case. So, if you find that the State
23 has not met its burden of proof beyond a reasonable doubt, in
24 that case, Mr. Scofield will be entitled to a verdict of not
25 guilty. However, if you were to find unanimously that the

1 State has proved the elements of the crimes beyond a
2 reasonable doubt, then the State would be entitled to a
3 verdict of guilty.

4 Now, under our laws as I told you, under the
5 Constitution of the State of South Carolina, you, as the
6 jury, are the sole fact finders in this case. I'm not
7 allowed as the judge to suggest to anyone what I may think
8 about the guilt or innocence of Mr. Scofield. You are the
9 finders of fact and, therefore, because of that, are the
10 judges of the credibility and the believability of the
11 witnesses and the evidence which has been presented in this
12 case. So, I instruct you that in considering the credibility
13 and believability of the testimony which you have heard in
14 this case, you may consider anything using your good common
15 sense that you deem appropriate. You can also consider
16 things such as this: what was the manner and appearance of
17 the witnesses who testified, was the witness straightforward,
18 was the witness hesitant in answering, how did the witness
19 come to know the fact which he or she testified to, what was
20 her or his ability to know these facts, is there some reason
21 they would want to give testimony which would help or hurt
22 one side or the other, in other words, was the witness biased
23 or prejudiced. Now, was the testimony of the witnesses
24 strengthened or weakened by other testimony or other
25 evidence. You, the jury, may believe as much or as little of

1 each witness' testimony as you deem appropriate. You may
2 believe the testimony of a single witness against that of
3 many or just the opposite. You can believe a part of a
4 witness' testimony and disbelieve the rest and the fact that
5 testimony is not controverted does not mean that you must
6 accept it as true and undisputed. You must still gage the
7 credibility of all the witnesses who have testified to
8 determine the believability or the truth of the facts offered
9 through this testimony.

10 Now, as I instructed you during the trial, it's normal
11 that a person cannot give opinion testimony. However, there
12 is an exception to that rule when a person is qualified
13 because of their education or experience to be an expert.
14 Normally, witnesses must only testify to what they saw, heard
15 or sensed by smell or something of that nature. There are
16 certain areas that a Court, such as myself, qualifies a
17 person as an expert in a particular field and they can offer
18 opinions in that field of expertise. In this case, there
19 were two experts so qualified. Dr. Lyle Pritchard, she was
20 qualified as an expert in child sexual assault examinations.
21 Dr. James McQuown is an expert in the field of family
22 medicine. These experts were allowed to give opinions in
23 their testimony in their respective fields of expertise.
24 Now, this does not mean that you must accept their opinions,
25 but it is evidence for you to also consider in your

1 deliberations.

2 Now, in a trial such as the one y'all have seen, there
3 are two types of evidence generally presented. There is
4 direct evidence and there is circumstantial evidence. Direct
5 evidence is testimony of a person who claims to have actual
6 knowledge of certain facts such as an eyewitness or a person
7 of that type. Circumstantial evidence is a little different.
8 It is proof that a certain chain of facts and circumstances
9 indicated the existence of a fact. Now, our law makes no
10 distinction between the weight or value to be given to either
11 direct or circumstantial evidence. There is no greater
12 degree of certainty required of circumstantial evidence than
13 that of direct evidence. You, as the jury, should weigh all
14 the evidence presented, whether it be testimony or documents
15 presented for your consideration. After weighing all this
16 evidence if you are not convinced of the guilt of Mr.
17 Scofield beyond a reasonable doubt, then you must find him
18 not guilty.

19 Now, as I instructed you earlier, in weighing the
20 evidence, weighing the evidence is a mental process. You
21 don't count the number of witnesses, you don't count the
22 length of testimony, you don't count the documents in
23 evidence. It is a mental exercise for y'all to consider in
24 your deliberations. In considering credibility and
25 believability, you as a group, must weigh this evidence and

1 using your good judgment and common sense, find the facts in
2 this case.

3 Now, criminal intent, generally, is a necessary element
4 for each crime charged the State must also prove beyond a
5 reasonable doubt. Criminal intent is always a matter that
6 must be determined by a jury from the circumstances
7 surrounding the situation. There is no way to prove intent
8 to a mathematical certainty, there is no medical science that
9 can dissect a person's brain to determine what he or she had
10 in mind. The law states that criminal intent may be inferred
11 from circumstances shown to have existed both before and
12 after the fact. This is how you, the jury, make a
13 determination of whether or not the element requiring intent
14 was present. Criminal intent is a mental state of conscious
15 wrongdoing. It's up to you, the jury, to determine what the
16 Defendant intended to do based upon the circumstances proven
17 in this case. Now, again, all the elements of the crimes
18 charged by the State must be proven by the State beyond a
19 reasonable doubt.

20 Now, the specific laws in this case regarding the three
21 crimes charged. Mr. Scofield is charged, first, with second
22 degree criminal sexual conduct with a minor. On that charge,
23 the State must prove beyond a reasonable doubt, that the
24 defendant engaged in sexual battery with the victim. A
25 sexual battery is sexual intercourse or any intrusion,

1 however slight, of any part of a person's body or of any
2 object into the genital or anal opening of another person's
3 body, except when the intrusion is accomplished for medically
4 recognized treatment or diagnostic purposes. The State must
5 then prove beyond a reasonable doubt that the victim was less
6 than sixteen years of age, but at least fourteen years of age
7 and prove the defendant was older than the victim.

8 Now, Mr. Scofield also is charged with contributing to
9 the delinquency of a minor. In this charge, the State must
10 prove beyond a reasonable doubt that Mr. Scofield was over
11 eighteen years of age. The State must prove beyond a
12 reasonable doubt that he knowingly and willfully encouraged,
13 aided or caused the minor to do any act or influence the
14 minor to: violate a law or municipal ordinance, become to be
15 incorrigible or ungovernable or eventually disobedient beyond
16 the control of the parent or guardian or any lawful
17 authority, to repeatedly desert their home or place where
18 they live without just cause without the consent of the
19 parents, to associate with immoral persons, to behave in a
20 way which willfully injures or endangers the minor's morals
21 or health or the morals or health of others. The State must
22 prove these elements beyond a reasonable doubt.

23 Now, I charge you lastly, that Mr. Scofield is charged
24 with the offense of conspiracy. The State must prove beyond
25 a reasonable doubt that Mr. Scofield conspired with other

1 persons for the purpose of committing an unlawful act or of
2 committing a lawful act by unlawful means. To prove
3 conspiracy, the State must prove beyond a reasonable doubt
4 that there was a mutual understanding, agreement, or common
5 intention and plan. I tell you that mere passive knowledge
6 of or consent to the criminal conduct of another is not
7 enough to make a person a conspirator. There must be guilty
8 knowledge and participation. The State must prove beyond a
9 reasonable doubt that Mr. Scofield intended to act together
10 with the other conspirators with a shared benefit within the
11 scope of the conspiracy charge. The conspiracy charge was to
12 commit the act of murder. Similarly, the mere fact that Mr.
13 Scofield may have associated with these other persons or met
14 with other persons to discuss a common aim and interest does
15 not necessarily establish proof of the existence of a
16 conspiracy or that Mr. Scofield was involved in a conspiracy.

17 On the other hand, it is not necessary for the agreement
18 to be a formal one, that it be in writing, that the persons
19 hold a meeting and expressly state the terms of the common
20 plan, or that the agreement be stated in words between them.
21 The agreement of a criminal conspiracy may come into being
22 through an implied or mutual understanding. The willful,
23 intentional, and knowing adoption by two or more persons of a
24 common plan is sufficient.

25 Now, I instruct you further that the State need not

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1 prove that any overt act be shown to establish a conspiracy.
2 A conspiracy may be shown by circumstantial evidence and/or
3 the conduct of the parties.

4 Now, in order for the State to convict Mr. Scofield of
5 criminal conspiracy, they must prove beyond a reasonable
6 doubt not only that he knew of the unlawful conduct, but he
7 agreed to combine with the other person for the purpose of
8 accomplishing unlawful conduct.

9 Now, as I instructed you earlier, reasonable doubt may
10 arise from evidence which is in this case, a lack or absence
11 of evidence in this case. It is for you, the jury, to make a
12 determination of whether or not reasonable doubt exists as to
13 the guilt of Mr. Scofield on each of these charges.

