

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

Donald B. Hocker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEITH DENVER TATE,

APPELLANT

APPELLATE CASE NO. 2014-001694

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,	)	2011-GS-01-0045	2011-GS-01-0050
	)	2011-GS-01-0046	2011-GS-01-0051
PLAINTIFF,	)	2011-GS-01-0047	2011-GS-01-0052
	)	2011-GS-01-0049	2011-GS-01-0053
	)		2011-GS-01-0054
-VS-	)		
	)	TRANSCRIPT OF RECORD	
KEITH DENVER TATE,	)		
	)		
DEFENDANT.	)		
_____	)		

MAY 27-28-29, 2014
ABBEVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE; AND A JURY

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

ATTORNEYS FOR PLAINTIFF:

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LANCE SHEEK, ASSISTANT SOLICITOR

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SHANE GORANSON, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

TRIAL DAY 1-05/27/14

1 THE COURT: Let me give you a little brief introduction
2 concerning the trial of this case. If the Defendant would
3 stand.

4 (Whereupon, the Defendant stands.)

5 THE COURT: Keith Denver Tate. That is the Defendant
6 who has been indicated by the Abbeville Grand Jury. Have a
7 seat, sir.

8 (Whereupon, the Defendant takes his seat.)

9 THE COURT: I have before me several indictments. And
10 I'm going to go ahead and tell you this now, and I'll tell
11 it to you again later on. The indictments are not proof of
12 any guilt or innocence. They're just the charging papers.
13 It gets the case from point A to point B. I'll just open
14 these up. Just a moment, please.

15 These indictments allege. They're just merely
16 allegations. Not evidence, not proof. Merely allegations
17 that the Defendant, Keith Denver Tate, did commit the
18 offense of criminal sexual conduct with a minor, namely a
19 Minor And there are, I think, nine indictments
20 making these allegations. And again, the indictments are
21 not evidence. They're not proof. But that is just a very
22 snippet of what this case is about.

23 Now, I have further questions of the jury panel. Is
24 anyone related by blood or marriage to either Keith Denver
25 Tate or Minor If so, please stand.

1 my fault, is I released three photographs there were taken
2 off of a cell phone. These photographs are of the genitalia
3 of a minor boy. I should not have released them. They
4 would be improper to disclose, display, disseminate in any
5 way, shape or form. So I just want to make sure that we
6 don't ever see those photographs in this courtroom.

7 THE COURT: Okay.

8 MS. NELSON: Your Honor, I agree that they shouldn't
9 have been disclosed to me. And when I realized -- you can't
10 tell from the photographs the age -- you can't tell if the
11 person is under age from the photographs. But once I
12 realized that he was -- well, even before that, I never
13 showed those to anyone else. So they have not been shown to
14 anyone by me. I have not duplicated the disc that they came
15 on. It would not be my intention to try to introduce that
16 photograph unless -- unless for some reason it -- the fact
17 that they existed on this young lady's phone is disputed.
18 And then, you know, if there was some way to describe them
19 to the jury short of them seeing the actual images. But I -
20 - you know, it wouldn't be my desire to introduce them. I
21 think -- I think in cases where child pornography is
22 involved -- and this is not one of those. But I think the
23 jury is allowed to see that type of evidence in trials to
24 prove that it exists on, you know, wherever it -- wherever
25 it might be.

1 THE COURT: Well, if I understand what you're saying,
2 you don't want to concede 100 percent at this stage that you
3 would not consider some sort of relevant evidence. And we'll
4 just see how it goes. Quite frankly, I don't see where it
5 would be relevant. But I'm not making any rulings on that.
6 No question about it. It was just a very honest mistake.
7 The Solicitor did nothing improper, and you certainly have
8 not done anything improper as it relates to those three
9 photographs. And if for some reason the Defense feels like
10 they want to have those introduced then we'll deal with that
11 evidentiary matter. But suffice it to say, nobody has done
12 anything wrong as it relates to those photographs and I'm
13 satisfied that it's purely just one of those inadvertent
14 situations, and it happens. I mean, you guys deal with so
15 many cases and, you know, mistakes like that are going to
16 happen.

17 MS. NELSON: Yes, sir.

18 THE COURT: Okay. Well, I'm kind of cutting y'all's
19 lunch break down to about 40 minutes. Is that okay?

20 MR. SHEEK: What the judge says is fine with us.

21 THE COURT: All right. Because the jury is coming back
22 at 2:00. Would you all be ready to make some opening
23 arguments and get into this case?

24 MR. SHEEK: Yes, sir.

25 THE COURT: All right. We'll be in recess until 2:00.

1 I've had jurors with their eyes closed and with all
2 indication they're not listening at all, and I don't care
3 for that much. So be very attentive. Make sure you get
4 plenty of rest before you come into this courtroom each and
5 every day.

6 I will ask from the State any objections or exceptions
7 to the court's preliminary charge?

8 MR. SLEEK: None from the State, Your Honor.

9 THE COURT: And from the Defense?

10 MS. NELSON: No sir, Honor.

11 THE COURT: At this time the lawyers will make their
12 opening arguments. It's not evidence in the case. It's
13 just their statement as to what they believe the evidence
14 will be. Their respective positions in this case. Kind of
15 get you on board as to what they believe this whole case
16 will be about and what will be presented. And as I told you
17 before you were selected on this jury, we have four
18 excellent trial attorneys and work very hard, so please give
19 them your undivided attention.

20 From the State.

21 MR. BROWN: Thank you, Your Honor. May it please the
22 court?

23 THE COURT: Yes, sir.

24 OPENING STATEMENT

25 BY MR. BROWN: Ladies and gentlemen, we are here today

1 because a young girl was sexually assaulted. We're here
2 because a young girl was actually raped, not only once but
3 multiple times and it turned her life upside down. The
4 young girl, sitting on the front row with her grandmother,
5 is Minor The man that sexually assaulted her is
6 sitting at the table, Keith Denver Tate, also known as Bo.

7 Now, ladies and gentlemen, throughout this trial you
8 will hear different testimony from different witnesses.
9 You'll hear that Minor at the time was 12 and 13-
10 years of age when this took place. She lived out of Lee
11 Street Apartments in Calhoun Falls with her mother, Delisa
12 Rucker Reed, her two brothers, and also Keith Denver Tate.

13 Starting around August 2009 sexual assaults began and
14 lasted to March 2010. Now, I, along with Lance Sheek,
15 represent the interest of the State in this case, and also
16 the interest of Ms. Minor and it is our honor and
17 privilege to do so. Our burden in doing so is we have to
18 prove all the elements charged. As the judge has already
19 let you know, he's charged with criminal sexual conduct,
20 second degree with a minor. Our burden of proof is to proof
21 to you beyond a reasonable doubt that Mr. Keith Denver Tate
22 did do what we purport him to do, that he did all the
23 elements that are a part of criminal sexual conduct with a
24 minor, second degree.

25 So what is proof beyond a reasonable doubt? Proof

1 beyond a reasonable doubt is the proof that leaves you
2 firmly convinced that the Defendant's guilty. Firmly
3 convinced. It's not all doubt. It's not every doubt. It's
4 not any doubt. But it's a proof that leaves you firmly
5 convinced. So what do we have to prove beyond a reasonable
6 doubt? Well, Mr. Tate is charged with criminal sexual
7 conduct with a minor, second degree. A person is guilty of
8 criminal sexual conduct with a minor in the second degree if
9 the Defendant engages in sexual battery with a victim who is
10 14-years of age or less, but is at least 11-years of age.

11 So what's sexual battery? Sexual battery means sexual
12 intercourse, cunnilingus, fellatio, anal intercourse, or any
13 intrusion however slight of any part of another person's
14 body, or of any object in the vaginal or anal openings of
15 another person's body. Those are the elements of criminal
16 sexual conduct with a minor in the second degree. Less than
17 14-years of age but older than 11, and some type of
18 intrusion into that person's body however slight.

19 Folks, this is a tough case. Nobody likes to hear case
20 concerning criminal sexual conduct. As the judge as already
21 alluded to you, being a jury -- being on a jury is the
22 second highest civic duty other than military. We
23 appreciate your time being here. Your willingness to serve.
24 We ask that you pay attention to all the testimony that's
25 going to be elicited from the stand, and also watch

1 carefully to all the evidence that's presented. Justice is
2 your goal in this case and it is not one that you can fall
3 short. Thank you.

4 THE COURT: Thank you, Solicitor. Ms. Nelson.

5 MS. NELSON: Thank you, Your Honor. May it please the
6 court.

7 THE COURT: Certainly.

8 OPENING STATEMENT

9 BY MS. NELSON: Ms. Minor is a really good story
10 teller. She's a regular Stephen King, James Patterson. And
11 what the State wants you to believe is that this horror
12 story that you're going to hear about is a horror story
13 where she is the victim. I expect that you'll hear her
14 called the victim numerous times throughout the course of
15 this case. But she said a lot of things to a lot of
16 different people, folks, and there are a lot of
17 inconsistencies in what she said. And we hope for the first
18 time that you people are going to get to hear about all of
19 those, listen to all of those, and really scrutinize them
20 and decide if she really was victimized or if the outcome of
21 this horror story is really that -- really that he was
22 victimized by having some of the most heinous accusations
23 that anybody could make against a person in our society made
24 against him by this young lady. You know how a good author
25 will write a chapter of a story and then work on it and edit

1 it and refine it and there are several drafts on the way and
2 what he writes the first time might not be what's in that
3 chapter in the published version. And that's sort of
4 similar to what we have going on here. And I hope you get
5 to hear during the trial of this case how Ms. Minor edited
6 and refined and changed her story about the things that she
7 said happened to her. And I hope at the end of this --
8 again for the first time, you're the first group of people
9 that is going to get to see all of those differences and
10 hear about all of those edits and refinements and get to
11 decide what you believe. You get to decide who the victim
12 is in this case. Whether her story about being assaulted is
13 true or whether Keith Tate has been falsely accused.

14 We don't have to prove anything to you in this case.
15 Mr. Tate is under no obligation at all to prove anything to
16 you. He sits at that table an innocent man. Just because
17 somebody is arrested, just because there's a grand jury
18 indictment does not mean that somebody is guilty. There's a
19 different standard of proof for getting an arrest warrant
20 than there is in finding someone guilty after a trial.

21 Your Honor, it looks like -- it looks like Ms. Minor is
22 upset and I don't want that to distract the jury.

23 THE COURT: Okay. Let me just see the lawyers up here
24 just one minute.

25 (Whereupon, a side bar was held.)

DELISA REED - DIRECT EXAMINATION

70

1 MS. NELSON: I was talking to you about something
2 pretty important and that's the fact that anyone who's
3 accused in the criminal system is innocent until they're
4 proven guilty. Just because he is sitting here does not
5 mean he's guilty. He has entered pleas of not guilty to all
6 nine of these charges that are before you. And it's the
7 government's job to give you evidence in this case that
8 proves to you beyond a reasonable doubt that he is guilty of
9 each and every one of these crimes before you can actually
10 find him guilty. And you finally are the people who get to
11 hear everything and make that determination. You get to
12 decide about Ms. Minor credibility.

13 The other thing this case reminded me about with the
14 horror story analogy was that part of reason -- part of the
15 reason horror novels are so scary is because -- it's because
16 some of them touch on things that we experience in real
17 life. There's just enough real out there to make it scary.
18 But then as you're reading something comes along that makes
19 you remember you're just reading a book and it's just a
20 fiction. Something like aliens or vampires or a killer
21 clown. And those are the kinds of things that I expect
22 you're going to hear in this case that jump out at you as
23 being implausible or outlandish.

24 At the end of this case we're going to come back to you
25 and ask that after you've heard everything and carefully

DELISA REED - DIRECT EXAMINATION

71

1 consider the evidence that you hear that you find that Mr.
2 Keith Tate is not guilty of these charges.

3 THE COURT: Solicitor, are you ready to call your first
4 witness?

5 MR. BROWN: I am, Your Honor. The State calls Delisa
6 Rucker Reed.

7 MR. SLEEK: Your Honor, if we could have just a moment
8 to check on this witness, because --

9 THE COURT: Sure. Sure. Not a problem. Everybody be
10 at ease for just a moment.

11 (Whereupon, there was a brief pause in the
12 proceedings.)

13 DELISA RUCKER REED, having been
14 first duly sworn, testified as follows:

15 THE COURT: Be sure to sit up close to the microphone
16 and speak loud so we can all hear you.

17 DIRECT EXAMINATION

18 BY MR. BROWN:

19 Q Good afternoon, Ms. Reed.

20 A Good afternoon.

21 Q I'm going to stand back here, so if I can hear you I'm
22 hoping the whole -- that everybody can hear you. But, Ms.
23 Reed, let's start off by tell us your full name.

24 A Delisa Lavette Reed.

25 Q And, Ms. Reed, let's learn about your family. How many

DELISA REED - DIRECT EXAMINATION

72

1 children do you have?

2 A Three.

3 Q And what are their names?

4 A Minor Takevis and Takwon.

5 Q And what's Minor full name?

6 A Minor

7 Q And then your boys are --

8 A Takevis R. and Takwon R.

9 THE COURT: Spell the names of those children, please,
10 for the benefit of the court reporter.

11 THE WITNESS: Minor

12 Takevis R. Takwon R.

14 Q Now, Ms. Reed, how old is Minor

15 A Sixteen.

16 Q And how old is your two boys?

17 A Twelve and -- 12 and 10.

18 Q Where does Minor live?

19 A As of now she live with my mom.

20 Q And where is that?

21 A In Greenville.

22 Q And what about your two boys?

23 A They live with me.

24 Q Where did you live back in 2009, 2010?

25 A In Calhoun Falls.

DELISA REED - DIRECT EXAMINATION

73

1 Q And do you still live there now?

2 A No, I do not.

3 Q And where in Calhoun Falls did you live?

4 A On Lee Street. I can't remember that -- it's . I
5 can't remember the apartment number. It's .

6 Q What were the apartments' name? Were they Lee Street
7 Apartments?

8 A Yeah, I think so.

9 Q And that's in -- what town and county is that in?

10 A It is in Calhoun Falls.

11 Q What county is that in?

12 A Abbeville County.

13 Q And, now, tell me, how long did you live in those
14 apartments?

15 A Honestly, I can't remember. It may be -- it may be a
16 year maybe.

17 Q Do you know when you moved in?

18 A I think it was in July.

19 Q Of what year?

20 A '09, I think.

21 Q Okay. And then you went there about a year?

22 A Yes, sir.

23 Q Ms. Reed, who lived in that house with you?

24 A My three kids, as well as Keith Tate and I.

25 Q And you mention Keith Tate. How did you know Keith

DELISA REED - DIRECT EXAMINATION

74

1 Tate?

2 A I had already knew him from Calhoun Falls, and then my
3 oldest son is his son.

4 Q Your oldest son is his son?

5 A Yes, sir.

6 Q Were you all boyfriend and girlfriend, or husband and
7 wife, or --

8 A Boyfriend, girlfriend.

9 Q And how long did you live together?

10 A We was together maybe three or four years, and the
11 whole time we lived together.

12 Q Okay. And so, when you moved to Lee Street Apartments
13 Mr. Tate lived there with you?

14 A Yes, sir.

15 Q With your three kids?

16 A Yes, sir.

17 Q Now, Ms. Tate, while you were living -- or in 2009 and
18 2010 did you have any health problems?

19 A Yes, sir. I did.

20 Q And were you taking any medication for those health
21 problems?

22 A Yes, sir. I was.

23 Q Can you tell me what kind of medication you were
24 taking?

25 A I was taking Xanax. I was taking Geodon, Depakote,

DELISA REED - DIRECT EXAMINATION

75

1 Ativan, Seroquel, Lortab, Phen-- not Phenergan. Flexeril
2 and Zanaflex, which are two muscle relaxers. I was taking
3 like 36 pills a day. I mean, it was --

4 Q Did you ever take anything to help you with --

5 A Ambien. I took that for sleeping.

6 Q And what were the reasons you were having to take those
7 medications?

8 A Some of it was I had seizures. Some of it was for my
9 schizophrenia and bipolar, and some was for fibromyalgia,
10 rheumatoid arthritis, and neuropathy.

11 Q Now, when you would take these medications what time of
12 day did you take these, most of the medications?

13 A At least -- most of the medicines they made me sleepy.
14 I took at least three times a day. Other medicines I took
15 maybe four times a day.

16 Q And after you would take this medication you said it
17 makes you sleepy?

18 A Yes, sir.

19 Q What was your typical day or night like after you took
20 these medications?

21 A If I took it in the morning -- well, not if. When I
22 took it in the morning I slept probably until maybe 5:00 or
23 6:00, and then I'll take my second dose for the day and
24 would sleep until probably about 9:00 or 10:00, and then
25 take my next dose and then sleep the rest of the night.

DELISA REED - DIRECT EXAMINATION

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1 Q So you're basically sleeping all day?

2 A Yes, sir.

3 Q And once you took your medication and you fell asleep
4 were you easily aroused? Were you able to -- would you get
5 somebody to wake you up pretty easily?

6 A No, sir.

7 Q Now, Ms. Reed, you understand why you're here today.
8 When did you find out about an allegation that Minor what is
9 Minor -- what does -- does she go by anything short?

10 A Minor

11 Q When did you find out that Minor alleged she was sexually
12 assaulted?

13 A When the police came to pick up Keith Tate.

14 Q Did you -- and how did you find out? Just from when
15 they picked him up?

16 A Yeah. We was asleep and -- I was sleeping in the
17 livingroom on the couch. Honestly I don't remember where he
18 was, but I think he was the one that answered the door. And
19 the police came in and said that they was arresting him for
20 molesting my daughter.

21 Q Ms. Reed, after he was arrested did the police come
22 back to your apartment?

23 A They came back to get a few things, if they didn't get
24 it then. But we moved right after they came and got him.
25 We left like a couple of days later.

DELISA REED - DIRECT EXAMINATION

77

1 Q So right after all this surfaced you left that
2 apartment?

3 A Yes.

4 Q And you took -- who did you take with you?

5 A I took my three kids, and whatever I could load in the
6 truck.

7 Q You left?

8 A Yes.

9 Q. Ms. Reed, in the course of this investigation in this
10 case did you by any chance give a sample of your DNA?

11 A Yes, sir. I did.

12 Q And who came and got that DNA from you, or what did
13 they do?

14 A It was someone from your office came and they swabbed
15 my mouth.

16 Q Was it an investigator in our office?

17 A Yes, it was.

18 Q Walter Bentley?

19 A Yes, sir.

20 Q And what did he do?

21 A He swabbed my mouth.

22 MR. BROWN: Beg the court's indulgence.

23 THE COURT: Sure.

24 Q Just a few other questions, Ms. Reed. Ms. Reed, what
25 is the name of the apartment in? Whose name was it in?

DELISA REED - CROSS EXAMINATION

78

1 A It was in mine.

2 Q And were y'all -- were you all married?

3 A No.

4 Q Was there any child support things brought up in regard
5 to this?

6 A No, sir.

7 Q Did you gain any advantage from these allegations
8 surfacing?

9 A No, sir.

10 MR. BROWN: No further questions.

11 THE COURT: Cross-examination.

12 MS. NELSON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. NELSON:

15 Q Hi, Ms. Reed, my name is Janna Nelson.

16 A Hi.

17 Q Mr. Brown was just asking you about gaining advantage
18 from these allegations. But you didn't make the
19 allegations, did you?

20 A No, sir. I didn't -- no, ma'am. I didn't.

21 Q And you didn't -- you testified you didn't know
22 anything about it until it all came out August 25th of 2010?

23 A That was the date. Yes, ma'am.

24 Q And before moving into the apartment into
you and Keith actually lived together in Greenville

DELISA REED - CROSS EXAMINATION

79

1 at a different apartment, right?

2 A We lived at a house.

3 Q Okay. A different residence?

4 A Yes.

5 Q And the first time you ever lived together was back in
6 1999 when Minor was only about two or three years old, right?

7 A She was about four or five. Yes, sir -- yes, ma'am.

8 Q She was born in '97?

9 A Yes, ma'am.

10 Q And you think she was about four or five the first time
11 you and Keith lived together?

12 A Yes.

13 Q How long did you live together in Greenville before
14 moving to Calhoun Falls?

15 A Honestly I can't remember. I think we stayed in the
16 house on Crosby Circle for like three years.

17 Q And your middle son, Takevis -- am I saying --

18 A Takevis.

19 Q Takevis. He is Keith's son also, right?

20 A Yes.

21 Q And he's 12-years-old?

22 A Yes.

23 Q And he still has a relationship with Keith, doesn't he?

24 A Whenever he want to see him, yes.

25 Q You still -- you let Takevis go see Keith just a couple

DELISA REED - CROSS EXAMINATION

80

1 weekends ago?

2 A Yes.

3 Q And he went and stayed with Keith in Calhoun Falls,
4 right?

5 A Yes.

6 Q So for about at least prior to Keith being arrested for
7 that previous four years or so he was the father figure to
8 all three of your children, wasn't he?

9 A Somewhat, yes.

10 Q And Minor called him Dad, right?

11 A I think she called him Bo.

12 Q You didn't ever hear her call him Dad?

13 A No.

14 Q So she's called him that to other people, that just
15 wasn't something you heard?

16 A She said -- maybe said it to other people, but I never
17 heard her come out her mouth and say Dad, calling him.

18 Q And you -- you talked about not knowing that anything
19 was going on. You never saw or heard anything that made you
20 suspect any kind of sexual abuse, did you?

21 A No, ma'am.

22 Q Did you ever see any marks on Minor face like she had
23 been punched or hit by somebody?

24 A She had a busted lip at one point.

25 Q She had a busted lip?

DELISA REED - CROSS EXAMINATION

81

1 A Yes.

2 Q Did you ever tell the police about that?

3 A No, ma'am. I didn't know the busted lip was from this
4 until we really started talking about this.

5 Q And the only reason your -- you say that you know about
6 the busted lip, the only reason you know that is from Minor

7 A No. I seen the busted lip when --

8 Q You didn't see how she got the busted lip?

9 A No. When the busted lip came up it was said that they
10 was playing and she had got -- her lip was busted.

11 Q When was that?

12 A I can't remember the actual date.

13 Q Can you remember a timeframe?

14 A No, ma'am. I can't.

15 Q You can't remember a month or -- what about a season,
16 or the year?

17 A I'm not going to sit here and lie. I don't know. I'm
18 being honest with you.

19 Q And you talked about the medications that you take
20 making you sleep really hard.

21 A Yes.

22 Q So you never heard any screaming going on in the house
23 after you went to bed?

24 A No, ma'am. If I did, I wouldn't have went to bed.

25 Q Well, if it happened after you went to bed --

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1 A I would have got up.

2 Q You would have gotten up. With the medications that
3 you took making you sleep so hard, if there had been a phone
4 next to you that went off with a text message, that wouldn't
5 have been something that would wake you up?

6 A No, ma'am.

7 Q I'd like to talk to you just a little bit about the
8 layout of the apartment that you were living in in Lee
9 Street. It's a pretty small three bedroom apartment, isn't
10 it?

11 A It wasn't really that small.

12 Q It was about 1,000 square feet?

13 A Actually, I don't know how big that is.

14 Q Okay. It had three bedrooms and a bathroom, right?

15 A Yes.

16 Q And a livingroom and a kitchen?

17 A Yes.

18 Q And the -- there were two doors -- there were two doors
19 going in and out of the apartment; is that right?

20 A Yes, one in the front and one in the kitchen.

21 Q So you go up on a little porch and there's a front door

22 --

23 A Yes.

24 Q -- that goes into the livingroom?

25 A Yes.

DELISA REED - CROSS EXAMINATION

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1 Q And then the livingroom goes straight through to the
2 kitchen, doesn't it?

3 A Yes.

4 Q And there's a backdoor in the kitchen?

5 A Yes.

6 Q And you can see both of those doors from either the
7 kitchen or the livingroom; is that right?

8 A Yes, it's possible.

9 Q And then there's -- coming off the livingroom there's a
10 short hallway?

11 A Yes.

12 Q And the bedrooms and bathroom are all off of that
13 hallway; is that right?

14 A Yes.

15 Q And so, the only -- were you in the -- were you in the
16 bedroom on the back of the apartment?

17 A When you walk in the apartment and start down the
18 hallway it was a bedroom here (indicating), it was a
19 bathroom here (indicating). Going down it was a bedroom
20 here and it was a bedroom there (indicating). I was in the
21 bedroom on the right beside the bathroom.

22 Q So as you're going down the hallway you're in the
23 bedroom on the far right at the back end of the apartment?

24 A Yes.

25 Q Did the bedroom doors have locks?

DELISA REED - CROSS EXAMINATION

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1 A I think ours did. I don't think the kids' room did.

2 No, the kids' room didn't. Our room did. The kids' room

3 didn't. Ours did.

4 Q When did Minor join the band?

5 A In sixth or seventh grade. I think it was seventh

6 grade.

7 Q Was she in the band while she was at Calhoun Falls

8 Charter School?

9 A Yes, ma'am.

10 Q What did she play?

11 A She played the trumpet -- well, she started out playing

12 the violin and the flute, but she ended up with the trumpet.