14 Now, it is not imperative that your verdict be
15 consistent, but your verdict must be unanimous and so you are
16 to consider each of the charges separately. Conspiracy,
17 contributing to the delinquency of a minor and criminal
18 sexual conduct with a minor, you can find not guilty on all
19 three, guilty on all three, or any combination; two or the
20 three or one of the three, however you, as a jury in your
21 discussions in making your findings of the facts, reach a
22 unanimous verdict. I again instruct you the State must prove
23 the elements of each of the charges separately on each of the
24 charges beyond a reasonable doubt and I instruct you again,
25 the fact that you have a full and free discussion does not

1 automatically impose or assume that a reasonable doubt
2 exists.

3 So, Mrs. Barks, other members of the jury, as you retire
4 to begin your deliberations in the jury room, I wish to
5 express my hope to each of you to be mindful of the
6 importance of your responsibility as jurors. You are not
7 called upon to serve as jurors very often. You, as a group,
8 are acting for this community and this state. It's my
9 responsibility to see to it that this trial is conducted
10 fairly. It is your duty to see to it that this verdict is
11 just.

12 Now, I am convinced that you will make a just verdict
13 and find a just verdict on this case provided that you
14 consider and weigh the evidence fairly and impartially,
15 applying the law as I instructed it in reaching a unanimous
16 verdict in all your decisions.

17 Now, Mrs. Barks, I'm going to show you the verdict form.
18 The indictments will be on my desk. The verdict form
19 basically has the three charges as I described them for you
20 and it has a mark for you to find or initial or check,
21 whichever you like to mark, once you've reached your verdict
22 on each of these charges. Upon completing your
23 deliberations, you will then sign this and knock on the door.

24 Now, I tell you this, several things: I'm going to let
25 y'all step back into the jury room. I'll ask the attorneys,

1 because they have been listening to my instructions to you,
2 and they are allowed to make comments to me, "Judge, we think
3 you need to explain further or you neglected to explain one
4 of the elements of the law in this fashion," and I get to
5 hear those comments from the lawyers. Many times the lawyers
6 are correct and in my instructions I neglected to mention one
7 thing or didn't fully discuss something else and so I allow
8 for that and they are allowed to make a record of that and so
9 if need be, I will call you back in and clarify my
10 instructions.

11 Second, if you have any questions, now I'll tell you one
12 improper question and tell you now why I can't answer it.
13 Why didn't either party call such and such witness. I can't
14 answer that. The parties and the lawyers are allowed to call
15 whoever they want to and they call whoever they want to. The
16 fact that someone didn't testify, we can't find them and
17 that's not our concern. You get to consider what you heard,
18 so I get that question a lot, "Why didn't somebody testify".
19 That's really not relevant. You consider what's been
20 presented. So, don't send me that question. But if you have
21 a question about, "Would you please explain reasonable doubt
22 one more time, or would you please read the law on conspiracy
23 one more time," I'll then bring you back in here to tell you
24 that and re-instruct you on whichever area of law that I
25 didn't clearly instruct you on or caused confusion. That was

1 a lot of instructions y'all got in a very brief time and one
2 juror described it to me as being allowed a drink of water
3 through a fire hose and so I understand that and so I do
4 allow it and it's very common, "please re-instruct us on such
5 and such". We will do that, but put it in writing so I can
6 get my instructions ready and then we will call y'all back
7 in.

8 Third, if you need to hear testimony again, "We'd like
9 to hear testimony again of the police officer," whichever one
10 it may be. Ms. Rice has made a recording of all the
11 testimony that's been given and she's got it on a digital
12 recorder and she can queue it up so it's right where y'all
13 want it so if you let me know what testimony you want to hear
14 to clarify your discussion, you are allowed to hear that.
15 So, you can hear testimony again, the evidence will be in the
16 jury room with you, you can submit questions in writing.
17 Once you begin deliberations, you are working on your time,
18 so y'all -- I don't know this. Do y'all have any smokers?
19 If someone wants to step outside and have a break, so be it.
20 You can't discuss the case unless all twelve of you are
21 there. So, if somebody has to step out to do anything, use a
22 cell phone to call home, whatever, stop your discussions
23 until everybody is back in there and then continue.

24 All right. What will we do about lunch, Emily? Tell
25 you what y'all do. That will be the first thing y'all do.

1 Normally, when we get to the lunch hour, the county generally
2 buys the jury lunch. Y'all are right at 12:00 so if y'all
3 want to order lunch, y'all decide that while I talk to the
4 lawyers about my instructions. I'll bring you back in here.
5 Where do you normally order lunch from Emily?

6 CLERK OF COURT: It's been a long time.

7 THE COURT: All right. If y'all want to work through
8 lunch or go get lunch, I'll let y'all work at y'all's pace.
9 With those instructions, starting out, we'll try to answer
10 the question about lunch. If y'all want lunch, let us know
11 and Ms. McMahan and I will try to figure something out and
12 we'll order it in. Okay? Go back to the jury room. You
13 can't start discussing the case yet until you get the
14 evidence. I'll send the verdict form with the evidence, but
15 don't start until you get that and the evidence.

16 (Jury out at 12:05 p.m.)

17 THE COURT: All right. For the record, any exceptions
18 or additions or additional instruction request by either
19 lawyer?

20 MS. WHITE: Not from the State, Your Honor.

21 MR. HENDERSON: None from the Defense, Your Honor, and
22 just to preserve my record, I renew my directed verdict
23 motion, which I assume is summarily denied.

24 THE COURT: Your record is protected and I also will
25 allow it was made appropriately before the close of all the

1 evidence, after you rested and prior to closing arguments,
2 again now, and it respectfully is denied.

3 MR. HENDERSON: Thank you, Your Honor.

4 (Jury in at

5 QUESTION FROM THE JURY

6 All right, folks. For the record, we have a question
7 from the jury with regards to a question about conspiracy
8 being separate and distinct from conspiracy to commit murder.
9 I believe my instructions were on the conspiracy to commit
10 the offense and I described murder, but I did not go into the
11 elements of murder, malice aforethought and all that. I
12 didn't do that. It was just conspiracy to commit murder on
13 the indictment and I left it at that and so it's my intent to
14 instruct them that I instructed them fully on the offense of
15 conspiracy to commit murder without the elements of murder
16 being instructed.

17 MR. HENDERSON: I believe that's appropriate. I think
18 our court has been very clear that conspiracy is the
19 agreement, not what you're trying to accomplish, but the
20 agreement is the crime.

21 THE COURT: All right. And the question about opening
22 comments from the State, the instructions and summaries are
23 not allowed to be replayed. I'm not going to replay that,
24 but they wanted the testimony of Officer Garner and we'll
25 re-play that. So, that's how I intend to handle this

1 MS. WHITE: None from the State, Your Honor.

2 MR. HENDERSON: None from the Defense, Your Honor.

3 THE COURT: All right. Bring them in.

4 (Jury in at 12:40 p.m.)

5 THE COURT: All right, I got your question. I will have
6 it marked as an exhibit and give it to Ms. Rice. Regarding
7 conspiracy and conspiracy to commit murder. The indictment
8 is for conspiracy to commit murder. The instructions I gave
9 you were, the State has to prove the agreement, not the act.
10 They don't have to prove he committed the act, they have to
11 prove the agreement to commit an offense. That's how I
12 instructed you and I will be happy to read that instruction
13 to you a second time if you would like. Do you want that?
14 (The jurors indicate by nodding) All right.

15 Now, on the testimony, I can replay the testimony of
16 Officer Garner. Ms. Rice has that queued up for you. So, I
17 can do that first or read you the instructions first. The
18 opening comments of either party is not testimony. That is
19 just the State providing an overview of what they think they
20 can prove, the defense, the same deal, a summary of what they
21 think was proven or not proven. That's not evidence that you
22 can consider. That's just what the lawyers think, their
23 theory of what happened, what was shown and not shown. So,
24 that's not allowed as sworn testimony. Would you like to
25 hear Officer Garner's testimony first and then my instruction

1 on conspiracy second? (They indicate agreement) All right.
2 Ms. Rice.