13 Q Was she in the marching band?

14 A Yes.

15 Q Did she play at football games?

16 A Yes.

17 Q What about away games?

18 A Yes.

19 Q And when I ask you this question I'm talking about the

20 school year for the timeframe we're talking about. So the

21 2009 to 2010 school year. You believe that that fall of

22 2009 she was playing in the band?

23 A She was playing in the band, as far as -- the time, or

24 whatever, I don't know, like I said. But she played in the

25 band from, I think, seventh grade until now she's been in

DELISA REED - CROSS EXAMINATION

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1 band. She hasn't stopped. So, I guess, yeah. Yes, to your
2 question.

3 Q Now, you've talked some really candidly about the
4 various health problems that you have, or that you had at
5 the time. When you lived in Calhoun Falls there were a
6 number of hospital visits that you made to the emergency
7 room, weren't there?

8 A Yes, ma'am.

9 Q And when you would go to the hospital Keith would come
10 to the hospital, wouldn't he?

11 A Not all the time. Sometimes yes. If he had to stay
12 back to watch the kids he didn't. If he didn't have to
13 watch them then yeah, he came. But most of the time he
14 stayed back and watched the kids.

15 Q Do you remember on -- and excuse me, just a moment.
16 I'm looking at between June of 2009 and July of 2010 that
17 you had about 20 or so hospital visits. Does that sound
18 about right?

19 A Yes.

20 Q I'm looking at one from February 14th of 2010. Do you
21 remember going in -- going by Greenville ambulance to St.
22 Francis in Greenville that day?

23 A As far as dates, I don't remember. But yeah, I was
24 always at St. Francis. Not -- I'm not going to say always.
25 But multiple times I went to St Francis.

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1 Q So if you were living in Calhoun Falls at the time of
2 February 14th, 2010 then you must have been visiting
3 Greenville if you were going to St. Francis? Is that
4 accurate?

5 A Yes.

6 Q Okay. If I -- if I show you the medical records from
7 that day would that help you remember if you were actually
8 at St. Francis on February 14th?

9 A Yeah. I'm pretty sure I was there. As far as, like I
10 said, the dates I'm not really sure on.

11 MS. NELSON: May I approach, Your Honor?

12 THE COURT: Sure.

13 (Whereupon, medical records were marked as Defendant's
14 Exhibit 1 for identification.)

15 Q I'd like to show you what's been marked as Exhibit 1
16 for identification. And I direct you to these dates up
17 here. Does that help refresh your memory about whether you
18 were at St. Francis on February 14th?

19 A Yes, ma'am.

20 Q You were taken there by ambulance that day?

21 A If I was taken by ambulance to St. Francis this day, I
22 was already in Greenville. I wasn't in Calhoun Falls and
23 went from Calhoun Falls to Greenville.

24 Q So you must have been visiting Greenville that day?

25 A Yes, ma'am.

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1 Q And Keith was with you, wasn't he?

2 A Yes, ma'am.

3 MS. NELSON: I'm sorry, Your Honor. May I have just a
4 moment?

5 THE COURT: Sure.

6 Q Ms. Reed, do you recall a visit to Self Regional
7 Hospital on March the 3rd, 2010?

8 A Self Regional. That's Greenwood?

9 Q Yes, ma'am.

10 A I'll be honest with you, I can't remember.

11 Q If I show you the record would that be --

12 A Yeah.

13 Q Would that help refresh your memory?

14 A Yes, ma'am.

15 MR. SHEEK: May we approach, Your Honor?

16 THE COURT: Certainly. Come around this way.

17 (Whereupon, a sidebar was held.)

18 THE COURT: Madam Forelady and ladies and gentlemen of
19 the jury, there's some records and some documents that the
20 lawyers are going to need to review, so I thought it might
21 be a good time to take a short afternoon break. So if
22 you'll retire to your jury room and we'll get you back out
23 shortly.

24 Again, I'll remind you not to discuss this case among
25 yourselves. We'll get you back out shortly. Thank you.

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1 (Whereupon, the jury exited the courtroom at 3:09 p.m.)

2 THE COURT: Ms. Reed, you can get off the witness
3 stand, if you like. You just can't discuss anything about
4 your testimony. Okay?

5 THE WITNESS: Okay.

6 (Whereupon, the witness steps down from the witness
7 box.)

8 THE COURT: All right. We'll be at short recess.

9 (Whereupon, the court was in recess from 3:09 p.m. to
10 3:31 p.m.)

11 THE COURT: Back on the record. I guess we probably
12 need to note on the record, during Ms. Nelson's opening
13 Minor I think, became somewhat emotional during the
14 closing argument (sic), and the court has no problem with
15 that, but if that's still a recurring problem then I think
16 we ought to agree that she needs not to be in the courtroom
17 because of the potential nature it has to be disruptive. So
18 just as a cautionary matter.

19 And I think, Solicitor, you had an objection to the
20 opening. If you want to note whatever you want to note on
21 the record.

22 MR. SHEEK: I'll note it, Your Honor. Obviously it's
23 over with now, but I believe opening statements should be
24 that. It's a statement of your -- position of what you
25 believe the evidence of the case will show. It's not an

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1 argument. And I believe the Defense opened straight with
2 argument. Their opening line was calling the victim a liar.
3 Saying it was a work of fiction and that the theme of their
4 opening statement was just that. And then that's when she
5 became very upset, understandably. But I understand the
6 court's ruling.

7 THE COURT: Sure. Sure. You know, it's a fine line.
8 It's a fine line. But anyway, that's noted for the record.
9 Anything else before the jury comes back?

10 MS. NELSON: Can I just make one quick response about
11 what was noted about opening --

12 THE COURT: Sure.

13 MS. NELSON: -- is that their opening line was calling
14 my client a child molester.

15 THE COURT: You know, I'm pretty liberal with
16 arguments, and it cuts from both sides. I know.

17 MR. SHEEK: Your Honor, in relation to these records.
18 One, I would note that I don't believe they're being used
19 for the purpose of refreshing the Defendant -- I mean, the
20 witness's memory. My understanding is, you have a document
21 and if it refreshes your memory they still must testify from
22 their own recollection and not from information contained in
23 the document. The document is merely used to refresh that
24 recollection. I believe in this case she's actually been
25 shown documents and being asked to agree with what is shown

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1 MS. NELSON: Yes, sir.

2 THE COURT: So I'll allow Defense to proceed along
3 those lines.

4 MS. NELSON: Thank you, Your Honor.

5 THE COURT: Okay. Let's bring the jury out, please.

6 (Whereupon, the jury entered the courtroom at 3:35
7 p.m.)

8 THE COURT: Let the record reflect the jury is back in.
9 I think we're still in cross-examination of this witness by
10 the Defense.

11 MS. NELSON: Thank you, Your Honor. May it please the
12 court.

13 Q Ms. Reed, I was talking to you about a -- asking you if
14 you remember a visit to Self Regional on March 3, 2010, and
15 I don't remember what you told me at this point.

16 A I was in and out of the hospital. As far as dates, I
17 don't know. I'm just going to be honest with you all. Not
18 dates.

19 Q If I showed you the record from that date do you think
20 that would help refresh your recollection about whether you
21 were there?

22 A Tell me what date that that say I was there, but as far
23 as me remembering --

24 MS. NELSON: May I approach, Your Honor?

25 THE COURT: Sure.

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1 A What's the date on this? Okay, I see it, 3/3. No.

2 THE COURT: What you need to do, ma'am, when you're
3 reviewing that document, try not to speak. Okay? Just
4 review it and not say anything. And then after you've
5 reviewed it then, of course, respond in any manner that you
6 wish to.

7 Q Does that help you remember?

8 A No, ma'am, because I don't know where the date is on
9 here.

10 Q Okay. Well, do you want to look through more than just
11 the first page and see if you could find one? Did any of
12 that help you remember?

13 A No, ma'am.

14 Q Do you remember going to the hospital in Abbeville on
15 March 15th for chest pain?

16 A (Shakes head.)

17 Q You --

18 A No, ma'am.

19 Q Okay. You just have to answer out loud for the court
20 reporter taking things down.

21 A I'm sorry.

22 Q So you don't remember that?

23 A No, ma'am.

24 Q If I show you the record from Abbeville Hospital do you
25 think that would help refresh your recollection?

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1 MR. SHEEK: Your Honor, may I approach? May we
2 approach, Your Honor?

3 THE COURT: Sure.

4 (Whereupon, a side bar was held.)

5 THE COURT: Ms. Nelson, you may want to kind of start
6 back where you were with that line of questioning.

7 MS. NELSON: Thank you, Your Honor.

8 Q What I had asked you, Ms. Reed, was if you remember a
9 visit to the Abbeville Hospital on March 15th for chest
10 pain.

11 A No, ma'am.

12 Q Do you think if I show you some documents it might help
13 you refresh your memory?

14 A It will tell me that I was there, but it don't refresh
15 my memory.

16 Q So you don't want to look?

17 A I can look. But, I mean --

18 MS. NELSON: May I approach, Your Honor?

19 THE COURT: Certainly.

20 (Whereupon, a medical document was marked as Defense
21 Exhibit 3 for identification.)

22 Q I'm handing you what's been marked Defense Exhibit
23 Number 3 for identification and would ask you to look at
24 that and see if that helps you remember anything.

25 A No, ma'am. It don't.

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1 Q Thank you, ma'am. Can you recall there being a time
2 when you were admitted to AnMed Health in Anderson in April
3 of 2010?

4 A To --

5 Q Yes, ma'am.

6 A Yes.

7 Q And you went in on April 13th and stayed for five days?

8 A I don't remember the dates. I remember going.

9 Q Actually, that was a misstatement. My question should
10 have been you went in on April 13th and stayed for seven
11 days. Is your answer still you don't remember?

12 A I don't remember. I just remember going. I don't
13 remember dates.

14 Q If I show you some documents, do you think it would
15 help refresh your recollection?

16 A I'll look at it.

17 MS. NELSON: May I approach, Your Honor?

18 THE COURT: Sure.

19 (Whereupon, a medical document was marked as Defense
20 Exhibit 4 for identification)

21 Q I'd like to show you what's been marked as Defense
22 Exhibit 4 for identification and ask you to take a look at
23 that, please, ma'am.

24 A Yes, ma'am. I remember.

25 Q Did I get those dates right?

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- 1 A Yes, ma'am.
- 2 Q And then do you recall going back a second time in
- 3 July, specifically on July 14th, for five days?
- 4 A Yes, ma'am.
- 5 Q And that was back at AnMed on the eighth floor, right?
- 6 A Yes, ma'am.
- 7 Q I'd like to go back just for a minute to the apartment
- 8 at . Was that -- there was no carpet on the
- 9 floor, was there, in that apartment? It was kind of, I
- 10 guess, a tile floor or --
- 11 A Yes, it was a tile floor.
- 12 Q It was a hard floor?
- 13 A Yes, ma'am.
- 14 Q And the walls were cinder block; is that right?
- 15 A Yes, ma'am.
- 16 Q Now, in the timeframe that we're talking about here,
- 17 and that's from August of 2009 until March of 2009 -- or
- 18 until the time Keith was arrested. So for about a year.
- 19 From August of '09 to August of 2010. At some point during
- 20 that timeframe Ms. Minor had a boyfriend named Terrence
C.
- 22 A Yes, ma'am.
- 23 Q And he was about 15?
- 24 A Yes.
- 25 Q Did there come a time -- or there did come a time when

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1 you found some photographs of Mr. Crawford on Ms. Minor --

2 MR. SHEEK: Objection, Your Honor. I have a matter for
3 the court.

4 THE COURT: Madam Forelady and ladies and gentlemen of
5 the jury, I have a matter of law that the lawyers need to
6 take up with the court. So I'm going to ask that you retire
7 to your jury room and hopefully get you back out as soon as
8 possible.

9 (Whereupon, the jury exited the courtroom at 3:42 p.m.)

10 THE COURT: Okay, Solicitor. Objection?

11 MR. SHEEK: Your Honor, this is what I've been trying
12 to avoid. I'm assuming, and I may have pulled the trigger
13 too quick, the pictures the Defense is getting ready to ask
14 about are the pictures that I advised the court about
15 earlier which would have no relevance to the accusations of
16 this crime, unless they're trying to put it in through some
17 type of third-party guilt, which clearly they haven't met
18 the statutory requirements of that, or they're trying to go
19 into some other alleged sexual activity by the child, which
20 would be certainly objected under the Rape Shield law. And
21 I can't imagine what other sense of relevance it may have.

22 THE COURT: Is this related to those three pictures off
23 the cell phone that you inadvertently --

24 MR. SHEEK: Absolutely.

25 THE COURT: -- had them in the discovery packet?

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1 MR. SHEEK: Yes, sir. Absolutely.

2 THE COURT: Ms. Nelson?

3 MS. NELSON: Thank you, Your Honor. We're -- this is
4 not a third-party guilt situation. We're -- our position is
5 that these -- these things that Ms. Minor is saying didn't
6 happen. That Mr. Tate is not the perpetrator, and we're not
7 accusing anyone else of being a perpetrator. I'm also not
8 going to -- I don't have any intention of asking anybody if
9 Ms. Minor was having sex with Mr. Terrence C. I think
10 those photographs coming in on that phone at the time that
11 they did go to a motive for why Ms. Minor would be saying
12 these things about Mr. Tate, because she got in trouble for
13 the pictures being on her phone.

14 MR. SHEEK: And I think then the question could be
15 posed, you know, was she using her phone in an improper
16 manner. Did she see something on the phone and got in
17 trouble for it. To get into what those pictures were is
18 completely irrelevant. Under 403, then it certainly would
19 certainly be more prejudicial than probative.

20 THE COURT: I have to assume, you all correct me if I'm
21 wrong, is that the pictures originated from the boy and he
22 texted those pictures to her? It ended up on her phone.
23 Well, I guess -- well, she could have taken them. I mean,
24 the pictures on the phone, was it in conjunction with a text
25 or was it just pictures on the phone like in her photo album

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1 on the phone?

2 MR. BROWN: Just pictures on the phone, Your Honor.

3 MS. NELSON: Simply images.

4 MR. SHEEK: They were not in conjunction with a text.

5 We have no phone records that I've been made aware of tying
6 it into any particular person. I think their allegations
7 are they were the boyfriend's based on what they've accused
8 her of doing. I've had conversations with these kids to
9 find out, you know, what I could about it. But they don't
10 have anything to tie in those pictures.

11 THE COURT: So we don't know -- all we know is that it
12 is male genitalia, three pictures, but we don't know who,
13 how it got on the phone, whatever, correct?

14 MS. NELSON: We know that they're on the phone and
15 there's a date associated. This -- the phones were analyzed
16 by the SLED computer center, and there is a date in that
17 report that is associated with those three images.

18 MR. SHEEK: Your Honor, for the court's information,
19 Your Honor, it would've come from Terrence C. the
20 boyfriend. I can tell you that now, from my own
21 investigation. So assuming the evidence will show that, I
22 still have the same objection. What's the relevance of it.
23 If we're not saying, hey, it's Terrence, it's not third
24 party guilt. We're not asking if they ever had a sexual
25 relationship. We just want the jury to know this little

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1 girl had pictures of male genitalia on her phone. We just
2 want them to know that. For what purpose?

3 MS. NELSON: Again, Your Honor, the dates I'm seeing
4 associated with these photos are August 14th and 15th of
5 2010. Ms. Minor reported this on August 25th. Or that's the
6 date -- I don't know what date she first reported it. It
7 may have been the 23rd. But Mr. Tate was arrested on the
8 25th. My understanding, and from my investigation of the
9 case, is that Mr. Tate and Ms. Reed found those photos on
10 the phone and that the young lady got in trouble for that.
11 And I think if the jury doesn't know -- if they just hear,
12 yeah, I had pictures of Terrence on my phone, that doesn't -
13 - that is not enough information to support the motive that
14 we want to give to the jury.

15 THE COURT: Why does the jury have to know that there's
16 three pictures of Terrence's private parts? Why do they
17 have to know that?

18 MS. NELSON: Because --

19 THE COURT: Why do they have to know it's his private
20 parts? I realize this is -- this is a case involving sexual
21 allegations.. I understand that. And that she has made
22 allegations against the Defendant of sexual in nature. I
23 understand that. But why does the jury has to know that
24 there are sexual pictures on her phone giving her the motive
25 to fabricate these allegations? That's what I'm trying to

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1 get a handle on.

2 MR. SHEEK: To give you a good example, Your Honor.

3 Let's say she was caught actually engaging in sexual
4 activity with Terrence and that was the basis for some
5 discipline, the Rape Shield still applies. You can't go
6 into you had sex with Terrence and that's why you got in
7 trouble, isn't it. They couldn't do that. So why can they
8 go into the fact that there was his picture on the phone?

9 MS. NELSON: Because it goes to motive, Your Honor. It
10 goes to the girl's credibility. It goes to the reason she
11 would -- she would come up with these allegations. And we
12 have the right to put up a defense. We have the right to
13 challenge the credibility of the State's star witness. I am
14 not going -- I don't know whether she was having sex with
15 Terrence, and I think if I ask her she would deny it. I
16 think if I asked him, he would deny it. I don't intend to
17 ask that question. But I think is -- I don't want to show
18 the jury the pictures. But I think it is significant to the
19 presentation of Mr. Tate's defense that they hear that those
20 pictures exist on that phone. And I don't know what Ms.
21 Reed is going to admit to or not, you know. I don't know
22 what Ms. Minor is going to admit to or not. But, you know, I
23 know the pictures are there, and there are times -- there's
24 even one of Ms. Minor statements to the forensic
25 interviewer where she accuses Keith of texting -- of texting

1 Terrence C. and asking him to send pictures of his
2 body to Ms. Minor And I -- I think that's -- and I don't -
3 - that's an outlandish thing to say, but that's what she
4 says in her forensic interview. So I think -- I think it's
5 kind of relevant. I don't want the jury to see pictures of
6 this young man.

7 THE COURT: Right. I don't really see much of a
8 difference in them seeing pictures or being told that there
9 are pictures of his male private parts. I mean, they can --
10 if it's male private parts they can envision in their mind
11 what the pictures show. I just don't -- I think you can
12 certainly ask if there were pictures on the phone concerning
13 Terrence that the mom disapproved of, if she did, that the
14 Defendant disapproved of if he did, but I don't think we
15 need to tell the jury that they are actually Terrence's
16 private areas. I don't think the jury needs to know that.
17 I don't see where there's any relevance. You can still
18 argue motive, because she got into trouble allegedly over
19 these pictures on the cell phone. Now, if you want to
20 proffer before we bring the jury out, because you're not
21 exactly sure what this witness is going to say, but if you
22 would like to make any proffer concerning the nature of
23 these pictures for the record, we'll be glad to do that.
24 But the jury is not going to know that there were pictures
25 of his private area.

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1 MS. NELSON: Well, again, Your Honor, I would just -- I
2 would just state again that if the jury doesn't know what
3 those pictures contain then I -- I think there's a huge
4 difference between knowing there's a picture of a penis on a
5 phone and making you look at that picture, or making Mr.
6 Crawford know that all these people in this courtroom have
7 seen that picture. That's a huge difference to me. It
8 certainly would be if it were my picture. But I don't think
9 the jury can appreciate why someone would tell this story,
10 if -- if they believe our defense, I don't think they could
11 appreciate it without knowing what those pictures consisted
12 of. And again, I think it goes to Mr. Tate's right to
13 present a defense.

14 MR. SHEEK: Your Honor, I believe at this point it
15 remains irrelevant based on the evidence that's been
16 presented to the court. However, should the Defense decide
17 to put up a case, I certainly think the court would have the
18 right to re-entertain the notion based on any testimony they
19 may present. I realize that at this point you can't just
20 say it's inadmissible. Well, at this point it's irrelevant,
21 unless they're trying to create a motive without putting up
22 a defense.

23 THE COURT: Right. Well, again, I believe that motive,
24 if the court believes that she had an improper motive to
25 make these allegations, these allegations having been made

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1 false, I think motive can be established without the jury
2 knowing that the pictures were of male genitalia. So the
3 question is -- I guess the objection by the State is
4 sustained.

5 But, if you want anything on the record, let's go ahead
6 and get it on the record by way of proffer.

7 MS. NELSON: Thank you, Your Honor. So I can go ahead
8 and ask what I need to ask?

9 THE COURT: Yeah, ask whatever you wanted to ask
10 because we're outside the presence of the jury.

11 Q Ms. Reed, did there come a time when you found some
12 photographs of Mr. Crawford on Minor phone that showed
13 him naked?

14 A I didn't find them. Keith did.

15 Q Keith found them. Did he show them to you?

16 A Yes.

17 Q Did he tell you -- so you did see them?

18 A Yes.

19 Q Did you think those were inappropriate?

20 A Actually, I didn't think they was Terrence, but it
21 seems that it was. Yeah, it was inappropriate.

22 Q Did you have a discussion with Minor about it?

23 A Yes, I asked her about it.

24 Q Did you have a discussion with Terrence's parents about
25 it?

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1 A Yes, I asked them about it.

2 Q And what did they say, if you remember?

3 A They said it was inappropriate.

4 Q So there were photographs on Minor phone that were
5 inappropriate enough for you to go have a discussion with
6 Terrence's parents about them?

7 A When Keith showed me the picture we was at the Blue
8 Hole. They was there.

9 THE COURT: What was that answer again, ma'am? I'm
10 sorry. I couldn't understand you.

11 THE WITNESS: When Keith showed me the picture we was
12 all at the Blue Hole. Terrence's parents was there.

13 Q Is that at the state park?

14 A Yes.

15 MS. NELSON: May I have just a moment, Your Honor?

16 THE COURT: Sure.

17 Q Ms. Reed, I asked you if those -- if those photographs
18 showed a young man you believe to be Terrence naked; is that
19 right?

20 A It was an inappropriate picture.

21 Q Was it a man whose -- a young man whose penis was
22 showing in the pictures?

23 A Yes.

24 Q And his penis was erect?

25 A Honestly, I can't remember all that. I just remember

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1 it was a penis on the picture.

2 Q And there were three of those, weren't there?

3 A I seen one. It might have been three. I didn't look
4 through the phone.

5 THE COURT: So the ruling is that nothing can be
6 mentioned to the jury of what the actual pictures show.
7 Certainly the use of the word inappropriate, if that's the
8 word of choice to describe the pictures. I'll allow that.
9 But they will not be told actually what the pictures show.
10 And you've got the record protected by way of your proffer.

11 MS. NELSON: May I just ask one more thing. Would I be
12 permitted to use -- to characterize them as showing him
13 naked?

14 THE COURT: No.

15 MS. NELSON: Yes, sir.

16 THE COURT: Anything further? Let's bring the jury
17 out, please.

18 (Whereupon, the jury entered the courtroom at 3:55
19 p.m.)

20 THE COURT: Let the record reflect the jury is back in.
21 Ms. Nelson, you're still in your cross.

22 MS. NELSON: Thank you very much, Your Honor.

23 Q Ms. Reed, what I was asking you about was Ms. Minor
24 having a boyfriend named **Terrence C.** during the time -
25 - timeframe that we're talking about.

DELISA REED - CROSS EXAMINATION

108

1 A Yes.

2 Q And did there come a time when you saw at least one
3 inappropriate photograph of Mr. Crawford on Ms. Minor
4 phone?

5 A Yes.

6 Q When you saw -- you were at the state park with Keith
7 when you saw that photograph?

8 A As well as Terrence and his family.

9 Q So Terrence C. -- his parents were there?

10 A And his sisters.

11 Q And you -- after you saw that inappropriate photograph
12 you actually went and talked to Terrence's parents about it,
13 didn't you?

14 A Yes.

15 Q And they agreed it was inappropriate?

16 A Yes.

17 Q And Terrence was 15 at the time, approximately?

18 A Yes.

19 Q I mean, he wasn't an adult, right?

20 A No.

21 Q And Ms. Minor would have been 12 or 13 --

22 A Yes.

23 Q -- during the timeframe we're talking about?

24 A Yeah, somewhere around there.

25 MS. NELSON: Just one moment, Your Honor.

DELISA REED - REDIRECT EXAMINATION

109

1 THE COURT: Sure.

2 MS. NELSON: That's all I have, Your Honor.

3 THE COURT: Thank you. Anything in redirect,
4 Solicitor?

5 MR. BROWN: Just a few questions, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Ms. Reed, you were asked several time were you admitted
9 to the hospital in Greenville at St. Francis, or Greenwood
10 at Self, or AnMed in Anderson, or even here in Abbeville.

11 A Yes, sir.

12 Q On any of these times when you admitted in the hospital
13 did your children go with you?

14 A No, sir.

15 Q Did Mr. Tate go with you every time?

16 A No, sir.

17 Q Where would they be?

18 A They would be with him.

19 Q Where?

20 A The kids would be with him at our house at

22 Q Calhoun Falls?

23 A Yes.

24 Q And talking about those inappropriate pictures. Who
25 showed you those pictures first?

DELISA REED - RECROSS EXAMINATION

110

1 A Keith.

2 Q Why did he show them to you?

3 A Honestly, I don't know. We was --

4 MS. NELSON: Objection, speculation.

5 THE COURT: I don't think she can testify what was in
6 the mind of the Defendant.

7 Q Who showed you the pictures?

8 A Keith.

9 MR. BROWN: No further questions.

10 THE COURT: Got anything in recross?

11 RECROSS-EXAMINATION

12 BY MS. NELSON:

13 Q If there was an inappropriate photograph on your
14 child's phone would you want to know about it, Ms. Reed?

15 A Yes.

16 MS. NELSON: Thank you.

17 THE COURT: Thank you, ma'am, for your testimony. You
18 can step down.

19 THE WITNESS: Thank you.

20 (Whereupon, Witness steps down from the witness stand.)

21 (Whereupon, a side bar was held.)

22 Terrence C. having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. BROWN:

Terrence C.

- DIRECT EXAMINATION

111

- 1 Q Good afternoon, Terrence.
- 2 A Good afternoon.
- 3 Q Could you tell the court reporter what your name is?
- 4 A Terrence C.
- 5 Q Terrence, how old are you?
- 6 A Eighteen.
- 7 Q Eighteen. And are you still in school?
- 8 A Yes, I'm a senior.
- 9 Q Where are you a senior?
- 10 A Calhoun Falls Charter School.
- 11 Q Calhoun Falls Charter School. And do you still live in
- 12 Calhoun Falls? Obviously, if you were going to Calhoun
- 13 Falls Charter School.
- 14 A Yeah. I live in Abbeville though.
- 15 Q In Abbeville County. Now, Terrence, how do you know
- 16 Minor
- 17 A I met her a long time ago in school.
- 18 Q In school, like --
- 19 A Yeah.
- 20 Q -- at Calhoun Falls Charter School?
- 21 A Calhoun Falls Charter.
- 22 THE COURT: Sit a little closer to the microphone,
- 23 please sir.
- 24 Q So a long time ago. Do you know what grade you might
- 25 have been in?

Terrence C.

- DIRECT EXAMINATION

112

1 A I believe I was a freshman, I think. I mean, ninth
2 grade, I think.

3 Q Ninth grade?

4 A Ninth or eighth.

5 Q Now, are you older than Minor

6 A Yes.

7 Q How much older are you than Minor

8 A Like two or three years.

9 Q All right. Now, going back to 2009 and 2010. Were you
10 and Minor kind of dating, or boyfriend and girlfriend?

11 A Yes, sir.

12 Q And how long were you all boyfriend and girlfriend?

13 A Two years maybe.

14 Q Two years. Now, are you still dating Minor

15 A No, but we're very close.

16 Q Still good friends?

17 A Yes.

18 Q And, Terrence, going back to 2010. Did Minor ever
19 disclose any type of sexual assault to you?

20 A Yes.

21 Q When did she disclose that to you?

22 A It was a couple of months after we started talking.

23 Q Do you know what year that was?

24 A No.

25 Q Do you know what grade you were in at that point?

Terrence C.

- DIRECT EXAMINATION

113

1 A I'm not sure.

2 Q Not sure. Now, Terrence, did you ever make a statement
3 to law enforcement? Give a written statement?

4 A Yes, sir.

5 Q If I showed you that statement do you think it might
6 help refresh your memory --

7 A Yes, sir.

8 Q -- of when you might have given this statement?

9 MR. BROWN: May I approach, Your Honor?

10 MS. NELSON: Your Honor, I don't think he testified
11 that he didn't remember when he gave the statement. He said
12 he remembered giving a statement, I thought.

13 Objection to the form because I didn't hear him testify
14 that he didn't remember something.

15 THE COURT: Okay. I think that the question was did
16 you give a statement and he said he remembered that he did.
17 So you're objecting to him relying on the previously given
18 written statement at this stage?

19 MS. NELSON: What I heard Mr. Brown say was if I give
20 you this statement will it refresh your memory about when
21 you gave it, and I didn't hear him -- I didn't hear him ever
22 get asked if he remembered when he gave it.

23 THE COURT: Okay. Maybe repeat the question and see
24 what he remembers or maybe doesn't remember.

25 Q Do you remember giving a statement to law enforcement?

Terrence C.

- DIRECT EXAMINATION

114

1 A Yes, I remember giving a statement.

2 Q Do you remember what date you gave this statement to
3 law enforcement?

4 A I'm not sure.

5 Q When you gave this statement to law enforcement was it
6 pretty close in time to when Minor told you about the
7 sexual assaults?

8 A It was a little later than that, because she really
9 didn't want me to tell. But I don't --

10 Q Pretty close in time though?

11 A Yeah.

12 Q And if I showed you --

13 MS. NELSON: Objection. He didn't say it was pretty
14 close in time, Your Honor.

15 THE COURT: Ask the -- and don't know what's in the
16 statement. But just ask the questions, and then if he
17 doesn't remember, if he needs some help to refresh his
18 recollection of those matters, then possibly the statement
19 can be utilized then.

20 Q Do you remember the date you gave the statement?

21 A No, sir.

22 Q If I showed you a statement that you did write for law
23 enforcement would that help you remember the time you wrote
24 this statement to law enforcement about what Minor told you?

25 A Yes, sir.

Terrence C.

- DIRECT EXAMINATION

115

1 MR. BROWN: May I approach?

2 THE COURT: Sure.

3 Q Now, having a chance to look over that document, do you
4 remember when you made -- or when she made the disclosure to
5 you of sexual assault?

6 A Yeah. Yes, sir.

7 Q When was that?

8 A About five or six months after that she had -- or after
9 it had been happening.

10 Q Do you know what time of year that was that -- well,
11 what did you do when you found out -- or what did you do
12 after you found out her allegation?

13 A After I found out I kept her secret for a while, and
14 then she told me it kept happening, so I told my mother.

15 Q And who is your mother?

16 A Patricia Crawford.

17 Q Okay. And where were you -- you were living in Calhoun
18 Falls when she told you?

19 A Yes, sir.

20 Q And where was she living?

21 A Same, Calhoun Falls.

22 Q Do you know where she was living? Can you tell me
23 where that is?

24 A Apartments -- I don't really know the name of them.
25 But it's a set of apartments in Calhoun Falls.

Terrence C.

- CROSS EXAMINATION

116

1 Q In Calhoun Falls. And after she disclosed to you, you
2 told your mother?

3 A Yes, sir.

4 MR. BROWN: No further questions.

5 THE COURT: Cross examination.

6 MS. NELSON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. NELSON:

9 Q Now, Terrence, I'm Ms. Nelson. Will you clear me up on
10 when it was that Minor was supposed to have told you what was
11 going on?

12 A She told me -- she told me a while before my -- I
13 actually went and told my mother, because I told her if it
14 kept happening I would tell.

15 Q Didn't you tell the police that she told you about a
16 month and a half ago, on the day you wrote this statement?

17 A I don't remember.

18 Q If I show you the statement, do you think that will
19 help -- help you remember?

20 A Possibly.

21 Q I'm looking about four or five lines down. Are you
22 done?

23 A Yes.

24 Q Does that help you remember what you told the police?

25 A Yes, ma'am.

Terrence C.

- CROSS EXAMINATION

117

1 Q And so, you told them it was about a month and a half
2 ago that she first told you that she was being raped?

3 A Yes, ma'am.

4 Q And she gave you some details about the first time it
5 was supposed to have happened?

6 A I'm not sure.

7 THE COURT: You need to speak up, sir.

8 A I'm not sure.

9 Q Would you like to look back at your statement see if
10 you wrote anything about that?

11 A Yes, ma'am.

12 Q Does that help you remember?

13 A Yes, ma'am.

14 Q And you remember that you told the police some details
15 about the first time she said it happened?

16 A Yes.

17 Q And those details were that the first time he went
18 through her anal and she screamed?

19 A Yes, ma'am.

20 Q Is that right?

21 A Yes, ma'am.

22 Q And he stopped and then he went through the front?

23 A Yes, ma'am.

24 Q And her brother walked in?

25 A Yes, ma'am.

Terrence C.

- CROSS EXAMINATION

118

1 Q And she told him to go get mom?

2 A Yes.

3 Q Is that right?

4 A Yes, ma'am.

5 Q Bo said no and whipped her brother? Whipped him?

6 A Yes, ma'am.

7 Q And then he slapped her?

8 A Yes.

9 Q And the she passed out and woke up in a tub full of
10 bloody water?

11 A Yes, ma'am.

12 Q Okay. And that was what -- that was what Minor had told
13 you --

14 A Yes.

15 Q -- happened the first time?

16 A Yes, ma'am.

17 Q Did you tell the police that Minor had told you that if
18 her mother was asleep that he would sometimes jerk off in
19 front of her?

20 A Yes, ma'am.

21 Q She told you she was scared to go to bed at night
22 because her mother took pills that made her sleep really
23 hard?

24 A Yes, ma'am.

25 Q And so, she doesn't hear Minor screaming?

Terrence C. - CROSS EXAMINATION

119

1 A Yes, ma'am.

2 Q Is that what she told you?

3 A Yes, ma'am.

4 Q Or is that what you told the police that Minor had said
5 to you?

6 A Yes.

7 Q And then she -- you also told them about the most
8 recent time that she described to you; is that right?

9 A I'm not sure.

10 Q Would you take a look at page two of your statement and
11 see if you can find what I'm talking about?

12 A Could you repeat what you said?

13 Q What you wrote in the statement is that Ms. Minor had
14 told you about the most recent time something happened as
15 well. Let me ask it to you this way, Mr. Crawford, if you
16 don't mind. What you wrote in the statement is, the most
17 recent thing is when she says he walked in her room one
18 night and snatched his pants down and hers.

19 MR. BROWN: Judge, if she would like, just let him read
20 the statement instead of --

21 THE COURT: Right. Just ask the question and let him -
22 - give him an opportunity to review the statement.

23 Q And what I'm looking at, if it helps, is down at the
24 bottom it says page two of four. At the very bottom.

25 A Yes.

Terrence C.

- CROSS EXAMINATION

120

1 Q Is that what you told them?

2 A Yes.

3 Q And you also told them that you sent a text -- you
4 texted her phone that was with her mom and just out of luck
5 she woke up and called her.

6 A Yes, ma'am.

7 Q So what your -- is what you mean by that, that Minor
8 phone was with her mother, Ms. Reed, and you sent a text to
9 that phone and that woke Ms. Reed up?

10 A Yes, ma'am.

11 Q And so, when Ms. Reed woke up, you told the police that
12 she said he stopped and let her go; is that right?

13 A Yes, ma'am.

14 Q You also told the police that she said he always used a
15 condom --

16 A Yes, ma'am.

17 Q -- when these things happened. And you told them that
18 there was one night when she was asleep and he put his
19 private part in her mouth and she bit it.

20 A Yes, ma'am.

21 Q And he got mad and grounded her; is that right?

22 A Yes, ma'am.

23 Q You also told the police that she said that he wouldn't
24 stop even if she was bleeding?

25 A Yes, ma'am.

Terrence C.

- REDIRECT EXAMINATION

121

1 Q And that blood was on the sheets, and it was coming out
2 quick, but he wouldn't stop?

3 A Yes, ma'am.

4 Q You wrote this statement for Lieutenant Mike Connelly
5 with Calhoun Falls Police Department?

6 A I don't remember.

7 Q You're not sure. Is the date on the statement August
8 26th of 2010? Up at the top?

9 A Yes, ma'am.

10 Q You think that's the date you gave the statement?

11 A Yes, ma'am.

12 MS. NELSON: Thank you, Mr. Crawford. That's all I
13 have.

14 THE COURT: Redirect examination?

15 MR. BROWN: Just a little bit, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BROWN:

18 Q Terrence, if you gave the statement on August 26th,
19 2010 you stated that she actually disclosed to you well in
20 advance of that time, right?

21 A Yes, sir.

22 Q And why did you not come forward, or why did you not
23 tell your mom before August 26th?

24 A Because she -- she told me and she said she didn't want
25 to mess anything up, so she made me -- basically she made me

Terrence C.

- RECROSS EXAMINATION

122

1 promise not to tell. And I told her if it keeps happening

2 I'm just going to come out with it, and I told.

3 Q You told your mother?

4 A Yes, sir.

5 Q When you said she didn't want you to tell anything

6 because it would mess everything up, mess what up?

7 A Mess the family up.

8 Q Was she afraid that if she told that --

9 MS. NELSON: Objection, speculation.

10 Q What did you take from that? What was your

11 understanding of what she meant?

12 A I'm not sure.

13 Q Just that it would mess the family up?

14 A Yes, sir.

15 Q So she didn't want you to say anything?

16 A She didn't want me to tell anyone.

17 MR. BROWN: No further questions.

18 THE COURT: Any recross?

19 MS. NELSON: Just briefly, Your Honor.

20 RECROSS EXAMINATION

21 BY MS. NELSON:

22 Q There was a time in the middle of August that you sent

23 Ms. Minor some inappropriate pictures of yourself, didn't

24 you?

25 MR. SHEEK: Your Honor, I'm going to object to that.

Terrence C.

- RECROSS EXAMINATION

123

1 Recross would be limited to redirect.

2 THE COURT: Right. Sustained.

3 MS. NELSON: Nothing further.

4 THE COURT: Thank you for your testimony, sir. You can
5 step down.

6 (Whereupon, the witness steps down from the witness
7 stand.)

8 MR. SHEEK: Your Honor, I think the next witness will
9 probably be fairly lengthy, if you want to break.

10 THE COURT: All right. Madam Forelady and ladies and
11 gentlemen of the jury, I'm informed that the next witness
12 that the State intends to call may be fairly lengthy. And
13 as I told you kind of at the outset of all this, we'll try
14 to break around 5:00, no later than 5:30, and it looks like
15 that witness may even go beyond that. I'm not saying we'll
16 never go past 5:00 or 5:30. Don't hold me to that. But at
17 least today we're going to go ahead and adjourn. And I ask
18 that you be back promptly at 9:30 in the morning, and
19 remember to -- when you come to the courthouse have your
20 jury badges on. And I also remind you not to discuss this
21 case, anything about this case, anything you've heard about
22 this case so far with anybody that you come into contact
23 with. And we'll see you back here at 9:30 in the morning.
24 Have a great evening.

25 (Whereupon, the jury exited the courtroom at 4:25 p.m.)

1 THE COURT: Okay. Anything we need to take up before
2 we recess for the day?

3 MR. SHEEK: Nothing from the State, Your Honor.

4 THE COURT: Defense?

5 MS. NELSON: Nothing, Your Honor.

6 THE COURT: All right. We'll be in recess until 9:30
7 in the morning. You all have a good evening.

8 (Whereupon, the proceedings were adjourned at 4:27
9 p.m.)

10 TRIAL DAY 2-05/28/2014

11 THE COURT: Ms. Nelson, I think you had indicated in
12 chambers you wanted to put a couple matters on the record.

13 MS. NELSON: Yes, sir. Your Honor. I'd just like to
14 supplement the records as far as the court's ruling on our
15 ability to go into detail on the description of the
16 inappropriate photographs of **Terrence C.** on Ms. Minor
17 phone.

18 THE COURT: Right.

19 MS. NELSON: And I understand you ruled on that, but I
20 have just asked to cite some cases. I think, Your Honor,
21 these cases would go toward what we were discussing with you
22 in chambers on the issue of the DNA of the unidentified male
23 that was found on item six that was analyzed by SLED and the
24 prosecutor's assertion that that would be violation of the
25 Rape Shield statute. But the cases I would like to cite to

1 Your Honor are *State vs. Finley*, 300 S.C. 196. That's a
2 1989 case, and one of the things it says is that "The right
3 to confront and cross examine witnesses against him and to
4 present a full defense to the charges makes relevant
5 evidence which tends to establish motive, bias and prejudice
6 on the part of the prosecuting witness." Also from *State*
7 *vs. Lang* at 304 S.C. 300. That case talks about the Rape
8 Shield having no application when evidence is proposed to be
9 offered strictly for the purpose of impeaching the
10 complainant's credibility. And that's what we want to offer
11 a description of the photographs about. That's what we want
12 the jury -- that's why we want the jury to hear about this
13 unidentified male DNA, because one of the things Ms. Minor
14 said was that she had never had sex with someone else. And
15 if the prosecutor wants the jury to infer that Keith Tate's
16 DNA on the blanket, which is item number five, if they want
17 the jury to infer that because Ms. Minor cannot be excluded
18 as a contributor to that mixture, then in putting up our
19 defense and in fully exploring cross examination of Ms. Minor
20 and what we present to the jury as evidence of -- that goes
21 against her credibility and toward a motive to make up this
22 story, then it's relevant for the jury to hear that on this
23 other blanket there's unidentified male DNA with which there
24 is other DNA mixed that -- for which Ms. Minor cannot be
25 excluded. And actually, the probability that she can't be

1 excluded from being present with that unidentified male is
2 greater than the probability that she can't be excluded from
3 the mixture with Keith Tate's DNA. But in neither case does
4 the SLED report indicate that it is definitely her DNA. So
5 if one of these things is relevant to supposedly prove that
6 there was a sexual assault, then the other is equally
7 relevant to let the jury have an inference that there was
8 some other sort of activity going on. I believe they also
9 intend to put up Dr. Lyle Pritchard who will testify to a
10 cleft in the hymen that's consistent with penetration, and
11 this would give the jury an alternate inference to make for
12 that penetration, if they believe that there was some sort
13 of sexual activity with an unidentified male, which is a
14 conclusion they can either draw or not draw from that
15 evidence. But if one is relevant, then the other is, too.

16 And again, Your Honor, we would not be -- we didn't
17 want this offered at all. But if it's going to come in then
18 -- we are not offering it to try to demonstrate any kind of
19 lack of morals on Ms. Minor part. My understanding is what
20 the Rape Shield is intended to protect is you coming in and
21 just listing every possible sexual peccadillo that a
22 complaining witness could have just for the purposes of
23 making them look bad. That's not what is going on in this
24 case. This is about credibility and it's about motive for
25 coming up with this story.

1 THE COURT: What my intentions are is to take a real
2 hard look at this during lunch, because as I understand it's
3 really not going to come into play as far as my ruling until
4 this afternoon. So I'm going to take a real hard look at
5 it. I'm going to give both sides complete opportunity to
6 make a full presentation in support of your respective
7 positions. I want to be as familiar with the Rape Shield
8 law, with cases involving that and everything else, so I can
9 intelligently review both sides' arguments and hopefully
10 make a correct ruling, so I'm going to take a look at that.
11 I will also look at these cases as they may relate to the
12 court's previous ruling on the pictures and what the
13 pictures depict. And certainly, if I make -- if I determine
14 that my prior ruling was erroneous then certainly I'll let
15 you both know that and we can proceed accordingly.

16 So at this stage I really don't want a whole lot more
17 argument on that, because I am going to give both sides full
18 opportunity to argue this concerning the SLED analysis as it
19 relates to the unidentified male semen and how that comes
20 into play and all that. And I'm not trying to cut you off,
21 Ms. Nelson. I just -- I want to be up to speed myself
22 before I start entertaining full argument on that. Now, if
23 you want to argue more concerning my ruling on the pictures
24 -

25 MS. NELSON: Yes, sir.

1 THE COURT: -- I'll be glad to hear from you more on
2 that. But as it goes to the SLED analysis, let's just kind
3 of hold off on that.

4 MS. NELSON: Okay. Well, I'd just like to, regarding
5 the pictures, cite to a couple more cases.

6 THE COURT: Sure.

7 MS. NELSON: *State vs. Younger*, 306 N.C. 692. That's a
8 1982 case.

9 THE COURT: All right. That's North Carolina?

10 MS. NELSON: Yes, sir.

11 THE COURT: 306 North Carolina?

12 MS. NELSON: These were all cases that were cited in
13 *State vs. Lang*, which I've already given to you. And I
14 believe also in *State vs. Finley*. So actually, if you look
15 at those cases, all of these other -- *State vs. Johnson*, a
16 1984 North Carolina case, and *State vs. Rider*, 65 Oregon
17 Appeals 304. Thank you, Your Honor.

18 THE COURT: Thank you. And also let's just note for
19 the record we did discuss in chambers the possible need for
20 the Defense to call a doctor out of order, if that
21 determination is made by the Defense that, in fact, that
22 doctor needs to be called out of order sometime today. The
23 State had no problem with that. Certainly the court
24 understands the scheduling issues related to doctors in
25 general. And so, we'll certainly accommodate the Defense on

Minor

- DIRECT EXAMINATION

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1 that, if the need arises.

2 MS. NELSON: Thank you, Your Honor.

3 THE COURT: Anything further?

4 MR. SHEEK: Your Honor, since we are calling the victim
5 as our first witness, anticipating cross examination as it
6 regards to other sexual activity, in light of the fact that
7 I think Dr. Pritchard will testify to a transection of the
8 hymen, then I think whether or not other sexual activity has
9 occurred would be a proper question that could be posed.
10 However, I don't conceive trying to discredit through
11 extrinsic evidence by any means. And I think that once the
12 child has answered that question then it would be improper
13 to go further into that matter with the child.

14 THE COURT: Well, let's just -- I guess just let's see
15 how the examination goes. And I know you folks will make
16 appropriate objections at the time. Let's just see what --
17 see what develops.

18 MR. SHEEK: Thank you, sir. We're ready for the jury.

19 THE COURT: Yeah. Bailiff, if you will bring the jury
20 out, please.

21 (Whereupon, the jury entered the courtroom at 9:43
22 a.m.)

23 THE COURT: Good morning. I hope everyone had a good
24 restful evening. The plan is we're going to work really
25 hard today and go a full day, so hopefully you guys got

Minor

- DIRECT EXAMINATION

130

1 plenty of rest.

2 And we'll still in the State's case, so I'll turn it
3 over to you, sir.

4 MR. SHEEK: Thank you, Your Honor. If it please the
5 court, the State calls Minor to the stand.

6 THE COURT: Come around, please, ma'am.

7 Minor having been first
8 duly sworn, testified as follows:

9 THE COURT: If you'd just sit close to the microphone
10 and speak up so we can all hear you. Okay? Go ahead,
11 Solicitor.

12 MR. SHEEK: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. SHEEK:

15 Q If you would, state your full name for the court
16 reporter and spell your name for her. Okay?

17 A Minor

18 Q Spell each of those.

19 A Minor

20 Q And you normally go by Minor

21 A Yes, sir.

22 Q Minor how old are you?

23 A Sixteen.

24 Q What is your birthday?

25 A

Minor

- DIRECT EXAMINATION

131

1 THE COURT: Okay, now. Minor you're going to need to
2 speak up louder, because I'm sitting right next to you --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- and I'm having a hard time hearing you.
5 So you've got to speak up loud, please.

6 THE WITNESS: Yes, sir.

7 Q Minor are you in school?

8 A Yes, sir.

9 Q Where do you go to school?

10 A Carolina High.

11 Q And what grade are you in?

12 A Eleventh.

13 Q Are you just finishing up your eleventh grade?

14 A Yes, sir.

15 Q You're passing this grade?

16 A Yes, sir.

17 Q And then you'll be a senior?

18 A Yes, sir.

19 Q Tell us what kind of things do you like to do, Minor Do
20 you play sports? Do anything in school?

21 A I play basketball, volleyball, I run track, I'm captain
22 of the band, I'm on the yearbook committee, and I like
23 writing poetry and helping around the school.

24 Q So you enjoy school?

25 A Yes, sir.

Minor

- DIRECT EXAMINATION

132

1 Q As a matter of fact, I think you told me this morning
2 you were missing basketball tryouts being here?

3 A Yes, sir.

4 Q Minor you told us your birthday. You were born in 1997?

5 A Yes, sir.

6 Q Give us the month and day again.

7 A June 27.

8 Q Okay. So in August of 2009 you were 12-years-old?

9 A Yes, sir.

10 Q You would have turned 13 in August of 2010?

11 A Yes, sir.

12 Q August of 2009 where were you living?

13 A With my mother in Calhoun Falls.

14 Q Do you remember the address?

15 A No, sir.

16 Q Do you remember the name of the apartments?

17 A Lee Street.

18 Q Lee Street apartments? And is that actually in the
19 city of Calhoun Falls?

20 A Yes, sir.

21 Q And that's here within Abbeville County?

22 A Yes, sir.

23 Q Okay. Minor when you were living there who did you live
24 with? Who lived there in your apartment with you?

25 A My mother, my two brothers, and my brother's father.

Minor

- DIRECT EXAMINATION

133

1 Q And who is your brother's father?

2 A Keith Tate.

3 Q Is Keith Tate, the person you're talking about, sitting
4 in the courtroom today?

5 A Yes, sir.

6 Q Can you point him out to me?

7 A He's right there.

8 Q And you're referring to the gentleman over here seated
9 beside the Defense lawyers?

10 A Yes, sir.

11 MR. SHEEK: If the record can reflect that she's
12 indicated the Defendant, Your Honor.

13 THE COURT: The record is so reflected.

14 Q Now, you said that was your brother's father?

15 A Yes, sir.

16 Q Is he your father?

17 A Yes, sir.

18 Q Is he your biological dad?

19 A No, sir.

20 Q Well, if he's not then why do you refer to him as your
21 father?

22 A Because I don't know my father.

23 Q Okay. And the Defendant here, Mr. Tate, do you
24 normally look to and call dad at this time?

25 A Not at this time.

Minor

- DIRECT EXAMINATION

134

1 Q What about in 2009?

2 A Yes, sir.

3 Q You said not at this time. Why is it different now?

4 A He doesn't have the trust that he's had.

5 Q Okay. Let's talk about that. You say he used to have
6 your trust?

7 A Yes, sir.

8 Q Prior to August of 2009 did you have a good
9 relationship with Mr. Tate?

10 A Yes, sir.

11 Q And did you think he was somebody you could turn to?

12 A Of course.

13 Q In August of 2009 how was your mom's health?

14 A Very bad.

15 Q Did she, from time to time, suffer from seizures and
16 things of that nature?

17 A Yes, sir.

18 Q Did you ever see her having to take medication for any
19 of her conditions?

20 A Yes, sir.

21 Q Did her medical condition keep her from being able to
22 work?

23 A Yes, sir.

24 Q What about around the house, was she able to take care
25 of everything around the house and take care of the kids?

Minor

- DIRECT EXAMINATION

135

1 A No, sir.

2 Q Why is that? What about her medical condition or her
3 medication cause any issues there?

4 A She was always sleepy and she would always -- if she
5 wasn't watching she'll have a seizure. If she didn't take
6 her medicine. And the medicine that she was on made her
7 sleepy. Made her very tired. So she slept all the time.