3 (Whereupon, the audio of Officer Garner's testimony is
4 played for the jury)

5 THE COURT: All right, folks. That was the testimony of
6 Officer Garner. Now, regarding instructions on conspiracy.
7 Mr. Scofield is charged on the indictment with conspiracy to
8 commit the act of murder. The State must prove beyond a
9 reasonable doubt that he combined or conspired with one or
10 more persons for the purpose of committing an unlawful act or
11 committing a lawful act by unlawful means. This means that
12 there must be a mutual understanding or common intention and
13 plan. Mere passive knowledge or consent to the criminal
14 conduct of another is not enough to make a person a
15 conspirator. There must be guilty knowledge and/or
16 participation. The State must prove beyond a reasonable
17 doubt that Mr. Scofield intended to act together with the
18 other coconspirators for their shared benefit within the
19 scope of the conspiracy. The mere fact that Mr. Scofield may
20 have associated with another person or met another person and
21 discussed common aims and interest does not necessarily
22 establish proof of the existence of a conspiracy. Now, on
23 the other hand, it is not necessary that the agreement be
24 formal or be in writing or that the persons hold a formal
25 meeting expressly stating the terms of the common plan or

1 state that the agreement be in words between them. The
2 agreement of a criminal conspiracy may come into being
3 through an implied mutual understanding. The willful
4 intentional knowing adopted by two or more persons of a
5 common plan is sufficient. A conspiracy may be shown by
6 circumstantial evidence and the conduct of the parties. In
7 order to convict Mr. Scofield of the crime of conspiracy, the
8 State must prove beyond a reasonable doubt that not only did
9 he know of the unlawful conduct, he agreed to combine with
10 another person for the purpose of accomplishing the unlawful
11 conduct.

12 Those are my instructions on the event of conspiracy.
13 All right? Now, return to your deliberations. If there are
14 any more questions, do it in writing. That was very
15 appropriate, the way you formed that last question. Now, I
16 think I've answered all your questions. All right, y'all
17 retire to your jury room and continue your deliberations. As
18 soon as the food is here we will send it back to you.

19 (Jury out at 1:00 p.m.)

20 VERDICT

21 THE COURT: Everybody ready for the jury?

22 MR. HENDERSON: Yes, sir, Your Honor.

23 MS. WHITE: Yes, sir, Your Honor.

24 THE COURT: Most of you have not been in a trial before
25 a jury. Be reminded or advised, juries work very, very hard.

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1 They struggle and they deliberate and when twelve people
2 reach a consensus, it's generally a result of very serious
3 deliberations. I don't want any reaction when the sentence
4 is read. Somebody won and somebody lost. That's
5 disrespectful to the jury and I don't want to see any type of
6 reaction of that sort.

7 (Jury in at 4:57 p.m.)

8 THE COURT: Mrs. Barks, has the jury reached a verdict?

9 MS. BARKS: Yes, sir.

10 THE COURT: All right. Was your verdict unanimous?

11 MS. BARKS: Yes, sir.

12 THE COURT: Very well. Would you hand it to Mr.
13 Manning? (Mr. Manning hands it to Judge Griffith, who hands
14 it to the Clerk of Court, Mrs. Boggs)

15 THE COURT: Mrs. Boggs, I'll let you publish the
16 verdict.

17 CLERK OF COURT: The State of South Carolina versus
18 James Roscoe Scofield, 2011-GS-01-380, 2011-GS-01-381, 2011-
19 GS-01-422. We, the jury, find as follows: Regarding the
20 charge of second degree criminal sexual conduct with a minor,
21 we find the defendant, James Roscoe Fields, not guilty.

22 Regarding charge, contributing to the delinquency of a
23 minor, we find the defendant, James Roscoe Scofield, not
24 guilty.

25 Regarding the charge of conspiracy, we find the

THE STATE OF SOUTH CAROLINA VERSUS JAMES ROSCOE SCOFIELD

1 defendant, James Roscoe Scofield, guilty. Foreman of the
2 jury, Linda Barks.

3 THE COURT: All right. Any further issue with the jury
4 from the Defense?

5 MR. HENDERSON: No, sir, Your Honor.

6 THE COURT: From the State?

7 MS. WHITE: No, sir, Your Honor.

8 THE COURT: Very well. Mrs. Barks, I want to thank
9 y'all on behalf of the eighth circuit and Abbeville County
10 for doing your job. I notice it's 5:00 and so I'm going to
11 let y'all go. I normally step back in the jury room so I can
12 answer questions for you. If that helps, I'll offer that. I
13 understand it's late in the afternoon and y'all want to get
14 going. That's perfectly fine. Okay. Do you want to do
15 that?

16 JUROR: We have a question for you.

17 THE COURT: All right. I love to talk to the jury.
18 This is an informal conversation and you can ask me anything
19 you like. If you do not want to stay for the conversation,
20 you are free to go. All right, let's step in the jury room.

21 (Jury out at 4:57 p.m.)

22 SENTENCING

23 MR. HENDERSON: Your Honor, we've been discussing this
24 matter. Considering that my client has been acquitted of two
25 charges and no prior criminal record at all, I think this

THE STATE OF SOUTH CAROLINA VERSUS JAMES ROSCOE SCOFIELD

1 will probably be an appropriate case for a pre-sentence
2 report. I know we don't see them too terribly often, but I
3 think this would be a prime case for that considering that in
4 light of the fact the other gentleman has plead guilty to
5 this.

6 THE COURT: I don't think it was on the record, but the
7 other gentleman received a probationary sentence, I believe.

8 MS. WHITE: Suspended YOA, Your Honor.

9 MR. HENDERSON: With three years probation. Correct.
10 And that would also give us time, Your Honor, for post-trial
11 motions or figuring out what our next posture might be.

12 THE COURT: Okay. I don't think that is an unreasonable
13 request. Ms. White, do you have any objection to it?

14 MS. WHITE: Your Honor, just that Mr. Scofield be
15 admonished and restrained from any contact with the victim
16 and the victim's family.

17 MR. HENDERSON: I don't have any problem with that at
18 all.

19 THE COURT: I don't think that will be an issue for him.
20 He understands that based on my pre-trial comments. Do you
21 understand that, Mr. Scofield?

22 MR. SCOFIELD: Yes.

23 MR. HENDERSON: Because he's been on house arrest, Your
24 Honor, now for about fifteen months.

25 THE COURT: Now, he'll be sentenced the next term of

1 General Sessions Court or will he be back in front of me?

2 MR. HENDERSON: Your Honor, back in front of you
3 wherever you may be. . You may be in Greenwood.

4 THE COURT: I'll be in Greenwood in October, the whole
5 month of October if I'm thinking right. Ladies and gentlemen
6 of the jury, what they are asking for, I know you would like
7 to know, the State can make recommendations, suggestions and
8 tell me about the prior record and this sort of thing and how
9 other defendants pled in similar cases. The Defense can ask
10 for a pre-sentencing investigation be done basically by
11 Probation, Pardon and Parole and it's done on every federal
12 case. In South Carolina it's not done on every case, because
13 of limited funds, but it's allowed and so what would happen
14 is, a probation agent would do a background communication
15 talk with everybody and come to the court and make a
16 recommendation as to; here are the facts we found, he'd be an
17 appropriate candidate for probation or not a good candidate
18 or that sort of thing and so that's what they are asking for
19 and it seems appropriate in this case that with the mixed
20 verdict that is perfectly fine. I don't see a problem with
21 that request being granted.

22 MR. HENDERSON: Your Honor, the week of September 17th,
23 I see that you are holding criminal court in Laurens and let
24 me just see...

25 THE COURT: I'm in Greenwood for two weeks of General

THE STATE OF SOUTH CAROLINA VERSUS JAMES ROSCOE SCOFIELD

1 Sessions the last two weeks of October.

2 MR. HENDERSON: Judge, wherever you tell us to go,
3 whenever you tell us to go and Your Honor, just for what it's
4 worth, my client is a Greenwood resident and has lived there.
5 I don't know who Your Honor would want to do the pre-sentence
6 report. It would make sense for Greenwood to do it, but...

7 THE COURT: I think Mrs. Sears could do it. She'd be
8 appropriate. She's the Greenwood agent in charge. Isn't she
9 still?

10 MS. WHITE: Your Honor, my only concern about it is, I'm
11 sure Your Honor is aware that Mrs. Sears work load. She,
12 right now, is pretty much the only agent in Greenwood.

13 THE COURT: Let's let Mr. Sorrow do it.

14 MR. HENDERSON: Okay. That's fine, Your Honor.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR ABBEVILLE COUNTY, SOUTH CAROLINA, SO GIVEN ON AUGUST 28-30, 2012 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 12TH DAY OF APRIL, 2013.



 JO RICE
 OFFICIAL COURT REPORTER

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-NWITNESSBY:PAGE NO.

No witnesses were called.

E-X-H-I-B-I-T-SNO.DESCRIPTIONID.EVD.

No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF STATE V. JAMES
2 ROSCOE SCOFIELD ON THURSDAY, DECEMBER 12, 2012 AT 03:51
3 P.M..)

4 SOLICITOR WHITE: James Scofield.

5 May it please the Court.

6 THE COURT: Yes, ma'am.

7 SOLICITOR WHITE: Your Honor, standing before you is
8 James Roscoe Scofield. He was tried in Abbeville County on
9 Indictment 2011-GS-01-380 for conspiracy to commit murder.
10 He was convicted by the jury of that offense, that trial
11 was on August 30th, 2012.

12 Your Honor held sentencing in abeyance pending a pre-
13 sentencing investigation that has been completed and was
14 emailed to Your Honor several weeks ago, and we are here
15 today for the sentencing hearing.

16 And, Your Honor, the victim, Ms. Wagner, is present
17 and does wish to address the Court at the appropriate time.

18 THE COURT: Mr. Henderson, let me hear from you.

19 MR. HENDERSON: Your Honor, if it pleases the court.

20 Standing here with Ross Scofield and his mother and
21 stepfather, Your Honor. Ross is twenty-one years old and
22 as the PSR made clear prior to this incident his only prior
23 arrest had been shoplifting back in 2010 which he went
24 through PTI for, Your Honor, and successfully completed
25 that.

1 Out of this set of incidents, Your Honor, my client
2 was arrested on four charges. One was an unlawful entry
3 into a graveyard. One was CSC with a minor. One was
4 contributing to the delinquency of a minor and then a
5 general conspiracy.

6 Your Honor, the unlawful entry was over in Abbeville
7 City Court and they dismissed that and it's been expunged
8 and they recognize what my client was doing in the
9 graveyard didn't violate any crime, didn't violate any
10 ordinance.

11 Your Honor, as it knows with a CSC with a contributing
12 my client was acquitted and the general conspiracy was
13 convicted. Your Honor, my client lives with his mother and
14 his step-mother [sic]. He has great family support. They
15 have kept him under a form of house arrest since he was
16 arrested back in late May of 2011. He has his GED; he
17 works in maintenance at Greenwood Country Club with his
18 step-father Tony Lambert. Tony is actually the crew chief
19 of the maintenance at Greenwood County Club. The family
20 attends church regularly, my client goes to Bible study
21 when he can. When he was arrested he spent approximately
22 forty-two days in jail.

23 And I think, Your Honor, that really caught his
24 attention because he has been in no trouble at all since he
25 has been out on bond or since we were in Abbeville in last

1 August, Your Honor. So I mean I think he understands the
2 severity that he can't get in any more trouble in his life
3 at all.

4 Your Honor, as it relates to background, Ross was
5 severally abused by his father growing up. And I think
6 that's caused him some problems through life. He's
7 undergone a lot of counseling. He's recently been in
8 counseling at Beckman. Naturally I recommend that he go
9 back since stopped counseling there upon my advice for a
10 few months but he's looking to start that back up, Your
11 Honor, and he's willing to go through - undergo any type of
12 counseling that the Court or probation or whoever would see
13 fit, Your Honor.

14 As I told Ross when I first met him I said you're
15 immature for your age. Now I think that's exactly what it
16 is, he's immature. I've discovered in just talking with
17 him and working with him that he's a verbal learner, he's
18 not a visual learner. You give him a piece of paper he has
19 a difficult time with it but I can sit and talk with him
20 and he grasp really well, Your Honor.

21 He's just not a planner or an organizer. That's not
22 him. He's been diagnosed with ADHD throughout the years.

23 Your Honor, about Mr. Scofield's codefendant John
24 Dillon Calvert; on July the 14th of last year Mr. Calvert
25 did plead guilty to conspiracy in General Sessions over in

1 Abbeville and, Your Honor, he was unable to make bond. I
2 think from talking to him and talking to his lawyer that's
3 the reason for the plea. He couldn't get out of jail
4 unless he pled. That was going to be his only ticket home,
5 Your Honor, but he was sentenced to a YOA not to exceed
6 five years and was suspended to three years probation with
7 the opportunity of PTUC for eighteen months. And Mr.
8 Calvert was restrained from the Wagner family. And I've
9 explained to Mr. Scofield that his Honor we request you to
10 restrain him from the Wagner family. He's had no contact
11 with them at all and doesn't desire any contact with them.

12 Your Honor, I believe that a suspended YOA would be an
13 appropriate sentence for my client too in that
14 understanding the jury's verdict and respecting the jury's
15 verdict, and also Mr. Calvert's plea, I think it would be
16 appropriate to serve them both out of the same spoon
17 because it would give my client, and along with Mr. Calvert
18 now, the opportunity one day to get this off their record;
19 if they don't get in any more trouble, survive probation,
20 and then go another five years he understands that
21 hopefully he'll have that opportunity to get this off his
22 record.

23 Your Honor, in talking with Ross and his parents his
24 life has significantly changed in the last eighteen months.
25 I think getting arrested and spending forty-two days

1 incarcerated really was a wake up call for him. I truly
2 don't believe that this court or any other court is going
3 to see him anymore for any type of reason.

4 Your Honor, he's been punished severely already. He's
5 gonna have a felony conviction on his record and hopefully
6 there will become a time when he'll be able to get that
7 felony conviction off his record. Mr. Tinsley, Mr. Robert
8 Tinsley has apologized, he couldn't be here today, he had
9 another obligation but he wanted me to echo that same
10 sentiment that he thinks that a YOA suspended would be an
11 appropriate sentence for Mr. Scofield. Mr. Tinsley knows
12 this family, he golfs a good bit at the country club so he
13 has a lot of contact with Mr. Lambert and Mr. Scofield and
14 he could really tell that this has been a wake up call for
15 Ross. And I've told him it needed to be a wake up call for
16 him.

17 And, Your Honor, so therefore I would respectfully ask
18 that the court consider some sort of YOA sentence suspended
19 and put him on probation and let him get back out here.
20 Like I said not many twenty-one year olds now work, have a
21 GED, attend church regularly and live under their parents
22 roof obeying their instructions. I said Ross, you're
23 really a novelty when it comes to that this day and age.
24 And, Your Honor, I think Ross wanted to address the Court
25 and I believe his parents would like to address the Court

1 too.

2 Ross.

3 THE COURT: Mr. Scofield.

4 MR. SCOFIELD: Your Honor, I'd like to just say that I
5 accept the verdict and since I am incarcerated or even
6 arrested this has been a wake up call for me and I've
7 changed my life around. I would like to get back into my
8 counseling with my counselor. And I'm currently attending
9 my church, wanting to go and look into being a preacher.
10 And I'm also working with my stepdad at the golf course
11 and I really love it out there. And I'm wanting to get to
12 a point to be one of his key people.

13 MR. HENDERSON: And also, Your Honor, just to kind of
14 follow that up. Ross doesn't drive so I think he doesn't
15 have the mobility that a lot of young people do. He
16 depends on his parents to ride everywhere to and from.

17 THE COURT: All right.

18 MR. HENDERSON: Identify yourself because the court
19 reporter is going to want to get your name.

20 (AUDIO DISTORTED.)

21 MADAME COURT REPORTER: I'm sorry, ma'am, back up from
22 the mic. There you go. You're echoing.

23 A. I'm sorry. My name is Carleen Lambert and I'm
24 Roscoe's mom, mother.

25 And, Your Honor, I just to say my son he truly is a

1 really good boy, he always has been. I just want to say
2 he's worked hard for most just about everything that he's
3 had. He's got a good job at the golf course that he seems
4 to love and he really does. He's learned a lot of trades
5 and skills. And he does he was raised in church, he
6 continues to go on a regular basis, seems to love it. I
7 just wanted to say my son also he's got this huge big
8 heart. He's really a giving person and I just want to say
9 that he's a joy and he's a blessing to us. I thank you and
10 I hope that you show mercy to my son. Thank you.

11 THE COURT: Thank you, ma'am.

12 MR. HENDERSON: Identify yourself to Madame Court
13 Reporter.

14 A. My name is Tony Lambert, I'm Ross's step father.

15 I've known him for eight plus years and he's been a
16 joy to have. I'm also his employer out there at the golf
17 course, country club and he's come a long way. He does a
18 lot out at the golf course. When he first stated he
19 couldn't drive a piece of equipment. Now he can do
20 anything that any of the staff members can. So he's a
21 pleasure to have, he's got a big heart. He's a good young
22 man. That's all. Thank you.

23 THE COURT: Thank you, sir.

24 All right, Ms. White.

25 SOLICITOR WHITE: Your Honor, just briefly when Ms.

1 Wagler speaks I did have a couple of points I wanted to
2 make with regard to Mr. Calvert. I think there are a
3 couple of distinctions between his case and Mr. Scofield's
4 case. First and foremost Mr. Calvert was a minor
5 conspirator. The testimony at trial was that he brought
6 the knives; that he knew what they were for, but it was not
7 his idea and he was not the one who really stood the most
8 to gain from it. The testimony at trial was that Mr.
9 Scofield was the one who was involved with Ms. Wagner's
10 daughter, so the conspiracy originated with Ms. Scofield.