8 Q Were you concerned about your mother at that time?

9 A Yes.

10 Q When your mother was sleeping, or unable to care for
11 you and your brothers, who took care of you?

12 A Bo Tate.

13 Q Now, you said Bo Tate. Bo, who you normally call Mr.
14 Keith Tate over here?

15 A No, sir.

16 Q What --

17 A I don't know what to call him now. I don't --

18 Q I'm sorry. What was that?

19 A I don't know what to call him now.

20 Q Well, at the time -- when you say Bo, you're referring
21 to the Defendant?

22 A Yes, sir.

23 Q So that's what you all normally called him, Bo?

24 A My mom. The adults did.

25 Q And at that time what did you normally call him?

Minor

- DIRECT EXAMINATION

136

1 A Dad.

2 Q Well now, Minor you said he no longer has your trust.

3 Did something happen to cause you to loose your trust in
4 him?

5 A Yes, sir.

6 Q If you would, tell this jury here what happened.

7 A He sexually assaulted me.

8 Q Well, let's talk about that. When you say he sexually
9 assaulted you. Do you recall going to a place called Beyond
10 Abuse, or Child's Place at that time to talk to someone?

11 A Yes, sir.

12 Q And did you also get the chance to talk to law
13 enforcement?

14 A Yes, sir.

15 Q Did you go to the police and tell them what was
16 happening?

17 A No, sir.

18 Q Did you go to your mom and tell her what was happening?

19 A No, sir.

20 Q Hold on a sec. Well, if you -- did you tell anybody
21 what was going on?

22 A Yes, sir.

23 Q How did you tell?

24 A My boyfriend.

25 Q And who was your boyfriend?

Minor

- DIRECT EXAMINATION

137

- 1 A Terrence C.
- 2 Q Do you recall when you told him?
- 3 A Sir?
- 4 Q Do you recall when you told him?
- 5 A No, sir.
- 6 Q Did you tell him when it first started back in August
- 7 of 2009?
- 8 A No, sir.
- 9 Q Was it a few weeks after it started, months after it
- 10 started when you told him?
- 11 A Months. Like months.
- 12 Q Well, tell us, Minor why didn't you immediately tell
- 13 somebody what was happening?
- 14 A I didn't know who to tell.
- 15 Q What about your mom?
- 16 A She was sick.
- 17 Q What about the police?
- 18 A I didn't know -- I didn't know anybody.
- 19 Q Did you call 911?
- 20 A I didn't have a phone at the time.
- 21 Q Well, what about at school? Did you ever go to a
- 22 teacher?
- 23 A No, I didn't talk to nobody really. I stayed to
- 24 myself.
- 25 Q And what were your concerns with talking to anybody? I

Minor

- DIRECT EXAMINATION

138

1 mean, did you --

2 A I mean, I just moved there. Why would they believe me.

3 Q You were afraid somebody wouldn't believe you?

4 A Yes, sir.

5 Q Were you afraid if you told and Bo said it didn't
6 happen it's your word against an adult?

7 A Yes, sir.

8 Q They might call you a liar and say it's like a work of
9 fiction, something like that?

10 A Yes, sir.

11 Q I'm going to hand you --

12 MR. SHEEK: If I may approach the witness, Your Honor.

13 THE COURT: Certainly.

14 Q I'm going to hand you a copy of a piece of paper there
15 and ask you, have you ever seen that drawing before?

16 A Yes, sir.

17 Q And where did you see that?

18 A At the Child's Place.

19 Q And when you were there did -- when you were talking to
20 the people at the Child's Place did they have you label
21 different body parts?

22 A Yes, sir.

23 Q And are those the names you gave to the circled body
24 parts on that anatomical drawing?

25 A Yes, sir.

Minor

- DIRECT EXAMINATION

139

1 Q And is that an accurate copy of the one that you
2 actually completed with them?

3 A Yes, sir.

4 MR. SHEEK: Your Honor, we would move to have that
5 marked and admitted as State's Exhibit Number 1.

6 MS. NELSON: No objection.

7 THE COURT: All right. Without objection, Number 1
8 will be into evidence for the State.

9 (Whereupon, State's Exhibit 1 was entered into
10 evidence)

11 Q Now, Minor I'm going to hand you a second piece of
12 paper. Do you recognize that one?

13 A Yes, sir.

14 Q And did you also label certain body parts on the male
15 figure when you were at the Child's Place?

16 A Yes, sir.

17 Q Is that a copy of the one you filled out there?

18 A Yes, sir.

19 MR. SHEEK: Your Honor, we would move to have this
20 marked and admitted as State's 2.

21 MS. NELSON: No objection.

22 THE COURT: Without objection, it'll be Number 2 from
23 the State into evidence.

24 (Whereupon, State's Exhibit 2 was admitted into
25 evidence.)

Minor

- DIRECT EXAMINATION

140

1 Q Now, Minor I don't want to embarrass you. I just want
2 to make sure we're using the same words for the same body
3 parts. Okay?

4 A (Nods head.)

5 THE COURT: You need to answer.

6 A Yes, sir.

7 Q You said -- correct me if I'm wrong. You said that Bo
8 Tate sexually assaulted you. Is that the term you used?

9 A Yes, sir.

10 Q When he sexually assaulted you did he touch you with
11 his hand or something else?

12 A Something else.

13 Q What did he touch you with?

14 A His penis.

15 Q And when he would touch you with his penis where would
16 he touch you?

17 A My vagina.

18 THE COURT: You need to speak up. I'm having a hard
19 time hearing you, please.

20 A My vagina.

21 Q Would he touch you on the outside of it, inside, or
22 something else?

23 A The inside.

24 Q So if I use the term penetrate, meaning he put
25 something inside your body, you understand that word?

Minor

- DIRECT EXAMINATION

141

1 A Yes, sir.

2 Q So are you saying that he penetrated your vagina with
3 his penis?

4 A Yes, sir.

5 Q Now, after you told Terrence what was going on, when's
6 the next time somebody talked to you about what was
7 happening?

8 A Months after.

9 Q Months after you told Terrence?

10 A Yeah. I made him wait because I didn't think nobody
11 would trust him either or believe him.

12 Q Well, when he told, do you recall who he told, or who
13 came and talked to you?

14 A He told his mom, and then his mom told the counselor at
15 his school.

16 Q Is that Ms. Lindler?

17 A Yes, sir.

18 Q And did Ms. Lindler talk to you about it?

19 A Yes, sir.

20 Q And where did you talk to Ms. Lindler? Was it at
21 school, at home, or somewhere else?

22 A At school.

23 Q And did you tell Ms. Lindler what was going on?

24 A Yes. Yes, sir.

25 Q And did you ever have an opportunity to sit down and

Minor

- DIRECT EXAMINATION

142

1 try to come up with, to the best of your recollection, the
2 dates in which different things had happened?

3 A Yes, sir.

4 Q To the best of your recollection, when you sat down --
5 who did you sit down with to go over these dates?

6 A Ms. Lindler.

7 Q To the best of your recollection, when you went over
8 these times with her, how many different times that you
9 recall that Bo Tate had sexually assaulted you?

10 A Ten.

11 Q And one of those times that your -- nine times were in
12 Abbeville County, right?

13 A Yes, sir.

14 Q And on each of those occasions, to the best of your
15 memory at that time, did he penetrate your vagina on each of
16 those occasions?

17 A Yes, sir.

18 Q Now, when you sat down with Ms. Lindler and went over
19 the dates that you can remember, was August 26, 2009 one of
20 those dates?

21 A Yes, sir.

22 Q What about October 31st of 2009?

23 A Yes, sir.

24 Q December 14th of 2009?

25 A Yes, sir.

Minor

DIRECT EXAMINATION

143

- 1 Q What about February 6th of 2010?
- 2 A Yes, sir.
- 3 Q What about February 13th of 2010?
- 4 A Yes, sir.
- 5 Q March the 3rd, 2010?
- 6 A No, sir.
- 7 Q Did you say no, sir?
- 8 A I couldn't hear what you said.
- 9 Q Was March the 3rd of 2010 one of those times?
- 10 A Yes, sir.
- 11 Q March 14th of 2010?
- 12 A Yes, sir.
- 13 Q What about March 15th, 2010?
- 14 A Yes, sir.
- 15 Q And then March 18th of 2010?
- 16 A Uh-huh.
- 17 Q Now, Minor when Ms. Lindler came and talked to you does
- 18 August of 2010, about that timeframe, sound like the time
- 19 that occurred?
- 20 A I don't remember.
- 21 Q Okay. Well, that's fine. But was it close in time to
- 22 the last time Bo had assaulted you, or was there sometime
- 23 between the last assault and the time you talked to the
- 24 police and the school?
- 25 A I really don't remember.

Minor

- DIRECT EXAMINATION

144

1 Q When you talked to Ms. Lindler did you tell her
2 everything that you recall --

3 A Yes, sir.

4 Q -- as far as the number of times that it happened?

5 A Yes, sir.

6 Q Had Bo ever sexually assaulted you prior to August
7 26th, 2009?

8 A Are you asking me had he sexually assaulted me before
9 then?

10 Q Yes. Before August 26th, the first day you told Ms.
11 Lindler that?

12 A No, sir. He hasn't.

13 Q And up until that time had you had any reason to be
14 fearful or distrustful of him at all?

15 A No, sir.

16 Q After the March 18th incident did he sexually assault
17 you again after that prior to talking to the counselor?

18 A No, sir.

19 Q Do you have any idea why it stopped at that time?

20 A Because when I was talking with my counselor I was
21 still at school and the police picked him up from the house.

22 Q Well, I was referring to between the March 18th
23 incident and whenever you talked to the police?

24 A Oh, okay.

25 Q Did your mom's medical condition ever require her to go

Minor

- DIRECT EXAMINATION

145

1 to the hospital?

2 A Yes, sir.

3 Q Did she ever have to go by calling an ambulance or go
4 unexpectedly like to the ER or something like that?

5 A Yes, sir.

6 Q Would you go with her during those times?

7 A No, sir.

8 Q Where would you stay?

9 A At home.

10 Q And did anybody stay there with you?

11 A Yes, sir.

12 Q And who would that be?

13 A Keith.

14 Q Now, let's talk about some of the details of what
15 happened. Okay?

16 A Yes, sir.

17 Q Refer to the August 2009. The first time you recall an
18 assault occurred. Did that occur at the Lee Street
19 Apartments?

20 A Yes, sir.

21 Q And do you recall who was there?

22 A My brothers and my mother.

23 Q Where were you when the assault happened?

24 A In the livingroom.

25 Q And tell me about the layout of this livingroom. How

Minor

- DIRECT EXAMINATION

146

1 is it set up?

2 A The livingroom is in the front of the house and the
3 rest of the rooms at the back of the house.

4 Q And where were you in the livingroom when the assault
5 occurred?

6 A On the couch.

7 Q Tell the jury, to the best of your recollection, what
8 occurred.

9 A What do you want me to say?

10 Q If you can, I want you to tell the jury what you
11 remember occurring from the time that Bo or you came into
12 the room, whoever came in first, and what was done to you.

13 A We usually sit in the livingroom and watch TV with each
14 other, and we was in the livingroom, and I thought he was
15 asking me like -- like helping me, because he was my father,
16 with my bra and my underwear. I thought it would be
17 strange, but my mom couldn't do it. And he'll ask me, well,
18 I want to see what size bra you wear. What size panties you
19 wear. And then I began to realize that that's not what
20 you're supposed to do, because he started kissing me and
21 rubbing me and -- is that what you was asking for or do you
22 need more details?

23 Q Take your time. We do need you to tell everything you
24 can remember, if you can tell us. Let me ask you a couple
25 of questions. You said he started kissing you. Where would

Minor

- DIRECT EXAMINATION

147

1 he kiss you?

2 A On my neck.

3 Q Where would he rub you?

4 A On my butt.

5 Q Would he rub you with his hands or something else?

6 A Hands.

7 Q Was this on top of your clothes or under?

8 A On top.

9 Q What happened after that?

10 A He tried to take my shirt off. And he told me he was

11 helping me for my bra. And then I sat on the couch --

12 Q Take your time. Do we need to take a short break for

13 you?

14 A Yes, sir.

15 MR. SHEEK: Is that all right?

16 THE COURT: Certainly. We'll take a short break. Madam

17 Forelady, ladies and gentlemen of the jury, I'm going to ask

18 you to just brief recess to your jury room and I caution you

19 not to discuss this case or anything about what you've heard

20 today among yourselves and we'll bring you back out shortly.

21 (Whereupon, the jury exited the courtroom at 10:05

22 a.m.)

23 MR. SHEEK: Judge, I'm not sure how the court would

24 prefer I handle this. It's very difficult for everybody. I

25 don't want to keep taking breaks if she can keep going

Minor

- DIRECT EXAMINATION

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1 through it. I don't want to sit her up there while she's
2 crying in front of the jury. So I don't know how the court
3 wishes to handle it.

4 THE COURT: Well, evidently it's very difficult for her
5 to testify. She's just going to have to -- she's going to
6 have to do the best job she can and, you know, we'll just
7 have to, you know, muddle our way through it. Possibly you
8 could, without discussing her testimony, just maybe talk
9 with her, and she's going to have to, you know, try to --
10 you know, try not to be emotional. Easy for me to say.

11 MR. SHEEK: Well, what I'll do in the future for the
12 court and for the Defense is I'll keep going unless someone
13 else wants us to take a break. And then we'll stop and let
14 her compose herself.

15 THE COURT: All right. We'll be at recess for a few
16 minutes.

17 (Whereupon, the court took a brief recess)

18 THE COURT: I'm going to call you Minor if you don't
19 mind. I know this is difficult for you to testify. I
20 understand that. But it's really important that you do the
21 very best that you can and there is a lot to cover in
22 questions that will be asked of you. So you just need to do
23 the very best that you can so we can get through your
24 testimony. Okay?

25 THE WITNESS: Yes, sir.

Minor

- DIRECT EXAMINATION

149

1 THE COURT: Okay. Just be sure and speak up loud.
2 Speak into that microphone. These old ears of mine
3 sometimes have a little trouble hearing people, so you'll
4 speak up loud so everybody, including myself, can hear you.
5 Okay?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. Let's bring the jury out, please.

8 (Whereupon, the jury entered the courtroom at 10:20
9 a.m.)

10 THE COURT: All right. Let the record reflect the jury
11 is back in. Solicitor, you may proceed.

12 MR. SHEEK: Thank you.

13 Q We were talking about the first instance of assault, as
14 you've described it, occurring at the Lee Street Apartments.
15 I believe you said in the livingroom area; is that correct?

16 A Yes, sir.

17 Q Was anybody else in the room besides you and Bo?

18 A No, sir.

19 Q You said he started by kissing you and rubbing you.

20 A Yes, sir.

21 Q Did he do any more than kiss you and rub you on that
22 date?

23 A Yes, sir.

24 Q What else did he do?

25 A He tried to take my clothes off.

Minor

- DIRECT EXAMINATION

150

1 Q When you say he tried, did he take your clothes off?

2 A Yes. And he laid on top of me. And I told him no, and
3 I told him to get off of me, and then he said "Don't act
4 like you don't want it."

5 Q And when he did that did he penetrate your vagina?

6 A Yes, sir.

7 Q And he penetrated it with what?

8 A His penis.

9 Q Did anybody else ever come into the room or indicate
10 that they heard you say or do anything?

11 A No, sir. Not to my knowledge.

12 Q Can you recall about how long this went on?

13 A What are you asking me?

14 Q Do you know how long it was while he was penetrating
15 you? How long this occurred?

16 A No, sir. I wasn't trying to see how long he lasted.

17 Q Okay. Have you thought about these things much since
18 they occurred?

19 A Yes, sir.

20 Q When he penetrated you do you remember what he did
21 after he penetrated you? Did he move, or did you move, or
22 was there any type of motion going on?

23 A He just got up.

24 Q Did you ever look to see if he had put anything on his
25 penis or not?

Minor

- DIRECT EXAMINATION

151

- 1 A No, sir.
- 2 Q And when you sat down with Ms. Lindler how did you come
3 up with the different dates? Do you recall?
- 4 A By what happened at school.
- 5 Q So when you told her that it happened in Abbeville
6 County nine times, are you confident of that number?
- 7 A Yes, sir.
- 8 Q Are you sure you're not miscounting?
- 9 A No, sir.
- 10 Q And on these occasions that you're relating did he
11 penetrate your vagina with his penis on each one of them?
- 12 A Except the last time.
- 13 Q What happened the last time?
- 14 A He put his penis in my mouth.
- 15 Q And where did that occur?
- 16 A At home.
- 17 Q And the other times he put his penis in your vagina?
- 18 A Yes, sir.
- 19 Q Do you ever recall him putting his penis in any place
20 else? Any other body opening?
- 21 A My butt hole.
- 22 Q Did you ever suffer any type of injuries or notice any
23 type of bleeding as a result of this?
- 24 A Yes, sir.
- 25 Q How many times did you notice that you would bleed?

Minor

- DIRECT EXAMINATION

152

1 A The first time when he penetrated my vagina, and then
2 when he penetrated in my butt hole.

3 Q And did you ever get blood on anything? Did you bleed
4 on something else?

5 A Yes, sir.

6 Q What did you get blood on?

7 A My sheet.

8 Q Do you know what happened to that sheet?

9 A He took that away.

10 Q Did you ever see it again?

11 A No, sir.

12 MR. SHEEK: Beg the court's indulgence.

13 THE COURT: Sure.

14 Q The sofa in the den, Minor was it a regular sofa or is
15 it one that could pull out to a bed, or was it --

16 A It was a pullout bed.

17 Q Who normally slept in there?

18 A Keith.

19 Q So he didn't sleep in the room with your mom?

20 A No, sir.

21 Q Did you have a bedroom?

22 A Yes, sir.

23 Q Did you have a bed in that bedroom?

24 A Yes, sir.

25 Q And did you have a blanket, comfortable, bedspread,

Minor

- DIRECT EXAMINATION

153

1 anything like that?

2 A Yes, sir.

3 Q All right. Minor I'll show you this.

4 MS. NELSON: I'm going to object to the evidence coming
5 out any more unless it's -- unless there's some more
6 description about it lay a proper foundation. I don't know
7 what Mr. Sheek is opening over there.

8 THE COURT: Right, okay. Maybe, Solicitor, might lay a
9 little bit more foundation before you get into whatever
10 evidence is in that bag.

11 MR. SHEEK: And I understand what you're saying, Your
12 Honor. I was simply going to ask her if she could identify
13 it and I can't ask her to do that until she can see it.

14 MS. NELSON: He can ask her to describe it first and so
15 that we know something about what he's attempting to have
16 her identify.

17 THE COURT: See if she can offer a description first,
18 Solicitor, before you get into anything.

19 Q Can you tell me what your bedspread looked like, your
20 blanket?

21 A I don't know. We had a lot. And everybody used them,
22 but I only had one. But that was a long time ago. I don't
23 remember.

24 Q Do you remember what color it was?

25 A No, sir.

Minor

- DIRECT EXAMINATION

154

1 Q If you saw it again would you recognize it?

2 A Yes, and it was mine. But like not off the top of my
3 head I can't remember what I had.

4 MR. SHEEK: Your Honor, I would propose to simply let
5 her see it and if she says she recognizes it, good, and if
6 she doesn't --

7 THE COURT: I'll allow it. Go ahead.

8 MS. NELSON: Just for the record, Your Honor, we still
9 object that she has said she can't remember anything about
10 the blanket.

11 THE COURT: All right. But he can -- he can ask if she
12 recognizes it.

13 Q Do you recognize that?

14 A Yes, sir.

15 Q Can you tell us what that is?

16 A It's a cover.

17 Q A what?

18 A A cover.

19 Q I'm sorry. Cover?

20 A The cover that we use to lay down with.

21 Q And was that one that you used?

22 A Yes, sir.

23 Q Are you positive of that?

24 A Yes.

25 MR. SHEEK: Your Honor, at this point I would move to

Minor

- DIRECT EXAMINATION

155

1 have it marked for identification.

2 THE COURT: Sure. For ID purposes only at this time.

3 (Whereupon, a blanket was marked as State's Exhibit 3
4 for identification purposes)

5 Q Do you recognize this item?

6 A Yes, sir.

7 Q And what is that?

8 A Quilt.

9 Q And who used -- or do you know who used that quilt?

10 A Bo.

11 Q What's that?

12 A Keith. It was in the livingroom.

13 Q That was off of his bed?

14 A Yes.

15 MR. SHEEK: Your Honor, we would move to have this
16 marked for identification, State's 4.

17 THE COURT: Okay. 3 for ID on what she says is her
18 cover. 4 for ID as she claims Defendant's quilt.

19 (Whereupon, a quilt was marked as State's Exhibit 4 for
20 identification)

21 Q Do you recognize this item?

22 A Yes, sir.

23 Q And what is that?

24 A It's another sheet that was on the front bed.

25 Q You're saying the front bed. The livingroom?

Minor

- DIRECT EXAMINATION

156

1 A Yes, sir.

2 MS. NELSON: Your Honor, I'm just going to object and
3 note for the record, she was questioned about a blanket
4 being hers and did she recognize it, and she identified that
5 as the first thing out of the bag and now there's additional
6 stuff that is being opened and identified without any --
7 without any questioning about -- about -- to lay a
8 foundation for why he's showing this to her. Why he's
9 opening this bag.

10 THE COURT: Well, she's identified it. It's been marked
11 for identification only. It's not into evidence. I don't
12 know where he's going to go with that. Certainly your
13 objection is noted.

14 MR. SHEEK: Your Honor, for identification as State's
15 Number -- beg the court's indulgence for one moment.

16 THE COURT: Sure.

17 Q Prior to the August 26th, the first assault, you said
18 you had a good relationship, you thought, with Mr. Tate?

19 A Yes, sir.

20 Q Did you have any reason at that point to be scared of
21 him?

22 A No, sir.

23 Q Did you have any reason to be mad or angry at him?

24 A No, sir.

25 Q Up until that point were you ever fearful or afraid to

Minor

- DIRECT EXAMINATION

157

1 go home because he was there?

2 A No, sir.

3 Q After that point were you fearful or afraid to go home?

4 A Yes, sir.

5 Q Did you ever relay that to any of the people at school?

6 A Not then.

7 Q Teacher or anything of that nature?

8 A Not then.

9 Q Did you ever write in a journal? You said -- you
10 mentioned earlier that you liked to write. Did you ever do
11 that before this incident?

12 A Yes.

13 Q After August 26th did you ever write in a journal about
14 anything that was going on?

15 A Yes, I wrote poetry about it.

16 Q You wrote poetry?

17 A Yes, sir.

18 Q Is that something you like to do to express how you're
19 feeling or things like that?

20 A Yes, sir.

21 Q I'm going to hand you -- I'm going to show you a copy
22 of that and ask if you can identify it. What is that?

23 A This is my journal cover.

24 Q And is that the journal that you wrote in?

25 A Yes, sir.

Minor

- DIRECT EXAMINATION

158

1 Q And we've got the original for you to look at. Did you
2 ever write in that journal that you just talked about about
3 what was going on with Keith or Bo?

4 A I wrote poetry about it. I didn't straight write out
5 what happened.

6 Q When you wrote it did it have a date on it?

7 A I don't remember.

8 Q I hand you that. Did you write that, or did that come
9 from someone else?

10 A I wrote that.

11 MS. NELSON: I'm sorry, Your Honor. I believe there
12 might be a potential witness in the courtroom. That's what
13 we're asking about.

14 THE COURT: Okay.

15 Q Back to that that's in your hand. Do you know who
16 wrote that?

17 A I did.

18 Q Did you write that before or after you talked with the
19 police?

20 A Before.

21 Q Did you write that before or after the assault started
22 with Mr. Tate?

23 A After.

24 Q Do you mind reading it for the jury?

25 A So many questions. Should I stay or should I go.

Minor

- DIRECT EXAMINATION

159

1 Should I walk away from all my fears or should I leave -

2 MS. NELSON: Your Honor, I'm going to -- I didn't see
3 what she was handed. I'm going to have to object to the
4 reading of that aloud if it's not -- if it's not named Mr.
5 Tate or referencing specific incidents in this case.