11 Also, Your Honor, Mr. Calvert pled guilty and agreed
12 to testify for the State which is another reason that he
13 received the suspended YOA sentence. The agreement to
14 testify and to tell what happened as it were.

15 Finally, Your Honor, Mr. Scofield testified at trial
16 gave several different versions between what he had given
17 the police, what he said on the stand, obviously the jury
18 did not believe what he had told the police and what he had
19 said on the stand. And, Your Honor, I've never heard Mr.
20 Scofield say that he's sorry.

21 Ms. Wagler would like to address the Court.

22 A. Kimberly Wagler.

23 I know he probably won't get the max but we would like
24 for him to have something. My daughter is still terrified.
25 Everyday she keeps saying momma when's this gonna go to

1 trial, I'm ready to put all this behind me. And she's
2 still scared. She's still having to go and talk to our
3 pastor for counseling. So I would like to see something
4 done because when we was warning Ross to stay away from her
5 he said - because I told him I said we gonna wind up in
6 court. He said well I'll get off of it. And I don't want
7 that. I want him to at least serve something. Thank you.

8 THE COURT: Anything else?

9 MR. HENDERSON: Your Honor, just very briefly.

10 No, no.

11 THE COURT: Very well.

12 MR. HENDERSON: Anything, Ross, you want to say?

13 MR. SCOFIELD: Your Honor, I would like to say that I
14 am sorry. I didn't - I mean right now all my lines rattle
15 and I - but I was meaning to say that at the beginning
16 but...

17 THE COURT: All right. Sentence of the court he be
18 committed to the Department of Correction Youthful Offender
19 Act not to exceed three years, credit for forty-two days
20 he's done. I want him referred and evaluated for the shock
21 incarceration program. Good luck to you.

22 MR. HENDERSON: Thank you, Your Honor.

23 SOLICITOR WHITE: Thank you, Your Honor.

24 (END OF TRANSCRIPT OF RECORD)

25

CERTIFICATE OF REPORTER\

State of South Carolina)

)

County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Newberry County, South Carolina, on the 6th day of December, 2012.

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

Wanda Nelson
 Wanda Nelson, CVR
 Certified Verbatim Reporter,
 Official Court Reporter,
 Notary Public, in and for
 The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 3-12 / 2013

VOLUNTARY STATEMENT (NOT UNDER ARREST)

221

I, James R. Scofield am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Sgt John Gray I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am [redacted] years of age, and I live at [redacted] (Greenwood) [redacted] [redacted] cannot read and write and completed the 6th grade in school. DOB: [redacted]

I went up there to see Kordie for a few. when up there she was in tears and ready to hurt her self I was mad and up and from everything that was sold to me by Justine Fields. so I asked Dylan Calvert to bring a couple of knives and to did as I can hurt myself. also Kordie said before I was there that she left a note saying that she will be back in a few. also Taylor Calvert did not know what the knives for.

I have read each page of this statement consisting of [redacted] page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. This statement was completed at [redacted] M. on the [redacted] day of [redacted].

This statement was written on my behalf by [redacted]

It is true to the best of my knowledge.

STATE'S EXHIBIT 3 8-28-12 11-05-01-380 PENGAD 800-631-9588

Signature of person giving voluntary statement

WITNESS: [redacted]

WITNESS: [redacted]

I certify that I have been given a copy of this statement consisting of [redacted] pages.

222

**VOLUNTARY STATEMENT
(NOT UNDER ARREST)**

John Dillon Calkert

am not under arrest for, nor am I being detained for

any criminal offenses concerning the events I am about to make known to Sgt John E Gray
I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 20 years of age, and I live at 714 Etown Send Rd

I cannot read and write and completed the 10 grade in school. DOB: 08-13-1990

Ross Scofield called me Saturday and wanted me to bring knives. I did not ask questions and did. I was going to give them to him and go back home. Last night he was talking about killing her (Carley) mother. I donot know who is involved they would not say. they was just talking. I tried to stay out of it.

JDC

DC

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 955 M. on the 30 day of 5 2011.

John Dillon Calkert

Signature of person giving voluntary statement

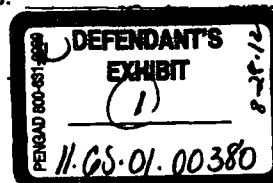
This statement was written on my behalf by:

It is true to the best of my knowledge.

WITNESS: Sgt John E Gray

WITNESS: _____

I certify that I have been given a copy of this statement consisting of _____ pages.



Commercial Printing

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Abbeville
STATE VS. James Roscoe Scofield

INDICTMENT/CASE#: 11GS01-0380

AKA:
Race: C Sex: M Age: [redacted]

AW#: J097282
Date of Offense: 2011-05-28
S.C. Code §: 16-17-0410

DOB: [redacted] SS#: [redacted]
Address: [redacted]
City, State Zip Greenwood, SC
DL# 101787353.SC SID#

CDR Code # 0049

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [] PLEADS

TO: Conspiracy (0-5YRS OR FINE)

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

[] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS [] 17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury.
The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: [Signature] 7/182
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,
for a determinate term of [] days/months/years or [X] under the Youthful Offender Act not to exceed 3 years,
and/or to pay a fine of \$ []; provided that upon the service of [] days/months/years and/or payment
of \$ []; plus costs and assessments as applicable; the balance is suspended with probation for [] months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on: []

[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections. 42 days

[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to SC Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65
(Criminal Domestic Violence) to ship, transport, possess or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred, [] Def. Waives Hearing [] Ordered PTUP
Total: \$ [] plus 20% fee: \$ [] days/hours Public Service Employment
Payment Terms: Obtain GED []
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling []
Random Drug/Alcohol Testing []
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ [] beginning []
\$ [] paid to Public Defender Fund []

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, §35.13 (Public Def/Prob) \$500, §73.3, 1B TP (Law Enforce. Funding) \$25, §33-7, 1B-TP (Drug Court Surcharge) \$150, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, §90.11 TP (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3, TOTAL \$133.90

Other: Evaluate for Shock Imprisonment

[] Appointed PD or appointed other counsel, \$47.12 requires
\$500 be paid to Clerk during probation

TOTAL \$133.90
Jackie S. Bougas
Clerk of Court/ Deputy Clerk

Court Reporter:
Sentence Date: 12-6-12
PRESIDING JUDGE [Signature]
Judge Code: 2154

TRUE COPY
BY Shandal Boggs
ABBEVILLE COUNTY CLERK OF COURT

WITNESSES

Neal Henderson
Abbeville Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2011

Indictment # 11GS01- *380*

WARRANT NUMBER

J097282

THE STATE

vs.

James Roscoe Scofield

Allen C. Brown

Foreman of the Grand Jury

Date: SEP 09 2011

INDICTMENT FOR

CONSPIRACY
16-17-0410

VERDICT

TRUE BILL *Guilty*

Linde Barks

Foreman

TRUE COPY
BY *Shandal Boag*
ABBEVILLE COUNTY CLERK OF COURT



THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

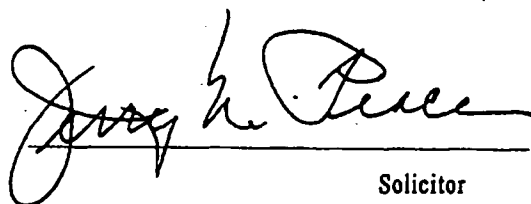
INDICTMENT FOR

**CONSPIRACY
16-17-0410**

At a Court of General Sessions, convened on the 9th day of September, 2011 the Grand Jurors of Abbeville County present upon their oath:

That James Roscoe Scofield, along with another person or persons, did in Abbeville County, state aforesaid, on or about the 28th day of May, 2011 willfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Murder, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended.

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




James H. Preece

Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 20th, 2014


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN - 1 2015

S.C. Supreme Court

Appeal from Abbeville County

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ROSCOE SCOFIELD,

APPELLANT

APPELLATE CASE NO. 2012-213731

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to direct a verdict of acquittal for conspiracy to commit murder when the State failed to prove an agreement between Appellant and anyone to commit murder?

STATEMENT OF THE CASE

In September of 2011, the Abbeville County Grand Jury indicted Scofield for second degree criminal sexual conduct with a minor, contributing to the delinquency of a minor and conspiracy to commit murder, indictments #2011-GS-1-380, 381, 422. On August 28, 2012 Scofield proceeded to jury trial before the Honorable Eugene C. Griffith, Jr. Attorney Carson Henderson represented Scofield at trial. Attorney Elizabeth White prosecuted the case on behalf of the State. The jury returned with verdicts of not guilty of second degree criminal sexual conduct with a minor and contributing to the delinquency of a minor. The jury found Scofield guilty of conspiracy to commit murder. On December 6, 2012, Judge Griffith sentenced Scofield pursuant to the youthful offender act and referred him for the shock incarceration program. A timely notice of intent to appeal was served on December 19, 2012. This appeal follows.

STATEMENT OF FACTS

In November of 2010, the fifteen year old female and nineteen year old Appellant, James "Ross" Scofield started dating. (R. pp. 53-54). In December of 2011, when the fifteen year old's mother discovered she was dating Appellant, the mother called the Appellant and told him she did not want him seeing her daughter. (R. p. 33, lines 13-16). Despite the mother's objection, the fifteen year old and Appellant continued to see one another. (R. p. 35, lines 3-6).

On the morning of May 28, 2011, the fifteen year old contacted the Appellant and later met him and Justin Fields at the square in Abbeville. (R. p. 55, lines 13-20; p. 62, lines 17-25). Lieutenant John Garner with the Abbeville Police Department testified that records from the cab company indicate that Appellant was dropped off at the square between 6:30 and 7:00 PM. (R. p. 90, lines 1-22). According to the trial testimony of the fifteen year old, she and Appellant had sex in the graveyard behind the Trinity church. The fifteen year old testified that later that evening the police picked them up and took them to the police station. (R. p. 56, line 16 – p. 57, lines 1-3). Appellant denied having sex with the fifteen year old. (R. p. 142, lines 15-18; p. 149, lines 16-19).

Kimberly Wagler, the mother of the fifteen year old, called the police between 5:30 and 6:00 PM after her daughter did not return from her bike ride that morning. (R. p. 33, line 21 – p. 34, lines 1-12). At about 9:00 PM Ms. Wagler received a phone call from the Abbeville Police Department that they found her daughter and she was at the police station. The mother went to the police station and took the fifteen year old straight to the hospital and asked that a rape test be done. (R. p. 34, line 16 – p. 35, lines 1-2). The mother testified

that a rape test was not done and she was asked to leave the room when the doctor examined her daughter. (R. p. 35, lines 3-7).

Dr. McQuown examined the fifteen year old at the hospital on the evening of May 28, 2011. (R. p. 115, line 10 – p. 117, lines 1-9). At trial the doctor testified that the fifteen year old denied any sexual contact. (R. p. 118, lines 3-6). The fifteen year old admitted that she initially denied having sexual intercourse with Appellant because she did not want her mother to know. (R. p. 58, lines 10-14). Contrary to the mother's testimony, the doctor testified that the mother was in the room with her daughter during the exam. (R. p. 119, lines 1-6). The doctor testified that he did a pelvic examination of the fifteen year old but was not asked to do a rape kit analysis. (R. p. 118, line 10 – p. 119, lines 1-11). Based on his examination of the fifteen year old, the doctor testified that there was no trauma to the vaginal area, no bruising or bleeding, no sign of semen, discharge or fluid and the hymen was intact. (R. p. 123, line 20 p. 124, p. 125, lines 1-7).

While the police were looking for the fifteen year old, they received a call about two white males, dressed in black running from the cemetery behind Trinity Church. Police investigated and found Justin Fields and John Dylan Calvert on the square. (R. p. 87, lines 2-14). Calvert had several large knives in his pocket and backpack. (R. p. 87, line 22 – p. 88, lines 1-15). Calvert and Fields told the police that Appellant and the fifteen year old were in the cemetery. (R. p. 87, lines 17-21).

In a written statement to police, marked as Defendant's Exhibit #1 at trial, Calvert told police, "Ross Scofield called me Saturday and wanted me to bring knives. I did not ask questions and did. I was going to give them to him and go back home. Last night he was talking about killing her [fifteen year old] mother. I don't know who is involved they would

not say. They was just talking. I tried to stay out of it.” (R. pp. 73 – 77; Defendant’s Exhibit #1, R. p. 222). Calvert was charged and pled guilty to conspiracy in connection with this case. (R. p. 70, line 18 – 25) Calvert testified against Appellant Scofield at trial and received a probationary sentence. (R. p. 71, lines 1-2).

According to Lieutenant John Gray with the Abbeville Police Department Appellant told him that the knives were going to be used to hurt the fifteen year old and her mother. This alleged statement was not recorded or reduced to writing. (R. p. 97, lines 5-12). In a written statement to police, however, Appellant stated that he intended to hurt himself with the knives. Appellant wrote, “I went up there to see [fifteen year old] for a few. When up there she was in tears and ready to hurt herself. I was mad and upset from everything that was told to me by Justin Fields. So I asked Dylan Calvert to bring a couple of knives and he did so I can hurt myself. Also [fifteen year old] said before I was there that she left a note saying that she would be back in a few. Also Dylan Calvert did not know what the knives for.” (R. p. 96, lines 6-14; State’s Exhibit #3, R. p. 221).

At trial Appellant testified that he and Justin Fields met the fifteen year old at the Rough House restaurant in Abbeville between 6:30 and 7:00 PM. (R. p. 138, line 16 – p.139, p. 140, lines 1-6). Appellant testified that they ate dinner and then the three of them played games – jumping creeks, climbing trees, and trying to scare one another. (R. p. 140, line 11 – p. 141, lines 1-8). Appellant testified that Dylan Calvert called him and “He told me he was bored and I asked him to come up to play some games, to play with me, Justin and [fifteen year old] and to bring some knives to cut some briars and bushes and stuff because [fifteen year old] cut her legs up pretty bad and we needed them so she wouldn’t get hurt any more or me or none of us would.” (R. p. 143, lines 3-8).

When asked about the written statement Appellant provided to police where he indicated he wanted to hurt himself with the knives, Appellant explained, "I wrote that – the officer was persistent and adamant of me giving a statement that I was going to hurt [fifteen year old] and Kim and I told him, 'No', and finally he said, 'Hey, did you even want to hurt yourself?' I said, 'Well, if it makes you happy, I wanted to hurt myself.'" (R. p. 148, lines 18-23).

The jury found Appellant not guilty of second degree criminal sexual conduct with a minor and contributing to the delinquency of a minor. The jury found Appellant guilty of conspiracy to commit murder.

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal for conspiracy to commit murder when the State failed to prove an agreement between Appellant and anyone to commit murder.

At the close of the State's case Appellant moved for a directed verdict on the charge of conspiracy to commit murder. (R. pp. 107-113). Appellant argued, "Your Honor, in this case, even assuming that all the evidence that the government introduced in their case in chief is accurate, assuming that Mr. Scofield did all this bad stuff they are accusing him of, Mr. Calvert has testified that he was not aware of any malicious intent of Mr. Scofield getting those knives or asking for those knives. And again, that is coming out of the government's own witness' mouth, so there was no agreement, there was no meeting of the minds, ergo, there can be no conspiracy." (R. p. 108, lines 9-17). Appellant also argued that the State failed to prove a benefit to Mr. Calvert. (R. p. 108, line 18 – p. 109, lines 1-17). Appellant further argued, "Now, you can have a conspiracy that's got multiple or single criminal objectives, but here in the case at hand, the government has alleged that Mr. Scofield and Mr. Calvert had one single criminal objective and that was to kill Mrs. Kimberly Wagler. And again, Your honor, Mr. Calvert did not testify to that. He said he had no idea about that until---" (R. p. 112, lines 12-19).

The judge denied the directed verdict motion stating, "I agree with you, it got different. It's clear to you, it's not clear to me. I mean, yeah, you went back and cleaned up. That's what lawyers are supposed to do. You're a good advocate, I'll give you that, but he testified a certain way on direct and I think that's in the evidence. I think that's a jury question. I would be doing the same thing if I were in your shoes, but I think there's enough there that that's a jury question, not a directed verdict." (R. p. 113, line 23, - p. 114, lines 1-6). While Calvert did testify one way on

direct, his testimony was clarified on cross examination and the clarification confirmed on re-direct. The judge erred in refusing to direct a verdict of acquittal for conspiracy to commit murder.