6 THE COURT: Well, let's first, before she reads any
7 more, Solicitor, would you just show that to counsel?

8 MR. SHEEK: Sure.

9 THE COURT: Let her look at it.

10 MS. NELSON: I believe I know what it is once she
11 started --

12 THE COURT: Sure. Take a look at it.

13 MS. NELSON: Do you actually have the original journal?

14 MR. SHEEK: We do.

15 MS. NELSON: Your Honor, could I ask if the original
16 journal could be produced for her to look at rather than a
17 copy?

18 MR. SHEEK: Well, we certainly can. It's not required
19 by the rules of evidence. She's -- go ahead.

20 THE COURT: Do you have the original journal handy?
21 Show it to counsel. I don't have a problem necessarily of
22 her reading from a copy. But before she continues any
23 further, if Solicitor would allow counsel to look at the
24 written --

25 MS. NELSON: And I would, after seeing that, still

Minor

- DIRECT EXAMINATION

160

1 object on the same basis that this isn't -- this isn't
2 anything that adds any evidence that tends to prove or
3 disapprove any facts at issue.

4 THE COURT: I think she certainly can read it and
5 Solicitor can question her about it. It would not go to
6 admissibility. I mean, maybe it would go to weight if she
7 does not identify the Defendant in the poem. But if you
8 still want to look at the original first before she
9 continues then I'm going to ask the Solicitor to put his
10 hands on it and show it.

11 MR. SHEEK: Okay. The original will be here, Your
12 Honor, in a few minutes. It's actually still in the
13 evidence locker, so they're bringing it now.

14 THE COURT: All right.

15 MS. NELSON: Your Honor, if she's not naming him or
16 referencing any specific incident is she going to be allowed
17 to just read any poems or stories or anything else she might
18 have composed?

19 THE COURT: It's my understanding that the Solicitor
20 asked this witness if she recorded anything about these
21 allegations and she said she wrote a poem in her journal.
22 Again, I don't think it goes to admissibility. It may go to
23 weight if she did not name the Defendant, but I don't think
24 it affects the admissibility of her testifying as to what
25 she claims that she did. Certainly you can cross examine

Minor

- DIRECT EXAMINATION

161

1 her about that. Now, if you still want to see the original
2 before she goes any further, then maybe the Solicitor can go
3 to something else, come back to this.

4 MR. SHEEK: Your Honor, at this point I'm close to the
5 end of my examination. I was going to have her read what
6 she's already identified. We've got the original coming. I
7 didn't intend to actually introduce the document as evidence
8 once she's read it, but I certainly -- it's been provided to
9 the Defense. It was provided a long time ago. They've been
10 given copies of all of it.

11 THE COURT: Right.

12 MR. SHEEK: I don't object to them entering it if that's
13 what they want to do and I'll have the originals here for
14 them to do that.

15 THE COURT: Ms. Nelson, do you still want to view the
16 original before the witness finishes reading what she says
17 that she wrote?

18 MS. NELSON: Your Honor, I don't -- I would like to see
19 the original at some point. I haven't seen it. But --

20 THE COURT: And your objection is already noted and I've
21 already overruled your objection. But if you insist on
22 seeing the original, subject to your objection before she
23 finishes reading it, then I'll allow that to take place. If
24 not, then we'll proceed.

25 MS. NELSON: And again, I would just add, Your Honor,

Minor

- DIRECT EXAMINATION

162

1 that this doesn't add anything to what she has already
2 testified to and that it attempts to bolster her testimony
3 with a prior supposedly consistent statement.

4 MR. SHEEK: Your Honor, and I will simply point out I
5 think the Defense was fairly clear in her opening about it
6 being a work of fiction and all made up. Something she
7 wrote prior to contacting the police.

8 THE COURT: We don't need further argument. The
9 objection is noted on the record. I ruled on it. And if
10 you don't necessarily want to see the original at this point
11 in time then I'll allow you to continue, Solicitor.

12 MR. SHEEK: Thank you.

13 Q If you would, start back at the beginning and read to
14 us what you wrote there.

15 A "So many questions. Should I stay or should I go.
16 Should I walk away from my fears or should I be strong.
17 Should I love him. Should I hate him. Should I keep it to
18 myself. Should I let them know. So many questions. Would
19 she still love me -- would she still love my for me or hate
20 me for something that wasn't my fault. Will she kick me out
21 because she didn't believe me. Should I run away or should
22 I stay. So many questions that have no answers. Does he
23 know how I feel. Do he know. Do he know. Do he know. So
24 many questions."

25 Q When you were talking about "he" who were you referring

Minor

- DIRECT EXAMINATION

163

1 to?

2 A Keith.

3 Q When you said, "Will she hate me or will she kick me
4 out," who was the "she" you were referring to?

5 A My momma.

6 Q Does that poem accurately depict how you were feeling
7 at that time?

8 A Yes, sir.

9 MR. SHEEK: Minor please answer anything the Defense may
10 have. And I apologize, Your Honor. Subject to the original
11 getting here, we will move for the book to be placed into
12 evidence. So we will offer it when the original is here.

13 THE COURT: Okay. Ms. Nelson, cross examination.

14 MS. NELSON: Thank you, Your Honor. May it please the
15 court.

16 THE COURT: Solicitor, you want to just take the sheet
17 back from the witness, please.

18 MR. SHEEK: I certainly will. And, Your Honor, for the
19 purposes of what we're doing, I'm going to move obviously
20 because that's right between me and the witness.

21 MS. NELSON: Is there a better place for me to put it?

22 THE COURT: You okay?

23 MR. SHEEK: Yes.

24 THE COURT: You may proceed.

25

CROSS EXAMINATION

Minor

- CROSS EXAMINATION

164

1 BY MS. NELSON:

2 Q Ms. Minor I'm Ms. Nelson. I just want to -- since the
3 jury can't take notes I want to go back over these dates
4 that you came to with Ms. -- when you talked to Ms. Lindler.

5 A Yes, ma'am.

6 Q Now, you testified that the first date was August 26th
7 of 2009?

8 A Yes, ma'am.

9 Q Didn't you actually tell law enforcement it was August
10 29th of 2009, if that's what's in the police report? Is
11 that right, or is what you're saying today right?

12 A What are you asking me?

13 Q I'm asking you if the police report says August 29th,
14 but today you're saying August 26th, which one of those
15 dates is right?

16 A August 26th.

17 Q Okay. The second date was October 31st?

18 A Yes, ma'am.

19 Q The third one was December 14th?

20 A Yes, ma'am.

21 Q The third one was -- excuse me, the fourth one was
22 December 26th?

23 A That wasn't here.

24 Q But the fourth date you gave them was December 26th?

25 A Yes.

Minor

- CROSS EXAMINATION

165

1 MR. SHEEK: And, Your Honor, for the record, December
2 26th is the one that happened out of county.

3 THE COURT: Right. That's not one of the indictment --

4 MS. NELSON: This is not before the jury. I understand.

5 THE COURT: Right.

6 MS. NELSON: I understand that.

7 Q But this is one of dates that you arrived at with Ms.
8 Lindler?

9 A Yes.

10 Q The day after Christmas?

11 A Yes.

12 Q February 6th was the next one?

13 A Yes.

14 Q Sorry?

15 A Yes, ma'am.

16 Q Okay. And then you testified to February 13th, but you
17 told the police it was February 14th.

18 A It could have been early that morning.

19 Q So you don't know if it was the 13th or 14th?

20 A It could have been early in the morning, because --

21 Q Of which day?

22 A Of -- it could have happened on the 13th, but could
23 have been on the 14th because it was early in the morning.

24 Q So you mean like after midnight?

25 A Yes.

Minor

- CROSS EXAMINATION

166

1 Q So which one -- so you're saying it happened early in
2 the morning on Valentine's Day?

3 A It could have happened -- I don't remember. You're
4 asking me questions that I don't know what you're asking me
5 for.

6 Q Okay. Well, let me try to -- I'm not trying to confuse
7 you. I'm just trying to get the dates down.

8 A You've already got them.

9 Q I'm sorry.

10 A But you already have them.

11 Q Yes, ma'am. But I'm asking you for clarification
12 because I have different ones in different places. So what
13 you testified to on direct was that it happened on February
14 13th. You told the police it happened -- and Ms. Lindler
15 that it happened on February 14th. Which one is correct?

16 A It could happen in the morning. I don't know what else
17 you want me to say.

18 Q Are you talking about the morning of the 14th or the
19 morning of the 13th?

20 A I really do not know what you're asking me. I can't
21 give you -- I can't give you the right question -- or the
22 right answer you want me to give you because you're asking
23 me a question that I already gave you the answer to.

24 Q It could have happened in the morning on February 13th
25 or 14th. Is that accurate?

Minor

- CROSS EXAMINATION

167

- 1 A Yes.
- 2 Q Then the next one was March the 3rd of 2010?
- 3 A Yes, ma'am.
- 4 Q And I don't mind it when you nod your head but the
- 5 court reporter has to take it down, so that's why --
- 6 A Yes, ma'am.
- 7 Q -- that's why I'm asking you to speak out loud. The
- 8 next time was March 14th?
- 9 A Yes, ma'am.
- 10 Q And then the very next day the 15th?
- 11 A Yes, ma'am.
- 12 Q And then finally March 18th was the last time?
- 13 A Yes, ma'am.
- 14 Q And the attacks stopped after that?
- 15 A Yes, ma'am.
- 16 Q And then it was -- it was about five months later that
- 17 Keith was arrested?
- 18 A I don't remember.
- 19 Q Can you agree that it was months later?
- 20 A I really don't remember.
- 21 Q You just don't remember whether he was arrested in --
- 22 A I don't remember what month.
- 23 Q Okay. But you do remember it stopping March 18th?
- 24 A Yes, ma'am.
- 25 Q And it starting August 26th?

Minor

- CROSS EXAMINATION

168

1 A Yes, ma'am.

2 Q Okay. This date of -- now, when this all came to light
3 you first told your boyfriend Terrence?

4 A Yes.

5 Q And he meant a lot to you, didn't he?

6 A Yes.

7 Q When did you start dating him?

8 A March 23rd. I don't remember what year, but I remember
9 the date.

10 Q Was it after you moved to Calhoun Falls?

11 A Yes, ma'am.

12 Q So if you moved there -- okay. So it was after you
13 moved to Calhoun Falls?

14 A Yes, ma'am.

15 Q So probably March 23rd of 2010 then. Before Calhoun
16 Falls you lived in Greenville; is that right?

17 A Yes, ma'am.

18 Q And you still -- you were living with Keith and your
19 mother and your brothers in Greenville?

20 A My grandma. My mother's --

21 Q You were living at your grandparent's house?

22 A Yes.

23 Q You weren't living in a separate house with Keith and
24 your mother?

25 A Then we moved into a separate house.

Minor

- CROSS EXAMINATION

169

1 Q Okay. Now, what you originally told the police and Ms.
2 Lindler was that all 10 of these incidents happened at the
3 apartment at Calhoun Falls, right?

4 A I don't remember.

5 Q So if the police report says that you don't know if
6 it's right or wrong?

7 A If it's there then I guess I said it, but I really
8 don't remember it now.

9 Q You never told anyone at any point until last week that
10 one of these incidents took place in Greenville, right?

11 A Yes.

12 Q So almost four years later for the first time you said
13 December 26th was in Greenville?

14 A Yes.

15 Q And you said that happened at your grandparent's house?

16 A No. I said it happened at my aunty's house.

17 Q Okay. So let's talk about some of the people that you
18 talked to while this case was being investigated. So you've
19 already told us about **Terrence C.** And that's your
20 boyfriend? He's the first person you told, right?

21 A Yes.

22 Q And then he told his mother, Patricia?

23 A Yes.

24 Q Did you also talk to Ms. Patricia Crawford about it?

25 A No, ma'am.

Minor - CROSS EXAMINATION

170

1 Q You never spoke to her about it?

2 A No, ma'am.

3 Q So anything she might know about this would have come
4 just from Terrence?

5 A That's the only person that I told.

6 Q Terrence is the only person you told?

7 A At that time, yes.

8 Q Okay. Well, I'm talking about any time, anybody you
9 talked to. Did you ever talk to Ms. Patricia Crawford about
10 any of this?

11 A No.

12 Q So again, anything that she knew would have to come
13 from Terrence?

14 A Yes.

15 Q So you didn't talk to her. You talked to Ms. Rebecca
16 Holland?

17 A I don't remember who that is?

18 Q Is she your band director that lived right down the
19 street from the Lee Street Apartments?

20 A Ms. -- yes. Yes.

21 Q Did you talk to her?

22 A Yes. She was the one that helped me and told me
23 everything would be okay.

24 Q And she's the one that got you to Ms. Lindler at the
25 school, wasn't she?

Minor

- CROSS EXAMINATION

171

1 A Yes.

2 Q So she was the next person you talked to, Ms. Lori

3 Lindler?

4 A Yes.

5 Q She's the guidance counselor at Calhoun Falls Charter

6 School?

7 A Yes.

8 Q And then is it your understanding that Ms. Lindler then

9 called the Calhoun Falls Police Department?

10 A Yes.

11 Q So did all this -- where did you first talk to Ms.

12 Rebecca Holland, your band director? Was that at school or

13 --

14 A At school.

15 Q I just wasn't sure. And you talked to Ms. Lindler at

16 school?

17 A Yes, ma'am. The same day.

18 Q So the same day you told Ms. Holland and Ms. Lindler

19 was also the same day you told the police?

20 A I didn't tell the police anything. Ms. Lindler did.

21 Q You never told the police anything?

22 A They came and talked to me afterwards. After she told

23 them.

24 Q Well, and that's -- I'm asking you what you talked to

25 people about any time. So after Ms. Lindler called the

Minor

- CROSS EXAMINATION

172

1 police did they come to the school?

2 A I don't remember.

3 Q You don't know where you talked to them?

4 A Everything happened so fast. And as I told -- I was
5 overwhelmed because I was crying. Ms. Lindler was in her
6 office. Ms. Holland was there holding me, everything -- and
7 they told me I couldn't go home. You know, I was 13. I
8 didn't --

9 Q Well, one of the reasons that we're here is to talk
10 about the case and I have to ask you some questions. I know
11 that you would prefer not to have to answer them. So I'm
12 trying to get it straight. You do remember talking to the
13 police?

14 A Yes, ma'am.

15 Q Was one of the officers was Roger Hunnicutt?

16 A I don't remember his name.

17 Q You don't remember it being Ms. Hunnicutt's husband?

18 A I knew it was her husband, but I don't remember his
19 first name.

20 Q Wouldn't you agree his last name is Hunnicutt?

21 A Yes.

22 Q And you talked to at least one other officer?

23 A Yes. I don't know his name.

24 Q Do you remember the former chief of police, Mike
25 Alewine? Do you remember writing him a statement?

Minor

- CROSS EXAMINATION

173

- 1 A Yes, ma'am.
- 2 Q You do remember that?
- 3 A I remember him. I don't remember anything you're
- 4 asking me. But I remember his name.
- 5 Q So you --
- 6 A I wrote a statement for somebody. I don't know who it
- 7 was given to. I don't know who it was for.
- 8 Q If I showed it to you would that help?
- 9 A I know what it says.
- 10 Q Sorry?
- 11 A I know what it says. I know --
- 12 MS. NELSON: May I approach, Your Honor?
- 13 THE COURT: Sure.
- 14 Q Is that the statement that you wrote for Mr. Alewine?
- 15 A Yes, ma'am.
- 16 Q Okay. Thank you, ma'am. Excuse me. Does that have a
- 17 date on it anywhere, Ms. Minor I didn't find one.
- 18 A No, ma'am.
- 19 Q Okay. Thank you, ma'am.
- 20 A You're welcome.
- 21 Q Now, the day after you talked to these folks at the
- 22 school and the officers your momma took you to the Abbeville
- 23 Hospital, didn't she?
- 24 A Yes.
- 25 Q And you talked to a couple of nurses and a doctor

Minor

- CROSS EXAMINATION

174

1 there?

2 A Yes, ma'am.

3 Q And you told them a little bit about what happened to
4 you?

5 A Yes, ma'am.

6 Q You've already said you remember talking to somebody at
7 the Child's Place?

8 A Yes, ma'am.

9 Q You remember that lady's name was Jessica Bell?

10 A I don't remember her name. I remember talking to a
11 lady that was at the Child's Place.

12 Q Was that a white lady --

13 A Yes.

14 Q -- with kind of hair about right here? I'm just going
15 to put Child's Place for that. And that was something that
16 got arranged for you through the victim's advocate at the
17 police department, wasn't it?

18 A Yes, ma'am.

19 Q And her name is Monique Bell?

20 A Yes, ma'am.

21 Q And she -- is she the one that actually took you to the
22 Child's Place?

23 A My mom.

24 Q Was Ms. Bell there?

25 A Yes.

Minor

- CROSS EXAMINATION

175

1 Q And you -- when you went in there they took you -- this
2 lady took you into a room to talk to you for a while?

3 A Yes, ma'am.

4 Q And it was about an hour and a half that she talked to
5 you?

6 A I guess you could say that.

7 Q Now, about a couple of months after you went to the
8 Child's Place they sent you to see another doctor who did an
9 exam, right?

10 A I don't remember.

11 Q You don't remember that exam? You don't remember
12 talking to that doctor? Her name was Lyle Pritchard.

13 A I don't remember. I remember I got taken there. I
14 went to the Child's Place. I think I went to a doctor
15 there. I really don't remember.

16 Q Okay. But that wasn't the same day that you had the
17 interview?

18 A No.

19 Q And then finally do you remember five pieces of paper
20 that you wrote about things that happened?

21 A I don't know it was for. But yes, ma'am, I remember.

22 MS. NELSON: Can I approach, Your Honor?

23 THE COURT: Certainly.

24 Q Could you tell me if those are the five pieces of
25 notebook paper I'm talking about?

Minor

- CROSS EXAMINATION

176

1 A Yes, ma'am.

2 Q Okay. And you wrote that some time after Keith was
3 arrested?

4 A Yes, ma'am.

5 Q That's not part of the journal that you and Mr. Sheek
6 were talking about?

7 A No, ma'am.

8 Q You don't remember who you wrote that for?

9 A No, ma'am.

10 Q And you don't remember when you wrote it?

11 A No, ma'am.

12 Q A few of those pages have dates on them; is that right?

13 A Yes, ma'am.

14 Q One of them is August 20th?

15 A Yes, ma'am.

16 Q And one of them said something like -- let me get it
17 right. The Friday after band started?

18 A Yes, ma'am.

19 Q And then there's another one that says August, but then
20 the number is scratched out?

21 A Yes, ma'am.

22 Q Can you tell what that number was supposed to be?

23 A I really can't tell.

24 Q And the other two don't have any dates on them at all,
25 do they?

Minor

- CROSS EXAMINATION

177

1 A No, ma'am.

2 Q Thank you, ma'am.

3 A You're welcome.

4 Q Now, you mentioned that you remembered your mother
5 taking you to the hospital for an exam the day after Keith
6 was arrested and talking to some doctors and nurses there?

7 A Yes.

8 Q And you talked to them about what happened?

9 A Yes.

10 Q You told them you had been sexually assaulted?

11 A Yes, ma'am.

12 Q The doctor gave you a vaginal exam?

13 A Yes, ma'am.

14 Q And it came back normal?

15 A I don't know.

16 Q Were you told anything was wrong?

17 A I don't know.

18 MR. SHEEK: Objection to the hearsay, Your Honor.

19 THE COURT: Well, she's already answered she doesn't
20 know, so...

21 Q Did they give you some -- did they do some tests for
22 pregnancy and sexually transmitted diseases?

23 A I don't know.

24 Q You don't know. And when you talked to the nurse there
25 you said the assault started in September of 2009, right?

Minor

- CROSS EXAMINATION

178

1 A I don't remember.

2 Q You said that every incident --

3 MR. SHEEK: Your Honor, I object. She's testified she
4 doesn't remember that conversation, so reading the report --

5 MS. NELSON: No. She testified she didn't remember
6 whether she said it started in September. She's testified
7 she remembers going to the hospital and talking to doctors
8 and two nurses.

9 THE COURT: Well, I don't know what you're referring to.
10 I mean, what you're using, Ms. Nelson, so I can't --

11 MR. SHEEK: It appears she was reading off of a form. I
12 may be incorrect.

13 MS. NELSON: I'm using the medical record from that
14 hospital visit.

15 THE COURT: She did testify she remembers going to the
16 hospital. Why don't you just ask her just some general
17 questions does she remember anything that was -- that she
18 told whoever she was talking to?

19 MS. NELSON: Well, because -- the reason I'm trying to
20 ask it this way is because I believe these are -- these
21 statements are inconsistent with her previous testimony and
22 I'm asking her about this prior inconsistent statement. If
23 I'd be permitted.

24 THE COURT: Okay. I'll allow it. Overrule the
25 objection. You may proceed.

Minor

- CROSS EXAMINATION

179

1 MS. NELSON: Thank you, Your Honor. You told the nurse
2 that all of those --

3 THE COURT: No, no. Did you tell the nurse. Ask a
4 question. Don't -- because then you're putting -- you're
5 assuming facts into evidence that are not into evidence. So
6 ask her did you say whatever and then she can say yes or no
7 or doesn't remember. Okay?

8 MS. NELSON: Okay, Your Honor. I was just doing it the
9 way I normally do a leading question.

10 Q Do you remember telling a nurse that all of those 10
11 occurrences involved vaginal penetration except the last one
12 which included oral and anal penetration?

13 A I don't remember.

14 Q Do you remember telling the nurse you had never had any
15 sexual contact with anybody other than Keith Tate?

16 A Yes.

17 Q That one you remember?

18 A Yes, because I didn't.

19 Q You said that you -- excuse me. Do you remember
20 telling the nurse that you recalled these incidents and
21 these details because you kept a journal and logged all of
22 the occurrences?

23 A No.

24 Q You don't remember telling the nurse that you wrote
25 this in a journal?

Minor

- CROSS EXAMINATION

180

1 A I remember telling the nurse I wrote some in the
2 journal, but I don't remember recalling telling her all of
3 them, because I didn't write all of them.

4 Q How many of them did you write?

5 A I wrote poetry. I didn't -- I didn't do none of that.
6 I didn't write --

7 Q Right. You didn't write anything about any particular
8 incident, did you?

9 A Right. I just write. I don't -- what are you asking?

10 Q I'm asking in your journal you didn't actually write
11 anything about any specific incident?

12 A I wrote about how I felt about the incident. I didn't
13 write what happened in the incident.

14 Q Right. But you remember talking to the nurse about
15 this journal?

16 A She asked did I write anything. I told her I wrote
17 something.

18 Q And you said that -- do you remember telling her that
19 the police had that journal?

20 A Yes.

21 MS. NELSON: May I have just a moment, Your Honor?

22 THE COURT: Sure.

23 Q Now, when you initially told Ms. Lindler and Ms.

24 Holland and the police about these incidents what you

25 told them was that they would happen in the apartment

Minor

- CROSS EXAMINATION

181

1 after your mother took her medicine and went to sleep,
2 right?

3 A Yes.

4 Q And that Keith would make your brothers go to bed?

5 A Yes.

6 Q And then Keith would attack you?

7 A Yes.

8 Q And you told them that that's the way it happened all
9 those times?

10 A Yes.

11 Q And again, for the first time last week you mentioned
12 that one of those incidents really didn't happen in Calhoun
13 Falls?

14 A Yes.

15 Q So that time in the day after Christmas when Keith
16 attacked you who else was there?

17 A The same people that was always at the house.

18 Q Your mother and your brothers?

19 A Yes, ma'am.

20 Q Was your aunt there?

21 A No, ma'am.

22 Q Okay. I'd like to talk to you some more about the
23 interview you had at the Child's Place.

24 A Yes, ma'am.

25 Q You knew that the lady you were talking to was there to

Minor

- CROSS EXAMINATION

182

1 try to help with investigating this case, right?

2 A My mom told me she was there to help me. That's all I
3 knew.

4 Q Didn't she tell you herself that she was there to talk
5 to you to get information about the case?

6 A I really don't remember. She just told me to talk
7 about what happened to me.

8 MS. NELSON: Your Honor, I have a transcript of the
9 forensic interview. May I unseal the original?

10 MR. SHEEK: Your Honor, actually the interview is
11 videotaped, which I believe would be a better representation
12 of what was said. If she wishes to use the tape, certainly
13 we don't object.

14 MS. NELSON: If we can have a discussion about that
15 outside the presence of the jury.

16 THE COURT: Okay. Well, it's probably a good time to
17 take a break. So let's take a morning break.

18 ladies and gentlemen of the jury, I'll remind you again
19 not to discuss anything about this case among yourselves.
20 And we'll take a 10, 15 minute break.

21 (Whereupon, the jury exited the courtroom at 11:08
22 a.m.)

23 THE COURT: Minor let me just -- since you're still in
24 the middle of your testimony -- I don't mind you getting off
25 the witness stand, but you just cannot talk with anybody.

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1 And I don't know who you're here with, but you can't talk to
2 anybody about your testimony or anything about this case,
3 because you're in the middle of your testimony. You can
4 talk about other things. That's fine. Just not anything
5 about this case or your testimony. Okay?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. You want to go ahead and take a
8 little break and then come back on the record?

9 MS. NELSON: Sure.

10 THE COURT: Or we can deal with it now, either way.

11 MS. NELSON: Whatever Your Honor's pleasure is, is fine
12 with me.

13 THE COURT: Well, let's go ahead and deal with it now.

14 Minor you can go ahead and get off the chair. That would be
15 fine.

16 (Whereupon, the witness steps down from the witness
17 stand.)

18 THE COURT: Okay. As I understand it there was some
19 sort of forensic interview with someone at the Child's
20 Place. You have a transcript of that interview. The
21 Solicitor says that there is a video recording of that
22 interview.

23 Now, I guess probably we'll figure out where we're
24 going to go, but you want to use that interview. You want
25 to use all of it for some purpose, portions of it, or --

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1 MS. NELSON: I want to ask her -- I want to ask her
2 questions about prior inconsistent statements she made in
3 that interview, and I was just going to use the transcript
4 to have her look at the statement she made, and look at the
5 statements that were -- you know, so that she could
6 acknowledge -- I mean, general impeachment with prior
7 inconsistent statements.

8 MR. Sheek is proposing playing the video and the only -
9 - the objection I would have to that is that I would be fine
10 with it if certain parts are redacted. There are parts
11 where she claims that -- and she has not testified to any of
12 this, and it's my understanding there would be no -- there
13 was no Lyle evidence to present in this case on the part of
14 the State. But there are a few different times in the
15 interview where she talks about Keith allegedly telling her
16 that he had done this to other girls. That people, maybe
17 his father, had done this to other people and told him it
18 was okay to do. And I would object to those parts of the
19 video being before the jury because they're obviously
20 extremely prejudicial under Rule 403 and not -- and not
21 probative of anything in this case. So that would be my
22 objection.

23 THE COURT: Well, and that's fine. I mean, I can't tell
24 you how to conduct -- I can't tell you how to conduct your
25 cross examination. But if you want to conduct your cross

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1 examination by use of the transcript and not by way of the
2 video, that's fine. And then if the State wants to come
3 back, if they believe that other portions of the video are
4 necessary to their case in redirect, then we'll deal with
5 it, you know, at that time.

6 MR. SHEEK: Can I ask, Your Honor, if it weren't for the
7 purposes of a prior inconsistent statement, I believe the
8 proper way would be to ask the witness did you, in fact, say
9 so and so, and if she denies it then they can use the prior
10 inconsistent statement. I think it would be improper to
11 simply stand up and say, "And you said so and so, didn't
12 you? And you so and so," unless it contradicts something
13 she's testified to.

14 THE COURT: Right. Yeah, I think the better way of
15 handling that, lay a foundation. You recall giving an
16 interview at Child's Place such and such date, and I assume
17 she'll say yes, and then did you or did you not tell the
18 interviewer such and such. And she may admit it. She may
19 say she doesn't remember. She may deny it. And then, of
20 course, you can use the transcript, so....

21 MS. NELSON: Understood, Your Honor.

22 THE COURT: And then Solicitor -- whether or not we're
23 going to get into the video or not let's just kind of wait
24 and see how this thing plays out.

25 MR. SHEEK: Yes, sir.

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1 THE COURT: All right. We'll be in recess a few
2 minutes.

3 (Whereupon, court was in recess until 11:34 a.m.)

4 THE COURT: All rise. The court will come to order.
5 Thank you very much. Have a seat. Are we ready to start
6 back?

7 MS. NELSON: Yes, Your Honor.

8 MR. SHEEK: The State's ready, Your Honor.

9 THE COURT: Bring the jury in, please.

10 (Whereupon, the jury entered the courtroom at 11:34
11 a.m.)

12 THE COURT: Let the record reflect the jury is back on.
13 I think we're still on cross examination. Ms. Nelson, you
14 may proceed.

15 MS. NELSON: Thank you, Your Honor. If it may please
16 the court.

17 Q Ms. Minor I was -- just to go back, I was talking to
18 you about your interview with Ms. Bell at the Child's Place.

19 A Yes, ma'am.

20 Q And that -- again, that happened about a month after
21 Keith was arrested, right?

22 A I really don't remember.

23 Q One of the things you told Ms. Bell was that you
24 remembered exactly the times because you wrote it in your
25 diary and the police got your diary.

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1 THE COURT: Rephrase your question, please, Ms. Nelson.

2 Q Is it correct that you told Ms. Bell that you remember
3 exactly because you wrote it in your diary and the police
4 got your diary?

5 A I probably said that because everybody kept asking me
6 how do you remember, how do you remember, how do you
7 remember. And she asked me the same question that I kept
8 getting asked every time I talked to a different person.

9 Q So you told her it was in the diary?

10 A I told her, yes.

11 Q And you told her you would write about it right after
12 it happened?

13 A I don't remember saying that.

14 MS. NELSON: May I approach, Your Honor?

15 THE COURT: Sure.

16 Q I'd like to show you what I believe is the original of
17 what you've already identified as your journal --

18 A Yes, ma'am.

19 Q -- is that right? What I would ask you to do is look
20 through that and tell me where in there you wrote about
21 these events in your diary, other than what you already
22 read.

23 A It seems like that page, on the page before that, but I
24 don't remember.

25 Q What don't you remember?

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1 A The page before that. And the only page you told me
2 don't use.

3 Q Well, what I said, other than -- may I see what you're
4 talking about?

5 A Yes, ma'am.

6 Q So this is supposed to be another poem that also
7 doesn't mention Keith and doesn't mention any dates?

8 A Yes.

9 Q And doesn't mention anything specific that happened?

10 A Yes.

11 Q It's a poem about rain falling down?

12 A It's not -- if you don't understand.

13 Q Well, the first line of it is, "Rain is falling from
14 the sky"?

15 A Tears --

16 Q I'm just asking you if it says "Rain is falling from
17 the sky."

18 A Yes, ma'am.

19 MR. SHEEK: Your Honor, if she can explain, I think
20 the question was, "So it doesn't mention anything about what
21 happened." If she's explaining if she's writing about that
22 --

23 THE COURT: Well, she can explain, or if you feel like
24 it's something that needs to be dealt with on redirect then
25 I trust that you'll take care of that. But certainly, if

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1 she wants to explain any answer that she gives then she
2 certainly can do that.

3 Q So the rain is your tears?

4 A Yes, ma'am.

5 Q There isn't anything else in this journal --

6 A No, ma'am.

7 Q -- about Keith? Keith's name is not in it?

8 A I never wrote his name out.

9 Q And the dates that you've given us when things
10 happened, the only one of these dates that's in there is a
11 Halloween picture of a little girl in a costume; is that
12 right?

13 A Yes, ma'am.

14 MS. NELSON: May I approach, Your Honor?

15 THE COURT: Certainly.

16 Q It's this photograph?

17 A Yes, ma'am.

18 Q And that references Halloween 2009?

19 A It's Halloween. I don't remember.

20 Q Well, I mean, you wrote Halloween '09 in there, didn't
21 you?

22 A Because of what -- we had a football game before that.

23 Q Okay. You had a football game on the 30th?

24 A Yes.

25 Q Okay. You also told Ms. Bell these are things that

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1 would happen after your mother took her medicine and went to
2 sleep.

3 A Yes.

4 Q And momma slept hard with the medicine?

5 A Yes.

6 Q And you told her that this all ended in March --

7 MR. SHEEK: Objection to the form of the question.

8 THE COURT: Rephrase the question.

9 Q Is it correct that you told her that this all ended in
10 March because you started sleeping with your mother?

11 A I remember I started sleeping with my mother. I don't
12 remember what month, and I don't remember telling her it
13 ended that day. I don't remember. But I remember me
14 sleeping with my mother to try to get away. Yes, I do
15 remember that part.

16 Q And he didn't do anything anymore after you started
17 sleeping with your mother?

18 A I was with my mom.

19 Q I understand. But he didn't do anything after that?

20 A No, ma'am.

21 Q What I'd like to talk to you about now is, as Ms. Bell
22 was talking to you she was asking you for details about the
23 things that happened, right?

24 A Yes.

25 Q And she specifically asked you about the second time

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1 something happened.

2 A I guess you can say that. I don't remember her coming
3 out of her mouth and asking me that at this moment.

4 Q The second time would have been this Halloween date
5 that you gave us?

6 A Yes, ma'am.

7 Q And that was right after this football game?

8 A Yes, ma'am.

9 Q And is it correct that you told her at that time he
10 stuck it up your butt?

11 A I don't remember.

12 Q Is it correct that you told her you screamed and he hit
13 you and your lip was busted?

14 A I remember that.

15 Q Did you tell her that then he went to the bathroom and
16 you ran to your room and locked the door?

17 A That happened, but I don't remember what time it
18 happened.

19 Q And you say it happened in the livingroom?

20 A Yes, ma'am.

21 Q And you told her that it -- did you tell her that it
22 started because he called you into the livingroom to help
23 him with your mother?

24 A I don't remember.

25 Q Did you tell her that he threw you on the couch and

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1 turned you over and put it in your butt?

2 A That happened when he did, but I don't remember that
3 being that date.

4 Q You don't remember that being October 31st?

5 A I remember this incident happened. I don't remember of
6 that date.

7 Q And you don't remember whether you told her this was
8 the second time?

9 A No.

10 Q Did you tell her that you screamed and -- after he had
11 turned over that you screamed and he hit you in the mouth
12 and pushed your head down in the pillow?

13 A I don't remember.

14 Q You don't remember talking about how your face --
15 demonstrating for her how your face was on the pillow so
16 that you could still breath?

17 A I mean, I don't -- you're asking a question that
18 happened so long ago and you expect me to remember.

19 Q Well, ma'am, didn't you meet with these folks here at
20 the solicitor's table last week?

21 A Yes. I watched it. Yes. But it doesn't mean that
22 just because I watched it, oh, I remember it (indicating),
23 like that. That doesn't --

24 Q So you just watched the video of this interview last
25 week?

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1 A I don't know what you're asking me.

2 Q I'm asking you, you watched it -- you just said that
3 you watched the video of this when you met with the
4 solicitor's office.

5 A By myself. I wasn't with them. I was at home.

6 Q But you got to watch the video --

7 A Yes.

8 Q -- last week?

9 A Yes.

10 Q Okay. I wasn't aware of that, so I appreciate you
11 telling me.

12 A You're welcome. I mean, everybody else watched it.

13 Q Well, but you're the one that the State has put up to
14 testify and I've got to ask you these questions, because
15 you're the one that's been -- you're the one making the
16 accusations.

17 MR. SHEEK: Objection, Your Honor. That's not a
18 question.

19 THE COURT: Just ask the question, and, Madam Witness,
20 you're going to answer the question.

21 MS. NELSON: Thank you, Your Honor.

22 Q Now, this incident that you described to Ms. Bell in
23 this interview that you just got to watch last week, do you
24 remember telling her that after that incident you woke up
25 the next morning and you were still on the couch?

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1 A I remember waking up on the couch, yes.

2 Q It was about 7:30?

3 A I don't remember what time it was.

4 Q Do you remember telling her that your ride for school
5 had already left?

6 A I don't remember that either. I don't. I don't
7 remember.

8 Q Do you remember telling her that nobody was home?
9 Everybody was gone when you woke up?

10 A I remember waking up to an empty house, yes. But I
11 don't remember telling her that.

12 Q But you do remember waking up to an empty house?

13 A Yes, ma'am.

14 Q Do you remember describing to Ms. Bell how when you
15 woke up your shorts were up but your underwear was down and
16 your shirt was on a lamp?

17 A I remember that incident, but I don't remember telling
18 her.

19 Q And so, you -- you remember being in the livingroom
20 with your clothes in that state and the house being empty?

21 A Yes, ma'am.

22 Q Now, let's talk about the apartment a little bit. When
23 you walk into the front door of the apartment you're walking
24 into the livingroom?

25 A Yes, ma'am.

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1 Q And that's where this happened?

2 A Yes, ma'am.

3 Q And that's where you were -- you woke up with your
4 clothes in that state?

5 A Yes, ma'am.

6 Q That door goes into the livingroom, and then the
7 livingroom goes directly into the kitchen?

8 A Yes.

9 Q And there's a backdoor in the kitchen?

10 A Right.

11 Q And you can see the front and back door -- if you're
12 standing at the front door you can see the backdoor right
13 there?

14 A Yes, ma'am.

15 Q And if you're standing at the backdoor you can see the
16 front door right there?

17 A Yes, ma'am.

18 Q And then the bedrooms are all back this way --

19 A Yes, ma'am.

20 Q -- right? And the only way out of the apartment is
21 through that front door or that backdoor?

22 A Yes, ma'am.

23 Q so anybody who left the apartment would have had to
24 walk right by you?

25 A Yes.

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1 Q Do you remember one time saying that you -- that you
2 passed out with your face in the pillow on this incident
3 date?

4 A I remember that happening. Yes, ma'am.

5 Q And you remember another time that you said you got up
6 and kicked him between the legs?

7 A Yes.

8 Q And by "him", I mean Keith.

9 A Yes, ma'am.

10 Q Was that before or after you passed out?

11 A I don't remember.

12 Q You don't remember that. But you started off with him
13 attacking you on your stomach on the couch with your face in
14 the pillow?

15 A Yes, ma'am.

16 Q And then at some point you get up and kick him. Do you
17 remember kicking him?

18 A Yes, I do remember kicking him.

19 Q But then you end up back on the couch passed out with
20 your face in the pillow?

21 A Yes, and I don't know how.

22 Q Okay. And then when you woke up your clothes were all
23 different?

24 A Yes, ma'am.

25 Q And did you tell Ms. Bell that that all happened at

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- CROSS EXAMINATION

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1 about 1:00 in the morning?

2 A I don't remember what time it was. I don't.

3 Q Was it after you got home from the football game?

4 A Yes, ma'am.

5 Q And the football game was October 30th?

6 A Yes, ma'am.

7 Q Football games were on Friday nights?

8 A Yes.

9 Q And that football game on October 30th was away in
10 Georgia in Twiggs County, wasn't it?

11 A It was at home.

12 Q It was a home game?

13 A Yeah.

14 Q Did you have a chance to look at a calendar of the
15 school events when you were coming up with these dates?

16 A Yes, with Ms. Lindler.

17 Q Ms. Lindler got that and helped you with it?

18 A Yes.

19 MS. NELSON: May I approach, Your Honor?

20 THE COURT: Sure.

21 Q I'd like to show you the school calendar for October
22 2009. Would you take a look at that -- at the football game
23 for that day? Do you see it?

24 A Yes, ma'am.

25 Q Does it say it's an away game in Twiggs County?

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1 A Yes, ma'am.

2 MS. SHEEK: Your Honor, at this point I would object to
3 lack of foundation and hearsay.

4 THE COURT: I'll allow it. It's cross examination.

5 MS. NELSON: I think she said she got it from Ms.
6 Lindler.

7 Q Is this the same thing Ms. Lindler showed you?

8 A I really don't remember.

9 Q You don't know. So if that's right and it was an away
10 game like that, you might have gotten home pretty late?

11 A Yes, if it was an away game. But I don't remember.

12 Like because I was color guard, and if it was a home game --
13 I do remember it was a home game. I don't know what football
14 team, which -- if it was varsity or JV. It was a football
15 game and it was at home. That's how I remember it. And
16 that's how I'm always going to remember it.

17 Q And so, you know, that the football game was on a
18 Friday night?

19 A Yes.

20 Q The next day would have been Saturday?

21 A Yes.

22 Q So October 31st was a Saturday?

23 A Yes, ma'am.

24 Q And you told Ms. Bell that nobody was there when you
25 woke up?

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1 A Yes, ma'am.

2 Q And you've testified you remember nobody being there
3 when you woke up?

4 A Yes, ma'am.

5 Q And did you say that you thought your mom was gone to a
6 doctor's appointment?

7 A I don't remember saying that.

8 Q Did you say that your brothers were gone to school
9 because their bus came at 7:00?

10 A I don't remember.

11 Q Did you say that your ride was pulling off so your
12 momma had to take you to school when you got home -- when
13 she got home?

14 A I don't know if we had a car.

15 Q And you talked about how when Mr. Tate hit you while
16 you were on your stomach but that busted your lip?

17 A Yes.

18 Q And you hid that -- you showed Ms. -- do you remember
19 showing Ms. Bell how you hid that from your mom?

20 A No.

21 Q You don't remember that. I'd like to talk to you some
22 about whether you remember things that you told Ms. Bell
23 about the very first time something happened. And you've
24 testified here today about the first time something
25 happened, right?

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- CROSS EXAMINATION

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1 A Yes.

2 Q Do you remember ever telling Ms. Bell that Keith was
3 looking at your underwear and told you he wanted to see what
4 underwear size you had?

5 A Yes.

6 Q Your remember saying that?

7 A Because he was my father. That's what he did.

8 Q You remember saying that to Ms. Bell?

9 A Not to her. I remember that's what happened.

10 Q Well, I'm asking you about the things that you said in
11 this interview --

12 A You asked me do I remember talking to her. I don't
13 remember talking to her.

14 Q Well, you just --

15 A I remember going to Child's Place and talking to a
16 person. I don't remember exactly what I said to her.

17 Q You remember going to Child's Place?

18 A Yes.

19 Q And you talked to a white lady with --

20 A Yes.

21 Q -- kind of hair like this. You don't remember her
22 name?

23 A No.

24 Q You just got to watch yourself on video last week
25 talking to her?

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1 A Yes.

2 Q So you remember the interview and you got refreshed on
3 it because you got to watch it last week?

4 A When you hear -- okay. If you say something four years
5 ago and you hear yourself say it now, you -- that doesn't
6 mean that you remember saying that. You know you said it,
7 but that doesn't mean you actually remember what you said,
8 when you said it, to who you said it to. I don't remember
9 saying that. I remember when stuff happened. I didn't
10 remember when, who or who I said it to. Does that make
11 sense to you?

12 Q No, ma'am. But that's okay.

13 A I don't --

14 Q That's okay. Whether -- just once again, you watched
15 the whole interview on video?

16 A Not the whole thing.

17 Q You didn't watch the whole thing?

18 A No.

19 Q How much of it did you watch?

20 A I don't know. I stopped it because I couldn't listen
21 to it anymore.

22 Q Okay. You knew you had to come to court and talk about
23 all this --

24 A Yes.

25 Q -- but you decided not to listen?

Minor

- CROSS EXAMINATION

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1 A Because I kept crying and I didn't want to listen to it
2 anymore. Why should I have to go through this over and over
3 again?

4 Q Because -- I'm not allowed to answer that. Since you
5 got to watch at least some of the video I'd like to, again,
6 talk to you about what Ms. Bell asked you about the very
7 first time this happened. And I'm trying to get an answer
8 to the question, did you ever tell Ms. Bell about Keith Tate
9 asking to look at your underwear for the size.

10 A Yes, ma'am.

11 Q You told her that?

12 A Yes, because that's what he did.

13 Q I'm not asking what he did. I'm asking what you told
14 her.

15 MR. SHEEK: Your Honor, at this point that question, I
16 think, has been asked six times.

17 THE COURT: Well, I think she -- I don't know about six
18 times. But she has just answered that she has knowledge
19 that she told Ms. Bell that.

20 Q Did you tell Ms. Bell the first time this happened he
21 called you into the living room?

22 A Yes, ma'am.

23 Q And he threw you on the couch, you said no, and he hit
24 you in the face with his fist?

25 A Yes, ma'am.

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1 Q You didn't -- you didn't testify today to him hitting
2 you in the face with his fist, did you?

3 A Because I didn't want to relive it again.

4 Q And when he -- when this man over here, Keith Tate, hit
5 you in the face with his fist you told Ms. Bell that it
6 didn't leave a mark?

7 A No.

8 Q And did you tell her that when he attacked you that you
9 screamed?

10 A Yes.

11 Q And you saw blood everywhere when he was done?

12 A On me, yes.

13 Q Now then, then do you remember telling Ms. Bell, after
14 you told her that was the way it happened, do you remember
15 then telling her that he called you in and threw you down on
16 the couch. But that time you said stop and he stopped?

17 A I don't remember.

18 Q You don't remember. So you don't remember telling her
19 about a version where he stopped and you went back to your
20 room and went to sleep, and then he came and got you out of
21 your room and threw you back down on the couch?

22 A I don't remember telling her.

23 Q Do you remember that happening?

24 A Yes.

25 Q Okay. So now you're telling us that the first time

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- CROSS EXAMINATION

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1 this happened you were in the livingroom. You told him to
2 stop and he stopped and you went to bed?

3 A No.

4 Q That's not what you're telling us?

5 A You asked me was that a version that I told her.

6 Q Yes, ma'am.

7 A It didn't have to be the first time.

8 Q So you -- okay. You're saying that wasn't the first
9 time then?

10 A You're confusing me. I don't know what --

11 Q I'm not trying to. I'm just trying to get through the
12 interview. Now, didn't you after -- after you told that
13 second version didn't you confirm to the interviewer that --

14 MR. SHEEK: Objection to the form of the question, Your
15 Honor. The child has testified it wasn't a second version.

16 THE COURT: Rephrase the question, please, ma'am.

17 Q So you're saying now it was a different -- that it may
18 have been a different time. But isn't it true that you
19 confirmed to Ms. Bell that you were still talking about the
20 first time?

21 A I don't remember.

22 Q Okay. Do you remember when Ms. Bell asked you why he
23 stopped that your momma called out Minor

24 A My mom did talk in her sleep. I don't know.

25 Q And then now, before all this happened he had told your

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- CROSS EXAMINATION

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1 brothers to go to bed?

2 A Just like he always did.

3 Q Where did they go to bed?

4 A Either in my room or their room.

5 Q And their room shared -- their bedroom shared a wall
6 with the livingroom?

7 A Yes.

8 Q And you said that you screamed when this happened?

9 A Yes.

10 Q Do you remember telling Ms. Bell that after this was
11 over you went in the room with your brothers and went to
12 sleep?

13 A I don't remember. But at the time I did.

14 Q And your brothers were still up watching TV at that
15 time?

16 A I don't know.

17 Q You don't know. Do you remember saying that to Ms.
18 Bell?

19 A No.

20 Q Did you ever get in trouble at school for going to
21 sleep in class?

22 A Yes.

23 Q You did?

24 A Yes.

25 Q Did you get in-school suspension for that?

Minor

- CROSS EXAMINATION

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1 A I don't remember.

2 MR. SHEEK: Object to relevance of that.

3 MS. NELSON: I can explain, Your Honor.

4 THE COURT: Well, this is cross examination. Wide
5 latitude in the questioning. You may proceed.

6 Q One of the things you told Ms. Bell, if you remember,
7 was that you'd stay up all night texting and then go to
8 sleep in class?

9 A I did.

10 Q Because it -- and did you tell her that you knew if you
11 went to sleep at home he would come in your room?

12 A He would get me.

13 Q So if you stayed awake texting he wouldn't get you?

14 A If I'm awake. If I'm doing something he would just
15 keep walking by. He would just leave me alone.

16 Q Okay. But then some other times he would call you in
17 the livingroom?

18 A Yes. He need something.

19 Q And if you went to go sleep in your brother's room he
20 wouldn't bother you?

21 A I'll get in trouble for that.

22 Q Do you remember telling Ms. Bell that sometimes you
23 went to sleep in your brother's room and he wouldn't do it?

24 A Why would he? My brother's in the room.

25 Q What I'm asking is do you remember saying that?

Minor

- CROSS EXAMINATION

207

1 A I don't remember saying any of that.

2 Q Do you remember telling Ms. Bell sometimes you'd sleep
3 under your bed so he couldn't find you?

4 A Yes.

5 Q Sometimes you'd go to sleep in the closet and lock your
6 closet -- lock yourself in the closet?

7 A Yes.

8 Q So your closet had a lock?

9 A No. I'll put stuff in front of the door.

10 Q I'm sorry. What did you say?

11 A I would put stuff in front of the door. I would put
12 stuff in front of my room door. I would put anything in the
13 way - stop.

14 Q How did you go into the closet and then put something
15 in front of the closet door?

16 A Because he didn't know I will be in the closet.

17 MS. NELSON: May I have just a moment, Your Honor?

18 THE COURT: Sure.

19 Q We've got a little while to go Ms. Minor Are you okay?

20 A Yes, ma'am.

21 Q All right. Now I'd like to go to Ms. Bell asking you
22 about the very last time something happened. So let's talk
23 about that. Do you remember telling Ms. Bell that the night
24 that happened you went to sleep on the couch?

25 A I don't remember.

Minor

- CROSS EXAMINATION

208

1 Q Do you remember telling her about your momma and Keith
2 having an argument and Keith left and then came back later?

3 A No, ma'am.

4 Q You don't remember that. Do you remember telling her
5 that you woke up and tried to go to your room but Keith was
6 in the hallway and pushed you down?

7 A No, ma'am.

8 Q Do you remember telling her that he pushed you and you
9 hit your head on the floor and started crying?

10 A I don't remember.

11 Q Do you remember this incident happening? An incident
12 like that where he was pushing you down in the hallway?

13 A I remember hitting my head. It was just normal.

14 Q Okay. But you didn't tell her about hitting your head
15 any other time except this one, right?

16 A It was normal for me to get hit.

17 Q Like when he punched you in the mouth the first time?

18 A That was normal.

19 Q Okay. But all those times he punched you in the face
20 your momma didn't ever see any marks on you?

21 A No.

22 Q And so, do you remember telling Ms. Bell that that last
23 time something happened that Keith put you on the couch and
24 took his penis out and put it in your mouth?