On direct examination Calvert testified, "He [Appellant] called me saying that he wanted me to help him try to murder, I think it's, [fifteen year old's] mom." (R. p. 68, lines 23-24). On cross examination Calvert was questioned about the written statement in which he told police, "Ross Scofield called me Saturday and wanted me to bring knives. I did not ask questions and did. I was going to give them to him and go back home. Last night he was talking about killing her [fifteen year old] mother. I don't know who is involved they would not say. They was just talking. I tried to stay out of it." (R. pp. 73 – 77; Defendant's Exhibit #1, R. p. 222). The reference to last night and talking about killing the mother was after Calvert and Appellant had been arrested. Calvert was asked, "The first time you knew about those knives was when you were sitting in jail. Is that fair to say?" (R. p. 76, lines 2-3). Calvert answered, "Yes, sir." (R. p. 76, line 4). Calvert clarified that when Appellant asked him to bring knives, Calvert did not know why Appellant wanted him to bring knives. (R. p. 75, line 223 – p. 76, lines 1-5). On re-direct examination and consistent with his written statement to police, Calvert confirmed that he did not know what the weapons were for until after both he and Appellant had been arrested and were in jail. (R. p. 76, lines 11-16). On re-direct the State asked, "Mr. Calvert, when Mr. Scofield called you and asked you to bring weapons, as you testified earlier, did he tell you what the weapons were for?" (R. p. 76, lines 11-13). Calvert answered, "Not until I was in jail." (R. p. 76, line 14).

In State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) the South Carolina Supreme Court wrote:

On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001) (citing State v. Burdette, 335 S.C. 34, 46, 515

S.E.2d 525, 531 (1999)). The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000) (emphasis added). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451–52 (1984).

Viewing the evidence in the light most favorable to the State, the judge erred in refusing to direct a verdict of acquittal for the conspiracy to commit murder charge because the State failed to prove an agreement between Appellant and Calvert or anyone else to commit murder. While the request to bring knives may have been suspicious, it does not prove an agreement to commit murder. As Calvert testified, at the time of the request by Appellant, Calvert did not know why Appellant wanted him to bring knives.

In State v. Cope, 2013 WL 4553427, 15 (S.C. 2013) the South Carolina Supreme Court wrote:

Criminal conspiracy is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or a lawful object by unlawful means. S.C.Code Ann. § 16–17–410 (2003). The gravamen of conspiracy is an agreement or combination. State v. Gunn, 313 S.C. 124, 134, 437 S.E.2d 75, 80 (1993). “To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties.” State v. Buckmon, 347 S.C. 316, 323, 555 S.E.2d 402, 405 (2001). The Court must exercise caution in its analysis, however, to ensure the proof is not obtained “by piling inference upon inference.” Gunn, 313 S.C. at 134, 437 S.E.2d at 81.

The only evidence of a conspiracy presented by the State was testimony from Calvert that Appellant called him, asked him to bring weapons, and provided Calvert with the name of a cab company. (R. p. 69, lines 1-11). Calvert, with knives, took a cab to the square where he met Fields. (R. p. 69, lines 9-11). According to Calvert, Appellant sent Fields to the square with money to pay for the cab. (R. p. 69, lines 9-14).

In United States v. Falcone, 311 U.S. 205, 210-211, 61 S.Ct. 204, 207 (1940) the United States Supreme Court wrote:

Those having no knowledge of the conspiracy are not conspirators, United States v. Hirsch, 100 U.S. 33, 34, 25 L.Ed. 539; Weniger v. United States, 9 Cir., 47 F.2d 692,693; and one who without more furnishes supplies to an illicit distiller is not guilty of conspiracy even though his sale may have furthered the object of a conspiracy to which the distiller was a party but of which the supplier had no knowledge.

Calvert had no knowledge of the alleged conspiracy to kill the mother until after he was arrested. Calvert, like the sugar suppliers in Falcone, is not a conspirator. When Appellant moved for a directed verdict on the conspiracy charge, the State argued that Fields was also part of the conspiracy. (R. p. 109, lines 2-11). Fields did not testify at trial. There is no evidence that Fields conspired with appellant to murder the mother. The State failed to prove the existence of a conspiracy to commit murder.

In Direct Sales Co. v. United States, 319 U.S. 703, 714-715, 63 S.Ct. 1265, 1271 (1943) the United States Supreme court wrote:

Conspiracies, in short, can be committed by mail and by mail-order houses. This is true, notwithstanding the overt acts consist solely of sales, which but for their volume, frequency and prolonged repetition, coupled with the seller's unlawful intent to further the buyer's project, would be wholly lawful transactions.

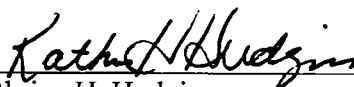
In Direct Sales the Court upheld the conspiracy conviction of a mail order supplier of vast quantities of morphine at a discounted rate to a physician in Calhoun Falls, South Carolina. Unlike the evidence in Direct Sales, there is no evidence that Calvert knew of some alleged plan to murder the mother when he brought the knives to the square and no evidence he would have benefited from such a plan.

In State v. Gunn, 313 S.C. 124, 134, 437 S.E.2d 75, 80-81 (1993) the South Carolina Supreme Court in discussing conspiracy wrote, "What is needed is proof they intended to act *together* for their *shared mutual benefit* within the scope of the conspiracy charged. United States v. Evans, 970 F.2d 663 (10th Cir.1992) (emphasis in original)." The State offered no evidence that Calvert knew of an alleged plan to kill the mother and offered no evidence that Appellant and Calvert acted together for a shared benefit within the scope of a conspiracy to commit murder. The State failed to present evidence of a conspiracy. The judge should have directed a verdict of acquittal.

CONCLUSION

Based on the above argument, Appellant's conviction and sentence should be reversed.

Respectfully submitted,



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ATTORNEY FOR APPELLANT

This 9th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

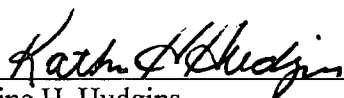
JAMES ROSCOE SCOFIELD,

APPELLANT

APPELLATE CASE NO. 2012-213731

CERTIFICATE OF SERVICE

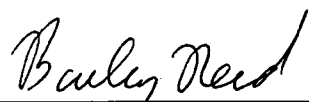
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also upon Mr. James Roscoe Scofield, 107 Morningside Dr. Greenwood, SC 29649, this 21st day of October, 2013.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of April, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021.



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April 8, 2014

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Re: The State v. James Roscoe Scofield

Dear Salley:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/brr

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN - 1 2015

Appeal from Abbeville County
Eugene C. Griffith, Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

vs.

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15A C.J.S. Conspiracy § 986

STATEMENT OF ISSUES ON APPEAL

The trial court did not err in denying the motion for directed verdict on the charge of conspiracy to murder since Appellant's codefendant testified on direct examination that Appellant asked for help to kill Appellant's girlfriend's mother and requested codefendant to bring weapons and codefendant procured large machete-size knives.

STATEMENT OF THE CASE

The Abbeville County Grand Jury indicted Appellant Scofield for second degree sexual conduct with a minor (CSC 2d), contributing to the delinquency of a minor (CDM), and conspiracy to commit murder. Scofield proceeded to jury trial before the Honorable Eugene C. Griffith, Jr. The jury acquitted Scofield of CSC 2d and CDM, but found Scofield guilty of conspiracy to commit murder. Judge Griffith sentenced Scofield under the Youthful Offender Act and referred Scofield to the shock incarceration program.

STATEMENT OF FACTS

Appellant Scofield, nineteen years old and a troubled young man to be sure, pursued and won the affections of a fifteen-year-old girl, who was the victim's daughter (Daughter). Scofield arranged for his friend to bring him large, machete-like knives because Scofield wanted to kill the girl's disapproving mother (Mother), who is the victim in this case.

Mother testified she told Scofield to leave Daughter alone because she was too young. Scofield replied, "he would do whatever he had to do – whatever he wanted to do, he was going to see her and it didn't matter what he had to do." She told Daughter that Scofield was too old for Daughter to date. When Daughter was late returning home, Mother called law enforcement on May 28, 2011. ROA. pp. 32-34 (Direct quote, ROA. p

33, lines 18-20).

Mother testified she was contacted by the police at about nine p.m. and told they found Daughter. Mother went to the police station for Daughter. Mother testified Daughter was "rough looking" and "had scratches all over her. She did not look herself. She just looked like she was wore slap out." ROA. p. 34, lines 8-25.

Daughter testified that on May 28, 2011, she met Scofield and his friend, Justin Fields, after Scofield arranged to meet her by text. They met up in the square in Abbeville. Scofield had sex with Daughter in the church graveyard. Daughter testified that she and Scofield hid out from both the police and her mother. Daughter testified they were subsequently caught by police at about 9:30 p.m. ROA. pp. 52-57.