25 A I remember that happening.

Minor

- CROSS EXAMINATION

209

- 1 Q And then you bit it?
- 2 A I remember that happening, too.
- 3 Q And he started screaming?
- 4 A I remember that happened, too.
- 5 Q And this happened in the livingroom?
- 6 A Yes.
- 7 Q And then after that happened you ran in your room and
- 8 locked the door?
- 9 A Yes. I pushed my dresser in front of it again.
- 10 Q You put the dresser in front of it? Is that what you
- 11 said?
- 12 A Again.
- 13 Q And you locked the door?
- 14 A That's locking it to me.
- 15 Q Okay. Did the door have a lock?
- 16 A I don't remember.
- 17 Q Now, this incident where you bit Keith's penis you also
- 18 told **Terrence C.** about that, right?
- 19 A Yes.
- 20 Q And you told him that Keith put his penis in your mouth
- 21 while you were asleep?
- 22 A I don't know.
- 23 Q Do you remember Ms. Bell asking you if anything ever
- 24 happened anywhere other than in the livingroom and the
- 25 hallway?

Minor - CROSS EXAMINATION

210

1 A Yes.

2 Q And do you remember telling her that only one other
3 time something happened in your room?

4 A I don't remember telling her that.

5 Q And when she asked you about where things happened you
6 never told Ms. Bell anything about something happening in
7 Greenville?

8 A I don't know. I didn't, no.

9 Q You didn't say that until last week?

10 A No, ma'am.

11 Q Do you remember an incident in your room where Keith
12 flipped the covers over and started taking your clothes off
13 and feeling you?

14 A I don't remember.

15 Q You don't remember talking to Ms. Bell about that?

16 A No, ma'am.

17 Q You don't remember telling her that you pushed him and
18 he hit his head and got mad and started cussing?

19 A I hit him all the time and he got mad.

20 Q And when he started -- do you remember telling her that
21 when he started cussing he woke everybody up?

22 A I don't remember.

23 Q Don't remember. So what I've just described to you
24 about him coming in your room and feeling on you and you
25 pushing him, was that an incident that occurred?

Minor

- CROSS EXAMINATION

211

1 A He did that all the time.

2 Q That happened all the time?

3 A He always touched me all the time.

4 Q Okay. Now, didn't you say that every time this
5 happened that he would put his penis in your vagina except
6 for the last time? Isn't that what you testified to to
7 begin with?

8 A Yes, ma'am.

9 Q And you didn't talk about times when he would just all
10 the time be touching you and not putting his penis in you?

11 A I mean --

12 Q Didn't you say every time this happened he put his
13 penis in your vagina except the last time?

14 A Yes, ma'am. I didn't know I was supposed to say he
15 touched me every time. I didn't know I was supposed to go
16 that far into detail.

17 Q But what you're telling us now is that there were times
18 he touched you and didn't put his penis in you.

19 A He did that, too. Touching led to that.

20 Q But sometimes he just stopped at touching? I'm just
21 trying to understand.

22 A I don't know what you're asking me.

23 Q Okay. So the things that you -- is it correct that you
24 told Ms. Bell about him putting his penis in your vagina; is
25 that right?

Minor

- CROSS EXAMINATION

212

1 A Yes.

2 Q And him putting his penis into your butt?

3 A Yes.

4 Q And putting his penis into your mouth?

5 A Yes.

6 Q Do you remember Ms. Bell asking you whether anybody had
7 put their mouth on that place on your body?

8 A I don't remember.

9 Q You don't remember telling her no?

10 A I don't remember.

11 Q All right. Do you remember telling Ms. Bell that
12 Terrence's mother wanted to talk to you after Terrence told
13 her about this allegation?

14 A Yes.

15 Q So did you talk to her?

16 A No.

17 Q You didn't? Okay. Do you remember telling Ms. Bell
18 that you told Terrence about all of this two weeks before
19 Keith was arrested?

20 A I don't remember telling her that. But I know I told
21 him before. I don't remember when I told him, but I know I
22 told him before he told.

23 Q And you just don't remember whether it was two weeks
24 before the arrest or some other period of time?

25 A I don't remember that.

Minor

- CROSS EXAMINATION

213

1 Q All right. Did you tell Ms. Bell that when he was
2 arrested Keith said I didn't do nothing?

3 A Don't remember. He always told me he was going to say
4 that anyway.

5 Q Now, I'm trying to get this straight. Do you remember
6 telling Ms. Bell a couple of times that you locked your
7 bedroom door?

8 A I don't remember if my room had a lock on it. But I
9 always put my dresser in front of it.

10 Q You always put your dresser in front of it?

11 A Usually when I go to my room I'll put my dresser in
12 front of it. Then I started getting in trouble for putting
13 my dresser in front of it because it's a safe hazard. So my
14 mom told me I couldn't put my dresser right there anymore.

15 Q And so, one time when you put your dresser in front of
16 the door your mom told you not to do that anymore?

17 A Because it's a safety issue.

18 Q She actually woke up and told you not to do that?

19 A No. She just didn't wake up. He woke her up.

20 Q Well, that's what I mean. Somebody -- she got up out
21 of bed and said don't put the dresser in front of --

22 A No. She called me in there.

23 Q Okay. She was awake when she called you in?

24 A Yes.

25 Q And then other times Keith would just push the -- he

Minor

- CROSS EXAMINATION

214

1 would just push your door open and come in anyway?

2 A Yes.

3 Q You don't remember whether your door did or didn't have
4 a lock?

5 A I don't remember. That was a long time ago.

6 Q Now, do you remember telling Terrence that the very
7 first time Mr. Tate ever did anything to you that there was
8 both anal and vaginal penetration?

9 A I don't remember.

10 Q And that isn't correct based on your testimony today,
11 is it?

12 A No.

13 Q The anal penetration was the second time?

14 A I don't remember what time it was. I know it happened.

15 Q Do you remember telling the nurse at Abbeville Hospital
16 that there was anal and oral penetration the very last time?

17 A I don't remember telling her that.

18 Q All right. And you don't remember about your answer
19 about anybody putting their mouth on your vagina?

20 A No.

21 Q Is that no?

22 A No, ma'am.

23 MS. NELSON: May I approach, Your Honor?

24 THE COURT: Sure.

25 Q Is this one of the notebook pages from something you

Minor

- CROSS EXAMINATION

215

1 wrote down at some point?

2 A Yes, ma'am.

3 Q And that doesn't have a date on it?

4 A No, ma'am.

5 Q And part of that statement is that he pulled your pants
6 down and put his mouth on the area between your legs?

7 A Yes, ma'am. It says it.

8 Q And then you punched him in the head and he slapped you
9 in the face?

10 A Yes, ma'am. It says it.

11 Q Now, didn't you tell Terrence that the very first time
12 this happened your brother walked in and you told him to go
13 get your momma?

14 A I don't remember.

15 Q Did your brother walk in and you told him to go get
16 your mom?

17 A No.

18 Q Your brother never saw any of this, did he?

19 A No.

20 Q Do you remember telling Terrence that you passed out
21 and you woke up in a tub full of bloody water?

22 A Yes, ma'am.

23 Q And that's something that you also told Ms. Lindler and
24 Ms. Holland, that you passed out and woke up in a tub full
25 of bloody water?

Minor

- CROSS EXAMINATION

216

1 A Yes, ma'am.

2 Q Do you remember ever telling Ms. Bell about a time that
3 Keith ripped a hole in your pants and in his shorts?

4 A Yes.

5 Q You do remember telling her that?

6 A I still have the shorts.

7 THE COURT: Speak up, please, ma'am.

8 A Yes, ma'am. I do.

9 MS. NELSON: Sorry, Your Honor. I just need to make a
10 note of that.

11 THE COURT: That's okay.

12 Q Now, how did the -- how did the waking up in the tub of
13 bloody water work? Did you -- did you pass out and wake up
14 in the tub or did Keith tell you to get in the tub?

15 A I don't remember. I just woke up in the tub.

16 Q You woke up in the tub?

17 A Yes. I don't know how I got there --

18 Q And that was -- I'm sorry?

19 A I don't know how I got there. I just woke up in the
20 tub.

21 Q And that was something that you never told the lady at
22 the Child's Place, did you?

23 A There's some stuff that I didn't want to tell her
24 because I was embarrassed.

25 Q After everything that you had to talk to her about you

Minor

- CROSS EXAMINATION

217

1 were embarrassed about the tub of water?

2 A No.

3 Q No?

4 A Look --

5 Q We can start over.

6 A I don't want to start over. Just let's finish where
7 we're at. Okay? Because I don't know -- I don't want to
8 talk about it no more.

9 Q All right. You never told the police anything about
10 the tub of bloody water either?

11 A They didn't ask me nothing about no water. They didn't
12 -- they didn't really care.

13 Q They didn't care. Okay. So you told Ms. Holland about
14 it and then Ms. Lindler about it, but when the police came
15 you didn't tell them?

16 A Because I knew them. I didn't know the police. They
17 were men. I don't want them to know.

18 Q But you were able to tell them that he had sex with you
19 10 times in the livingroom --

20 A I found out that I was supposed to tell that. That's
21 because it's true and it happened and you can't just keep
22 that to yourself. You have to tell somebody if you want
23 help. That had nothing to do with that. I mean, it did,
24 but I didn't have to tell them everything because I just
25 wanted help.

Minor

- CROSS EXAMINATION

218

1 Q Okay. You wanted help. Your mother never took you for
2 any counseling after all of this happened to you, did she?

3 A I don't want to keep talking about it.

4 Q Well, let's try to talk about something -- something
5 maybe a little easier. Are you going to be able to keep
6 going, Ms. Minor

7 A I need a break.

8 THE COURT: Okay. Let me see the lawyers just for a
9 second.

10 (Whereupon, a side bar was held.)

11 THE COURT: Madam Forelady, ladies and gentlemen of the
12 jury, what I'd like to do is just take another break. I'm
13 not -- I don't really want to take a lunch break yet. So
14 let's take another -- a short break. And if you smokers
15 need another break on that I'll ask one of the bailiffs to
16 escort you out, and we'll start back in about 10 minutes.
17 Okay? Thank you very much.

18 (Whereupon, the jury exited the courtroom at 12:20
19 p.m.)

20 (Whereupon, the witness steps down from the witness
21 stand.)

22 THE COURT: I realize she's emotional. I understand
23 that. But I don't want this -- and this is -- I'm not
24 commenting on -- but it's being disruptive. Okay? So I
25 want both of you all to go out there and talk to her. Okay?

Minor

- CROSS EXAMINATION

219

1 MS. NELSON: I think I may as well go ahead and make the
2 motion, Your Honor.

3 THE COURT: Well, let me go -- and I know what you're
4 going to do.

5 MS. NELSON: Yes, sir.

6 (Whereupon, a brief recess was held.)

7 THE COURT: We're back on the record, and I know -- and
8 I'll get to you in just a minute, Ms. Nelson. And, I mean,
9 I don't want any perception of anyone to think that I'm not
10 being unsympathetic. But I've got to maintain decorum in
11 this courtroom. And regardless of the nature of the
12 allegations and the emotions involved and everything, I've
13 still got to maintain decorum, and I just can't tolerate the
14 witness storming out of the courtroom in the manner in which
15 she did. I think probably the vast majority, if not all of
16 the jurors, were back in the courtroom, or most of them at
17 least were back in there when that took place. But I just -
18 - and I hope both Solicitors have talked with her. And I
19 know this has not been an easy experience for this witness
20 to be testifying. But nonetheless, she's got to be aware
21 that we can't allow that sort of conduct.

22 With that said, you want to put something on the
23 record, Ms. Nelson? And certainly, Solicitor, I'll be glad
24 for you to comment.

25 MS. NELSON: Your Honor, I think I do have to move for a

Minor

- CROSS EXAMINATION

220

1 mistrial at this point because of the pretty extreme display
2 of emotion that was going on while Ms. Minor was sobbing as
3 the jury left the jury box and while the door back there
4 behind the jury box was still open she started yelling out
5 for her mother, and I can't imagine that even if the jury
6 was right down the hall in their room that they would not
7 have heard that demonstration. It was -- I don't see how it
8 could be construed as anything but prejudicial and could
9 potentially influence the outcome of this case and be
10 considered outside the evidence that's being presented. So
11 I think the only alternative I have is to move for a
12 mistrial at this time, Your Honor.

13 THE COURT: And I understand. Solicitor, you want to
14 make any statement?

15 MR. SHEEK: Yes, Your Honor. I mean, the court is well
16 aware. You were sitting there when it was going on, and
17 this came after a very lengthy and very difficult cross
18 examination by the Defense. And that was one of the reasons
19 earlier I had raised the issue because I didn't want an
20 emotional outburst. I didn't want her sitting there sobbing
21 for a long period of time in front of the jury, if the
22 Defense wanted to take a break from it. I do understand
23 what the court is telling me and I understand why the court
24 is telling me that. And it certainly was not our intent. I
25 can't imagine the emotions this young girl is dealing with,

Minor

- CROSS EXAMINATION

221

1 and she got upset. She understand what Your Honor is saying
2 and we'll conduct ourselves accordingly.

3 THE COURT: In light of the fact that we've had a lot of
4 emotion displayed by this witness throughout her testimony,
5 a lot of crying, I think she's gone through a good many
6 Kleenexes. We have had to take a break or two. I think in
7 light of that then I don't see where that necessarily would
8 create the type and amount of prejudice, if any. But
9 certainly not the amount and type of prejudice that would
10 justify a pretty severe remedy of declaring a mistrial. So
11 I'm going to deny it, but certainly you're protected on the
12 record.

13 MS. NELSON: Could I just add one more thing, Your Honor
14 --

15 THE COURT: Sure.

16 MS. NELSON: -- that I didn't say, and that was that we
17 -- this happened at the very beginning of the trial when Ms.
18 Minor wasn't even on the witness stand --

19 THE COURT: Right.

20 MS. NELSON: -- and got emotional during my opening
21 argument.

22 THE COURT: Right.

23 MS. NELSON: And I understand that she didn't like the
24 things I was saying, but it started out at the outset
25 influencing this trial.

Minor

- CROSS EXAMINATION

222

1 THE COURT: Right.

2 MS. NELSON: And I understand your rule.

3 THE COURT: Right. And I understand that. I mean, this
4 is -- you know, this is just inherent in a case like this
5 that there is going to be a lot of emotion. Again, I'm not
6 in any way justifying what was done, and I've already
7 indicated my feelings on that. But nonetheless, there are a
8 lot of emotions. We may have -- I don't know. We may have
9 some other witnesses get very emotional, too, when it's all
10 said and done in this case. I don't know that. But taking
11 everything into consideration I don't think the
12 justification is there to grant a mistrial.

13 MS. NELSON: Thank you, Your Honor.

14 THE COURT: Thank you. I think what the plan is, to try
15 to finish this witness before lunch. I don't want to limit
16 in any way whatsoever the cross examination nor redirect
17 examination. If we have to go a little bit longer before we
18 take a lunch break, that would be what I'd like to do. If
19 that's not possible and it looks like -- my stomach has been
20 growling up here the last hour. I'm ready for lunch. But
21 I'd like to get this witness finished before we break. So
22 bring the jury out, please.

23 MS. NELSON: I can ask after -- before we get ready to
24 break. It's just about logistics with -- if I'm going to
25 have any witnesses come in, I wasn't sure. But we can talk

Minor

- CROSS EXAMINATION

223

1 about that.

2 THE COURT: Yeah. When we break for lunch I would like
3 to talk with the lawyers for just a little bit to get a feel
4 of where we're headed after.

5 MR. SHEEK: And I'll go ahead and say, Your Honor, with
6 Ms. Holland, Ms. Lindler, Dr. Pritchard already scheduled to
7 be in this afternoon, that I can say we'll probably kill the
8 afternoon.

9 MS. NELSON: That's kind of what I suspected.

10 THE COURT: Bring the jury out, please.

11 (Whereupon, the jury entered the courtroom at 12:34
12 p.m.)

13 THE COURT: Let the record reflect the jury is back in.
14 Ms. Nelson, we're still in your cross examination.

15 MS. NELSON: Thank you, Your Honor. May it please the
16 court.

17 Q I'd like to ask you about something that Terrence
18 testified about and that was an occasion when your phone was
19 in your mother's room and he sent a text and your mother
20 woke up. Do you remember that?

21 A Huh-uh.

22 Q You don't remember that happening.

23 THE COURT: You need to give a verbal response.

24 A No, ma'am.

25 MR. SHEEK: Your Honor, if I could just ask her to

Minor

- CROSS EXAMINATION

224

1 rephrase that question. I don't believe this witness was in
2 here for Terrence's testimony, so I'm not sure -- maybe I'm
3 wrong. I thought she was asking if she remembered Terrence
4 testifying to that.

5 MS. NELSON: I think I said I want to ask you about
6 something Terrence testified about, which still may not be
7 the correct form, but...

8 Q Do you ever remember a time when your phone was in
9 there with your mother and Terrence sent you a text and it
10 woke your mother up?

11 A No, ma'am.

12 Q Okay. And you told me earlier, I think, that you
13 started dating Terrence you thought in about March?

14 A Yes, ma'am.

15 Q March 23rd? And there were times when Keith and your
16 mother tried to keep you from seeing Terrence?

17 A Yes, ma'am. I don't know what you mean by that, but --

18 Q Well, do you remember telling Ms. Bell that when they
19 found out you had a boyfriend your momma wouldn't let your
20 boyfriend come over there?

21 A She wouldn't let me talk to him.

22 Q Okay. And they wouldn't let you go over to his house?
23 Do you remember telling Ms. Bell that?

24 A Yes.

25 Q Okay. And you remember telling her that when Keith

Minor

- CROSS EXAMINATION

225

1 found out you had a boyfriend he punched you in the arm and
2 you had to wear long sleeves to cover it up?

3 A I remember getting hit a lot.

4 Q You don't remember that specific incident. Now, on --
5 at a point in time you did get a phone, didn't you?

6 A Yes, ma'am.

7 Q And you talked about how you would stay up and text on
8 it --

9 A Yes, ma'am.

10 Q -- so you wouldn't go to sleep? And the police
11 actually took that phone when they arrested Keith, didn't
12 they?

13 A Yes, ma'am.

14 Q Did you understand that they sent that phone to SLED to
15 be looked at?

16 A Yes, ma'am.

17 Q And is it correct that your phone had three
18 inappropriate pictures of Terrence C. on it?

19 A Yes, ma'am.

20 Q And you got those pictures on August -- I mean -- yes,
21 August 14th and 15th of 2010, right?

22 A I don't remember what date. I know I had them on my
23 phone.

24 Q Okay. And after you got those pictures Keith and your
25 mother found them, didn't they?

Minor

- CROSS EXAMINATION

226

1 A Yes.

2 Q And they didn't like it?

3 A No.

4 Q And they even talked to Terrence's parents about it?

5 A Yes, ma'am.

6 Q And that was something you got in trouble for?

7 A Yes, ma'am.

8 Q And then not very long after that Keith was arrested?

9 A Yes, ma'am.

10 Q They took your phone away from you when they found
11 those pictures?

12 A Yes, ma'am.

13 Q And then it was about 10 days later that you talked to
14 police and Ms. Lindler and Ms. Holland about Keith?

15 A I don't know the date, but it was --

16 Q You know it was a short time?

17 A Yes, ma'am.

18 Q Had they ever taken your phone away before?

19 A Yes, ma'am.

20 Q Do you remember telling Ms. Bell that the sixth and
21 seventh incidents happened because you didn't have a phone?

22 A I don't remember telling her that.

23 Q You don't remember that. Do you remember telling Ms.
24 Bell that when Keith came in the room you would scream and
25 your mother would wake up and he'd leave out really fast?

Minor - CROSS EXAMINATION

227

1 A I don't remember.

2 Q You've talked a little bit about your mom's health
3 problems, right?

4 A Yes, ma'am.

5 Q She's got -- she's got some physical and some mental
6 health problems?

7 A Yes, ma'am.

8 Q And during this time period that we're talking about,
9 and I'm talking about from August of 2009 until about August
10 of 2010 when all of this was going on, your mother was in
11 the hospital a lot?

12 A Yes, ma'am.

13 Q And some of those times she was in the hospital were
14 close to some of these dates, weren't they?

15 A Yes, ma'am.

16 Q But that wasn't how you were able to remember these
17 dates --

18 A No, ma'am.

19 Q -- was it? That you were able to remember them with
20 Ms. Lindler by going through a school calendar?

21 A That was one of the reasons. I don't remember exactly
22 all of the reasons that I remember them, because I don't --

23 Q It's just too long ago?

24 A Yes.

25 Q But you know -- you do remember that you were able to

Minor

- CROSS EXAMINATION

228

1 sit down with Ms. Lindler and some school information and
2 come up with these dates?

3 A Yes, ma'am.

4 Q Do you remember the time that your mom in April of 2010
5 actually went into the hospital in Anderson and stayed for
6 about a week?

7 A I remember her staying. I don't remember the dates
8 that she stayed. But I do remember her going away.

9 Q Wasn't that after this stuff stopped happening?

10 A I don't -- can you say that date again?

11 Q If she was there in April of 2010 that would have been
12 after this?

13 A Yes, ma'am.

14 Q And then do you remember she went back the second time
15 for about another five days or so later in the year?

16 A Yes.

17 Q And that was also after --

18 A Yes.

19 Q -- March 18th of 2010, right?

20 A Yes.

21 MS. NELSON: May I have just a moment, Your Honor?

22 THE COURT: Sure.

23 MS. NELSON: Thank you, Ms. Minor That's all I have.

24 THE COURT: Solicitor, redirect.

25

REDIRECT EXAMINATION

Minor

- REDIRECT EXAMINATION

229

1 BY MR. SHEEK:

2 Q Minor Ms. Nelson let you see that.

3 A Yes, sir.

4 Q Is that your journal?

5 A Yes, sir.

6 Q Is that the one the police took from your house?

7 A Yes, sir.

8 Q Did they take it on the day that you talked to the
9 police?

10 A Yes, sir. I believe so.

11 MR. SHEEK: Your Honor, we offer this into evidence.

12 THE COURT: Okay. And what says the Defense?

13 MS. NELSON: No objection.

14 THE COURT: All right. Without objection it will be
15 Number 6 for the State into evidence.

16 (Whereupon, State's Exhibit 6 was entered into
17 evidence.)

18 Q Minor you went to the Child's Place back in September of
19 2010; is that correct?

20 A Yes, sir.

21 Q And is it fair to say that you can't remember
22 everything you said in this 73 page typed statement?

23 A Yes, sir.

24 Q Do you remember that man sitting right there raping
25 you?

Minor - RECROSS EXAMINATION

230

1 A Yes, sir.

2 Q Any doubt about that?

3 A No doubt..

4 Q Ms. Nelson asked you about coming in and meeting with
5 us. Do you remember meeting with us?

6 A Yes, sir.

7 Q Do you remember me telling you what I want you to say
8 in this courtroom?

9 A Yes, sir.

10 Q What was it?

11 A To tell the truth.

12 Q Is it the truth?

13 A Yes, sir.

14 MR. SHEEK: Nothing further, Your Honor.

15 THE COURT: Recross?

16 RECROSS EXAMINATION

17 BY MS. NELSON:

18 Q Minor is the truth here in the courtroom today different
19 from what you told Ms. Bell in an hour and a half back in
20 September of 2010?

21 A There's no difference.

22 Q It's not different. Thank you, ma'am.

23 THE COURT: Thank you, ma'am, for your testimony. You
24 can step down.

25 (Whereupon, the witness steps down from the witness

REBECCA HOLLAND - DIRECT EXAMINATION

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1 THE COURT: Let the record reflect the jury is back in.
2 Solicitor, you may proceed.

3 MR. BROWN: The State calls Rebecca Holland.

4 REBECCA HOLLAND, having been first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Good afternoon, Ms. Holland.

9 A Good afternoon.

10 Q Spell your name for the court reporter so we have that
11 correct.

12 A Rebecca, R-e-b-e-c-c-a, Holland, H-o-l-l-a-n-d.

13 Q Ms. Holland, where do you work?

14 A Calhoun Falls Charter School.

15 Q And how long have you worked at Calhoun Falls Charter
16 School?

17 A At the Charter School itself, before it became the
18 Charter School. I was with the district approximately 15
19 years and now I've been with the Charter School
20 approximately seven years.

21 Q And what's your job there at the Charter School?

22 A I am a substitute teacher, bus supervisor, track coach,
23 band director, bus driver, a past softball coach, among
24 other things.

25 Q And so, if you're there for 15 years you were there in

REBECCA HOLLAND - DIRECT EXAMINATION

233

1 2010?

2 A Yes, sir.

3 Q And your job in 2010, were you the band director then?

4 A Yes, sir.

5 Q While you were at Calhoun Falls Charter School did you
6 have occasion to teach Minor

7 A Yes, sir.

8 Q What did you teach her?

9 A I would teach her in class only if I had subbed that
10 day for a particular teacher and she was in that class, and
11 I would have her in band everyday. I was the band director?