Ultimately, Scofield was acquitted for the charges related to his conduct with Daughter -- criminal sexual conduct and contributing to the delinquency of a minor. One could speculate why. Certainly, the inexplicable failure of the examining doctor to perform a full rape kit examination may be part of the explanation. ROA. pp. 119-120. The other reason may have to do with Daughter's demeanor, described by defense counsel as "a little like a robot giving that testimony." ROA. p. 170, lines 24-25. However, the conspiracy to murder Mother was beyond the ken of Mother or Daughter while these troubling events unfurled.

Testimony serving as direct evidence of the illicit agreement comes on direct examination of Scofield's friend and codefendant, John Calvert. Calvert testified he received a phone call from Scofield on May 28 asking for help to try and kill Mother. ROA. p. 68. Scofield asked Calvert "to get what I could and come up there." ROA. p. 69, line 1. Calvert understood that as a request for Calvert to get weapons. Scofield gave

Calvert the name and number of a cab company to bring Calvert to the square. Scofield sent another friend, Justin Fields, to pay for the cab. Calvert brought two machete-size knives with him. ROA. p. 69. The knives were about ten inches long. ROA. p. 70, lines 1-3. Calvert pled guilty to conspiracy and received probation. ROA. pp. 70-71.

On cross-examination, Calvert changed his testimony and claimed Scofield did not tell him why he wanted the knives and only told him about killing Mother after Scofield and Calvert were already in jail. ROA. pp. 74-75. Calvert stuck with this recantation through the brief redirect examination. ROA. p. 76, lines 11-15. It is based on this recantation that Scofield argues he was entitled to directed verdict.

Halie Owenby, friends with both Daughter and Scofield, testified that the day before, Scofield complained about Mother during a phone conversation and said "I hate that bitch. I want her dead." ROA. p. 79, lines 15-17. Owenby further testified as follows: "He called me and he said, 'the deed is done.' And I was like, 'What are you talking about?' He said, 'I did it.' I said, 'What are you talking about?' He said, 'I killed Kim.'" ROA. p. 78, lines 20-23. The record is devoid of explanation as to why Scofield falsely claimed success in murdering Mother.

Lieutenant John Garner responded to the missing persons report for Daughter. He found Fields and Calvert in the park. Although not forthcoming at first, Fields and Calvert told Lieutenant Garner they were waiting on Scofield and Daughter, who were behind the church. Lieutenant Garner noticed a knife handle sticking out of Calvert's pocket. Lieutenant Garner took custody of that knife and recovered other knives from

Calvert's backpack.¹ ROA. pp. 87-89.

Scofield admitted in his first statement to police that he intended to harm Mother. ROA. p. 93. In his second statement, he claimed Calvert did not know what the knives Calvert brought were for and that Scofield asked Calvert to bring them because Scofield was going to harm himself. ROA. p. 93; p. 96.

Scofield testified in his own behalf, and his less-than-credible explanation about the knives (the third) probably helped convince the jury to convict. Scofield claimed he was playing in the woods and jumping across the creek with Daughter and Fields. Daughter scratched up her legs in the briars, so Scofield asked Calvert to bring knives with him to cut the briars. ROA. pp. 141-143. On cross-examination, he admitted it was near dark (8 p.m.) when he spoke with Calvert about the knives. He did not ask Calvert to bring band aids or flashlights. ROA. pp. 152-153. He admitted paying for Calvert's taxi ride. ROA. p. 153. Scofield claims the reason he told law enforcement that he wanted the knives to hurt himself was because the Officers were being persistent and adamant. ROA. p. 148. Scofield claimed he told law enforcement that he did not intend to hurt Mother or Daughter when he gave the first statement. Then oddly, five hours later, he requested the police to return just to provide the same story again. ROA. p. 154-155.

¹ The knife in Calvert's pocket was eleven inches long with a six-inch blade. Three more knives were found in the backpack: a sixteen-inch long knife with an eleven-inch blade, a seventeen-inch knife with a nine-and-a-half inch blade, and a nine-inch knife with a five-inch blade. ROA. p. 88, lines 6-15.

ARGUMENT

The trial court did not err in denying the motion for directed verdict on the charge of conspiracy to murder since Appellant's codefendant testified on direct examination that Appellant asked for help to kill Appellant's girlfriend's mother and requested codefendant to bring weapons and codefendant procured large machete-size knives.

Scofield argues the trial court should have granted directed verdict based on his codefendant's cross-examination testimony recanting the direct examination testimony that Scofield asked for help to murder his girlfriend's mother (Mother). The direct examination testimony is direct evidence supporting the agreement or conspiracy to murder Mother. Which version of events was more credible is a decision for the jury, not the trial court, so the trial court did not err in refraining from granting the directed verdict.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury." State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001).

A "conspiracy" is "a combination or agreement between two or more persons for the purpose of accomplishing an unlawful object or a lawful object by unlawful means." S.C. Code Ann. § 16-17-410. "The gravamen of conspiracy is an agreement or combination." State v. Stuckey, 347 S.C. 484, 502, 556 S.E.2d 403, 412 (Ct. App. 2001). "However, a formal agreement is not necessary to establish a conspiracy, as the conspiracy

may be proven by circumstantial evidence and the conduct of the parties.” Id., 347 S.C. at 502-03, 556 S.E.2d at 412 (citations and internal quotation marks omitted).

Overt acts committed in furtherance of a conspiracy are not elements of the conspiracy, just evidence of the existence of the conspiracy. State v. Wilson, 315 S.C. 289, 294, 433 S.E.2d 864, 867-68 (1993). “Once an agreement has been reached, the crime of conspiracy has been committed; no further act need take place. Conspiracy is an inchoate offense, and is a crime in and of itself.” State v. Crawford, 362 S.C. 627, 639, 608 S.E.2d 886, 892 (Ct. App. 2005) (citation and internal quotation marks omitted). “Prohibition of conspiracy serves two distinct purposes: the punishment of group behavior and the control of inchoate activities.” Id., 362 S.C. at 639, 608 S.E.2d at 893 (quoting 15A C.J.S. Conspiracy § 98).

Direct evidence of the conspiracy was provided by Calvert on direct examination. “The weight to be attached to the testimony of an accomplice is for the jury alone who must consider it in view of the other evidence and reach their conclusion on the view of the whole case.” State v. Pitts, 256 S.C. 420, 426, 182 S.E.2d 738, 741 (1971). “[T]he testimony of an accomplice is altogether for the jury and, if believed, the jury may convict even when his testimony is not corroborated.” State v. Givens, 267 S.C. 47, 52, 225 S.E.2d 867, 869 (1976).

Calvert testified Scofield “called me saying that he wanted me to help him try to murder, I think it’s, Karlie’s mom.” ROA. p. 68, lines 23-24. Scofield told Calvert “to get what I could and come up there.” ROA. p. 69, line 1. Calvert explained this meant to gather weapons. ROA. p. 69, lines 2-4. Scofield gave him the name of the cab company to use and the phone number, and sent another friend, Fields, to pay Calvert’s fare. ROA.

p. 69.

In the instant case, Scofield requests this Court to consider only the cross-examination testimony from Calvert and disregard his direct examination testimony that firmly establishes Scofield's guilt. It is up to the jury, not the trial court, to decide which of the dueling versions of events were truthful. "[T]he jury is the judge of which contradictory statement of the witness is the truth." State v. Needs, 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998) (citation and internal quotation marks omitted); see State v. Buckman, 347 S.C. 316, 324 n.6, 55 S.E.2d 402, 406 n.6 (2001) (credibility of a witness goes to the weight of the evidence and not consideration by the trial court in determining whether to grant a directed verdict); Crawford, 362 S.C. at 634, 608 S.E.2d at 890 (finding the contradiction between accomplice's statement to police and subsequent trial testimony disavowing knowledge of Crawford's involvement was a matter of weight for the jury to resolve).

In the instant case, the jury was free to decide which version of events Calvert gave was the truth. Given the potential bias Calvert had for his friend and the patently incredible testimony from Scofield himself, the jury's verdict is supported by evidence in the record and the trial court did not err in denying the motion for directed verdict. See Town of Hartsville v. Munger, 93 S.C. 527, 77 S.E. 219 (1913) ("False and conflicting statements . . . have always been regarded as some evidence of guilty knowledge and intent.").

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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April 1, 2014

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IN THE COURT OF APPEALS

Appeal From Abbeville County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

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JAMES ROSCOE SCOFIELD,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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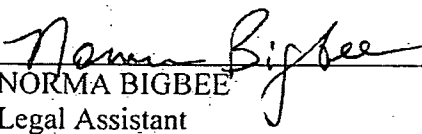
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 1st day of April, 2014.


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