12 Q How long was Minor in band?

13 A She was in the '09 season and partial 2010 season.

14 Q And what was her role in 2009?

15 A She was the color guard.

16 Q And with color guard would she travel with the band
17 wherever they went?

18 A Yes, sir.

19 Q Now, Ms. Holland, did Minor ever disclose to you a
20 sexual assault incident?

21 A Yes, sir.

22 Q And when did she disclose that to you?

23 A On August 23rd, 2010.

24 Q And what did you do after she disclosed this to you?

25 A I spoke with her as briefly as possible and I told her

REBECCA HOLLAND - DIRECT EXAMINATION

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1 because it was so late in the afternoon there was no people
2 at school that I could go to at that time to report the
3 incident, so I would have to wait until the next morning
4 when I got back to school when the principal and vice
5 principal or whoever was there so I could report it.

6 Q And did you report it?

7 A Yes, sir. I did.

8 Q Who did you report it to?

9 A I reported it to Ms. Lori Lindler.

10 Q And who is that?

11 A She's the assistant principle/guidance counselor.

12 Q And, Ms. Holland, as band teacher and director -- first
13 of all, did you know where Minor lived?

14 A Yes, sir.

15 Q Where did she live?

16 A She lived approximately a half a block from where I
17 lived.

18 Q And were there some occasions after band practice you
19 might take her home?

20 A Yes, sir. I took her home every day.

21 Q Every day?

22 A Yes, sir.

23 Q When you would take her home did you ever realize or
24 either witness anything out of the ordinary?

25 A Yes, sir. On occasion I had.

REBECCA HOLLAND - DIRECT EXAMINATION

235

1 Q What would you witness?

2 A I would witness her step-father, as she referred to him
3 at times, he would always be standing there waiting for her
4 when she got out of the car, and he would say, "I thank you
5 for bringing my daughter home." And as they would start to
6 depart from my car down the sidewalk I have on occasion
7 observed him grabbing her by the arm.

8 Q What was she like on the way to her house?

9 A She would cry.

10 Q Did you ever know why she was crying?

11 A No, sir. I did not.

12 Q Did she ever ask you not to take her to the house?

13 A Yes, sir.

14 Q What would she ask you?

15 A She would ask me if she could just go to my house, or
16 she weren't ready to go home. She didn't want to go home.

17 Q But you never --

18 A No, sir. I didn't question her.

19 Q -- really asked why?

20 A No, sir.

21 Q After she disclosed the assaults to you, you went on up
22 and told the assistant principal?

23 A Yes, sir. The next day.

24 Q Now, is that -- that's protocol at school?

25 A Yes, sir.

REBECCA HOLLAND - CROSS EXAMINATION

236

1 Q And as soon as you found out you did that?

2 A Yes, sir.

3 MR. BROWN: No further questions.

4 THE COURT: Cross examination.

5 MS. NELSON: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MS. NELSON:

8 Q Hi, Ms. Holland. I'm Ms. Nelson.

9 A Hello.

10 Q So she told you about this on August 23rd?

11 A Yes, ma'am.

12 Q And you took her home that same day, too?

13 A Yes, ma'am.

14 Q And all of these times she cried and stated she didn't
15 want to go home you didn't ask her why?

16 A No, ma'am.

17 Q When you told her -- after she disclosed these graphic
18 details to you, you told her it'll be all right and we'll
19 get you help tomorrow?

20 A Yes, ma'am.

21 Q And you believe -- were you involved when the police
22 actually came to the school?

23 A Yes, ma'am.

24 Q And you believe that was the next day?

25 A Yes, ma'am.

REBECCA HOLLAND - CROSS EXAMINATION

237

1 Q So you believe that was August 24th?

2 A Yes, ma'am.

3 Q She told you that this had started in August of 2009
4 and continued until March of 2010?

5 A Yes, ma'am.

6 Q And so, five months before it had stopped?

7 A Yes, ma'am.

8 Q And she also said she could no longer protect herself
9 from him?

10 A Yes, ma'am.

11 Q But nothing had happened since five months before,
12 according to what she told you?

13 A I had no way of knowing that, ma'am.

14 Q Well, I'm asking you about what she told you though.
15 She said that it had stopped in March?

16 A Yes, ma'am.

17 Q And so, by the point she told you five months later,
18 based on what she said, there's not anything going on to
19 protect herself from, is there?

20 A I don't know, ma'am.

21 Q You don't -- well, I'm asking -- I'm asking based on
22 what she said. You were --

23 MR. BROWN: Your Honor, I think that calls for
24 speculation. If she doesn't know, she doesn't know.

25 MR. NELSON: Okay.

REBECCA HOLLAND - CROSS EXAMINATION

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1 THE COURT: If she knows, based upon her conversations
2 with the child, she can testify to that. If she doesn't
3 know, she doesn't know. You may want to repeat the
4 question, Ms. Nelson.

5 MS. NELSON: I'm not sure anymore what it was, Your
6 Honor.

7 THE COURT: All right.

8 Q What I'm trying to ask is if every -- if she's telling
9 the truth about everything stopping in March of 2010, then
10 by the point she tells you in August there wouldn't be
11 anything going on to protect herself from?

12 THE WITNESS: May I answer this in --

13 THE COURT: Answer it and then you can explain your
14 answer if you care to. Yes, ma'am.

15 A I don't know, ma'am.

16 Q Okay.

17 THE WITNESS: And may I answer?

18 THE COURT: Yes.

19 A The reason I say I don't know is because between the
20 time that she reported to me and what she told me I told the
21 officers. I put it in my report what she said to me, and I
22 can only go on what she said to me. Now, if anything
23 happened prior to the time from March until the time she
24 reported to me, I could not say.

25 Q That's not something she told you happened?

REBECCA HOLLAND - CROSS EXAMINATION

239

1 A As in -- what do you mean? Something she told me?

2 Q She didn't tell you anything happened after March --

3 A No, ma'am. She did not.

4 Q -- of 2009? She told you sometimes that he would hit

5 her so hard when she would scream that it would cause her to

6 pass out?

7 A Yes, ma'am.

8 Q Is that the right word, "scream"?

9 A Yes, ma'am.

10 Q And that when she would wake up she would be in a tub

11 of bloody water?

12 A Yes, ma'am.

13 Q And he would put her in the bloody -- in the water to

14 clean up after each attack?

15 A Yes, ma'am.

16 Q So 10 times she woke up -- at least 10 times she woke

17 up in bloody water?

18 A That is what was reported, ma'am.

19 Q Okay. And all of your knowledge about any of this

20 comes from what Ms. Minor told you?

21 A Yes, ma'am.

22 Q Do you -- do you remember there being a football game

23 on October 30th?

24 A Yes, ma'am.

25 Q Is that a game you would have taken --

REBECCA HOLLAND - CROSS EXAMINATION

240

- 1 A Yes, ma'am.
- 2 Q -- Ms. Minor to?
- 3 A Yes, ma'am.
- 4 Q That would have been on a Friday night?
- 5 A Yes, ma'am.
- 6 Q One more -- maybe not one more, but something else that
- 7 I've thought of. When the police came to the school did you
- 8 sit in on their interview with Ms. Minor
- 9 A Yes, ma'am.
- 10 Q Were you there when she was able to come up with the 10
- 11 different dates that things happened?
- 12 A Yes, ma'am. I was.
- 13 Q Do you remember how she came up with those dates?
- 14 A Because of events that had taken place at school,
- 15 ma'am.
- 16 Q Do you remember what those events were?
- 17 A Not them all. Not all of them.
- 18 Q Do you remember any of them?
- 19 A I remember the 31st.
- 20 Q I'm sorry?
- 21 A I remember the 31st. It was a football that we had in
- 22 Twiggs County, Georgia.
- 23 Q Was that on the 30th or the 31st?
- 24 A The 31st. It was on Friday night. It was Halloween.
- 25 Q Can I show you the calendar and see if we've --

REBECCA HOLLAND - CROSS EXAMINATION

241

1 A Yes, ma'am.

2 Q Just to confirm we got the day of the week right.

3 MS. NELSON: May I approach, Your Honor?

4 THE COURT: Sure.

5 Q I'm showing you what was provided to me as a school
6 schedule for October 2009. Was the date of that Twiggs
7 County football game the 30th --

8 A Yes, ma'am.

9 Q -- according to that calendar?

10 A Yes, ma'am.

11 Q So it was the 30th and then Halloween was the next day
12 on Saturday?

13 A Yes.

14 Q And that was an away game in --

15 A Yes, ma'am.

16 Q -- Georgia near Macon?

17 A Yes, ma'am.

18 Q So it would have -- it would have been kind of late
19 when you got Minor back home?

20 A It was after 2:00 in the morning, ma'am.

21 MS. NELSON: That's all I have, Ms. Holland. Thank
22 you.

23 THE COURT: Any redirect?

24 REDIRECT EXAMINATION

25 BY MR. BROWN:

REBECCA HOLLAND - REDIRECT EXAMINATION

242

1 Q Ms. Holland.

2 A Yes, sir.

3 Q She was asking, referring to a statement that you had
4 written out, about being placed in bloody water. That Minor
5 would wake up in bloody water. Do you remember writing
6 earlier in that statement and said on occasion he's hit her,
7 and on occasion she'd wake up in bloody water?

8 A Only what she reported to me I put in my statement.

9 Q Did she give exact details on all --

10 A Yes, sir.

11 Q -- all the sexual assaults?

12 A As much as she could, sir.

13 Q As much as she could? As much as she could remember?

14 A Uh-huh.

15 Q And that football game, referring to on the calendar,
16 in Twiggs County, Georgia, was Minor at that game?

17 A Yes, sir. She was.

18 Q And then after that game you brought her back by her
19 house?

20 A I took her home. She was the last one I dropped off
21 because she's right down the street from where I live.
22 She's always been my last drop off before I go home.

23 Q And that was the apartment there in Calhoun Falls?

24 A Yes, sir.

25 MR. BROWN: No further questions.

REBECCA HOLLAND - RECROSS EXAMINATION

243

1 THE COURT: Recross.

2 MS. NELSON: Thank you, Your Honor.

3 RECROSS EXAMINATION

4 BY MS. NELSON:

5 Q These details that Ms. Minor gave about the incident
6 dates, you tried to put that into your statement --

7 A Yes, ma'am.

8 Q -- to law enforcement?

9 A Yes, ma'am.

10 Q And one of those details was that -- was that on
11 occasion he had hit her so hard when she would scream that
12 it would cause her to pass out and when she would wake up
13 she would be in a tub of bloody water where he would --
14 where he would put her to clean her up after each attack?

15 A Yes, ma'am.

16 Q And she described at least 10 different attacks?

17 A Yes, ma'am. She did.

18 Q And so, your interpretation of that was that she was in
19 bloody water after each time?

20 A Yes, ma'am. According to her.

21 MR. SHEEK: Your Honor, I would be happy just to have
22 her read her written statement.

23 THE COURT: I'll allow further redirect if you need to.

24 MS. NELSON: I think she's already testified to most
25 everything in it.

REBECCA HOLLAND - REDIRECT EXAMINATION

244

1 THE COURT: Mr. Brown, any further redirect from this
2 witness?

3 MR. BROWN: Beg the court's indulgence.

4 THE COURT: Sure.

5 MR. BROWN: Your Honor, just a -- referring to her
6 statement.

7 REDIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Ms. Holland, do you remember writing a statement to law
10 enforcement?

11 A Yes, sir.

12 Q I'll show you here. I'm going to show you a document.
13 See if you can identify that.

14 A It is. It's in my handwriting. It's my statement.

15 Q Is that your statement?

16 A Yes, sir.

17 Q And how do you know that's your statement?

18 A Because it's my handwriting. I signed it and I
19 initialed it.

20 Q Ms. Holland, read what you wrote in that statement.

21 A "On Tuesday, August 23rd, 2010, Minor did come
22 to myself and Ms. Patricia Crawford at the end of band
23 practice and told us that she was being sexually assaulted
24 by her step-father, Bo Tate, who is known -- who is Keith
25 Denver Tate. She said that the assaults had happened more

REBECCA HOLLAND - REDIRECT EXAMINATION

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1 than 10 times within the past year and that she wanted them
2 to stop but she could no longer protect herself from him and
3 his advances, and that she needed some help and protection
4 from him. We told her that things would be better -- be all
5 right and that we would get her some help the next day. Her
6 biggest concern was her mother and her brothers. Minor
7 said the abuse started in August of 2009 and continued until
8 March of 2010. She said that she did not come to me because
9 she did not know that she could trust me and that the time
10 that it started, after she gained my trust, she started to
11 open up to me but never came out and said what was being
12 done to her by him until August 23rd, 2010. Minor painted
13 a very graphic picture of each exact -- of what would be
14 done to her by him. By Bo. She said that he would wait
15 until her mother and brothers would go to sleep, go to bed,
16 and would call her into the livingroom and have sex with
17 her. She also stated that on occasion he had hit her so
18 hard when she would scream that it would cause her to
19 blackout. To pass out. And when she woke up she would be
20 in a tub of bloody water. Then -- excuse me. Where he
21 would put her to clean her up after each attack. She would
22 cry every day at the end of band practice because she did
23 not want to go home when she knew that he would be there."

24 Q Is that your complete statement?

25 A Yes, sir.

LORI LINDLER - DIRECT EXAMINATION

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1 MR. BROWN: Mark this for identification purposes.

2 THE COURT: Okay.

3 (Whereupon, the Statement of Rebecca Holland was marked
4 as State's Exhibit 7 for identification.)

5 MR. BROWN: No further questions.

6 THE COURT: Any further cross?

7 MS. NELSON: No, sir, Your Honor.

8 THE COURT: Thank you for your testimony, ma'am. You
9 can step down.. You're free to leave the courthouse or
10 you're welcome to remain with us.

11 (Whereupon, the witness stepped down from the witness
12 stand.)

13 MR. SHEEK: The State calls Lori Lindler, Your Honor.

14 THE COURT: Okay.

15 LORI LINDLER, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SHEEK:

19 Q All right, ma'am. If you would, state your name for
20 the jury and spell your first and last name for the court
21 reporter.

22 A Lori, L-o-r-I, Lindler, L-I--d-l-e-r.

23 Q Ms. Lindler, where are you employed?

24 A I'm employed at Calhoun Falls Charter School.

25 Q And were you at the Charter School before it became the

LORI LINDLER - DIRECT EXAMINATION

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1 Charter School and still part of the district?

2 A Yes.

3 Q So how long have you been working there at the high
4 school?

5 A I have been there 14 years.

6 Q And what do you do there?

7 A I am currently the assistant principal and guidance
8 counselor.

9 Q And back in 2009 and then 2010, school year began in
10 August '09-'10, what was your capacity then?

11 A The same thing, assistant principal and guidance
12 counselor?

13 Q Did you have an opportunity as part of your job there
14 at the Charter School to speak to Minor regarding
15 allegations of sexual abuse?

16 A Yes.

17 Q And do you know how she came to talk to you about this?

18 A She had confided in the parent of a student, and she
19 had also confided in her band director, Rebecca Holland, and
20 they insisted that she needed to come and speak with me
21 about this matter.

22 Q And did she, in fact, come and speak with you?

23 A She did.

24 Q And did that happen there at the Charter School?

25 A She did.

LORI LINDLER - DIRECT EXAMINATION

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1 Q Do you recall what day that was?

2 A My statement says August the 25th of 2010.

3 Q And when you talked to Ms. Minor did she disclose to you
4 any allegations of any type of sexual abuse or sexual
5 misconduct?

6 A Yes.

7 Q And did she tell you when that had occurred?

8 A Yes.

9 Q And based on your discussions with Minor Minor did
10 you actually sit down with her and go through a calendar and
11 attempt to identify as close as possible certain dates?

12 A Yes.

13 Q Do you recall how many days she identified that she had
14 been sexually assaulted in Abbeville County?

15 A It was -- it was 10.

16 Q Ten assaults. Do you know if those were all in
17 Abbeville County or --

18 A I believe one may have occurred in Greenville County.

19 Q And how did you all come up with these dates? Did you
20 use anything to aid you in coming up with dates?

21 A We did. We used this school calendar, because she
22 could remember that some things had occurred after a certain
23 football game. She could maybe remember the team in which
24 we played but maybe could not remember the exact date, so we
25 used this particular calendar to help her establish those

LORI LINDLER - CROSS EXAMINATION

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1 dates.

2 Q I'm going to go through some dates with you. Did you
3 make any notations on your calendar of the dates you all
4 were able to identify?

5 A Not on this particular calendar. No, sir.

6 Q Okay. That's fine. Do you recall roughly what point
7 in time she alleged the sexual assaults to begin?

8 A I believe that was in August, I believe, of 2009.

9 Q: And did she report to you when they had stopped, or
10 when the last one was at that point?

11 A I'm sure we came up with that, but I can't tell you
12 that one off the top of my head. No, sir.

13 Q Did she identify where those sexual assaults had
14 occurred? You said one was not in not in the county. But
15 did she say where in Abbeville County?

16 A I believe the vast majority were at her home, or all
17 maybe had taken place in her home.

18 MR. BROWN: Beg the court's indulgence.

19 THE COURT: Sure.

20 Q When you had sat down and talked with Minor when she
21 made these allegations, did you inform anybody?

22 A Yes.

23 Q And how did you inform?

24 A The Calhoun Falls Police Department.

25 MR. BROWN: Thank you, Ms. Lindler. Please answer

LORI LINDLER - CROSS EXAMINATION

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1 anything the Defense may have.

2 THE COURT: Cross examination.

3 MS. NELSON: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. NELSON:

6 Q Hi, Ms. Lindler. Now, at the time that -- the dayMinor
7 told you about this, Ms. Minor told you about this, was
8 August 25th?

9 A (Witness nods head affirmative.)

10 Q Is that right?

11 A Yes, ma'am.

12 Q I'm just asking -- the court reporter has to take down
13 what you say, which is why I was asking.

14 A Yes, that's correct. August the 25th.

15 Q Okay. And that was two days after she had talked to
16 Ms. Holland about it; is that right?

17 A I'm not sure what her statement date says.

18 Q Okay. When you talked to Ms. Minor about this who was
19 present?

20 A I believe -- I was trying to see if I had that in my
21 statement. To the best of my recollection it was Ms.
22 Holland and Patricia Crawford.

23 Q And then, of course, after you contacted the police
24 they came, too?

25 A That's correct.

LORI LINDLER - CROSS EXAMINATION

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1 Q And did Ms. Minor relate the -- let me back up. Before
2 the police got there had you already established these dates
3 with Ms. Minor before the police arrived?

4 A We had not.

5 Q So she had just basically told you this has been
6 happening and you called the police?

7 A That's correct.

8 Q I don't see -- you can correct me if I'm wrong. I
9 don't see anything in your statement about -- about her
10 alleging any kind of physical abuse, like being hit or
11 punched or anything like that. Is that correct that that's
12 not in your statement?

13 A If you'll give me a minute.

14 Q Or you can tell me if you can remember her talking
15 about anything like that.

16 A From what I'm reading in my statement that I made, the
17 abuse that she alleged to me was completely sexual.

18 Q Sexual, okay. One of the things she told you was that
19 after these assaults she would wake up either on the couch
20 with blood between her legs or in the bathtub in bloody
21 water?

22 A That's correct.

23 Q So it wasn't until after the police arrived, and that
24 was Michael Connelly who came?

25 A I do recall Officer Connelly being there.

LORI LINDLER - CROSS EXAMINATION

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1 Q And Roger Hunnicutt?

2 A To be honest with you, I can't remember the rest of the
3 law enforcement officers who were there that day. But I do
4 recall Officer Connelly.

5 Q There was more than one officer?

6 A There were. There was more than one. But that's been
7 four years ago, and I do recall that Officer Connelly - I
8 recall him for sure.

9 Q Now, you said you didn't have any notes on the calendar
10 you have. Tell me what you -- well, let me -- let me tell
11 you that -- let me ask you this question. The first date
12 that Ms. Minor came up with was August 29th of 2009; is that
13 right?

14 A To be honest with you, I'm not sure about that. I
15 don't know. I don't remember the exact dates.

16 Q Okay. She gave 10 dates and said that they all
17 happened at the apartment on Lee Street?

18 A We worked to come up with the dates, and to the best of
19 my recollection I do recall that the vast majority I
20 believe, if not all, occurred at her home.

21 Q Okay. Did she -- at that time on August 25th you don't
22 remember Ms. Minor ever saying that anything happened
23 anywhere else, right, other than the apartment?

24 A Well, there was the one in -- I believe there was the
25 one in Greenville County that occurred.

LORI LINDLER - CROSS EXAMINATION

253

1 Q You believe she said that there was one in Greenville
2 County?

3 A Because she was visiting family. I believe it was
4 around Christmas time.

5 Q Okay. So it's your recollection that she said that
6 happened in Greenville?

7 A Yes. That she was out of town visiting family.

8 Q And that's not something you found out about recently?

9 A No.

10 Q Do you have any of Ms. Minor school records with you
11 at all?

12 A I do. I have some.

13 Q Do you happen to have an attendance record with you?

14 A I don't think I do, because I think that's what your
15 office requested this morning, and I did fax that over
16 separately, but I do have what I faxed -- or not faxed, but
17 actually made copies of earlier. I believe that was last
18 week.

19 Q And I could not read the dates on mine. So do you --
20 do you actually have one with you that has legible dates on
21 it?

22 A I do not.

23 Q Okay. And you don't have a copy of what you sent me?

24 A No, ma'am.

25 Q Okay.

LORI LINDLER - CROSS EXAMINATION

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1 A But I can get you another one if you need it.

2 Q Do you have a disciplinary record for Ms. Minor

3 MR. SHEEK: Your Honor, at this point we have a matter
4 of law.

5 THE COURT: Okay. Madam Forelady, ladies and gentlemen
6 of the jury, we need to take up something with the attorneys
7 and hopefully we won't be long and we'll get you right back
8 out.

9 (Whereupon, the jury exited the courtroom at 2:35 p.m.)

10 THE COURT: Yes, sir, Solicitor.

11 MR. SHEEK: Your Honor, a couple of things. First of
12 all, I'm not aware of the subpoena they're referring to. If
13 the Public Defenders forwarded a copy to our office, I
14 haven't seen it. So I'm understanding they're asking about
15 records they have subpoenaed and they intend to introduce
16 either information from the records or records into
17 evidence, and we don't have that and have never been
18 provided any of it under Rule 5. And I don't think you can
19 say, well, I subpoenaed the witness to bring them. I didn't
20 have them until the witness got here, and basically
21 circumvent Rule 5.

22 The second issue would be I'm not sure what relevance
23 these disciplinary records would have. So I don't want to
24 go into them and then stand up and say none of that was
25 relevant.

LORI LINDLER - CROSS EXAMINATION

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1 THE COURT: Well, if I remember cross examination of
2 the child there was some questioning about did she get in
3 trouble at school falling asleep, and then there was
4 something else and I can't recall. I'd have to go back
5 through my notes. But there was some -- is that correct,
6 Ms. Nelson?

7 MS. NELSON: Your Honor, I believe that was all I asked
8 about was her testimony was that she would -- I don't know
9 if it was her testimony, because I got confused on what she
10 remembered and what she didn't. But I think she agreed with
11 me that there were times she would text all night so she
12 wouldn't go to sleep and then she'd get in trouble at school
13 for not -- for being asleep.

14 THE COURT: Right.

15 MS. NELSON: And I've seen the disciplinary record and
16 I was just going to ask -- Ms. Lindler may be the person who
17 sent it to me, or copied it for me. I'm not sure. But I
18 was just going to ask her if there were any reports on that
19 disciplinary record for falling asleep in class, because I
20 know there aren't.

21 MR. SHEEK: That would be our Rule 5 objection then.
22 If she's seen these records and she's seeking to elicit that
23 information, we've never been provided anything.

24 MS. NELSON: I got it by subpoena. And they have been
25 to the school and spoken to Ms. Lindler and I -- I don't --

LORI LINDLER - CROSS EXAMINATION

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1 I'm not going to introduce it.

2 THE COURT: Right.

3 MS. NELSON: I'm just going to -- it's not even -- it's
4 about credibility, again. It's not about -- I don't want
5 the jury to see other violations she had. I'm not trying to
6 get that in. I'm just trying to get in the absence of any
7 discipline for falling asleep in school, because she -- Ms.
8 Minor said it happened.

9 THE COURT: Right.

10 MR. BROWN: If I understand the Defense's argument
11 then, they would argue that a disciplinary action for
12 sleeping in class affects the credibility of this child,
13 because they said it's for credibility purposes.

14 THE COURT: I think -- I think -- without speaking for
15 Ms. Nelson, I think where she's coming from is based upon
16 what the child testified to on the witness stand, and
17 evidently the records -- the school records are going to
18 contradict that.

19 MR. SHEEK: Your Honor, I think she's saying the school
20 records confirm it.

21 MS. NELSON: No, sir.

22 THE COURT: I think she said that --

23 MS. NELSON: The school records confirm two phone
24 violations, a -- some sort of failure to obey, and one other
25 thing. But no sleeping in class. There were four, if I

LORI LINDLER - CROSS EXAMINATION

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1 remember right.

2 MR. SHEEK: And I don't think the child was questioned
3 about any of those others. She asked her if she got in
4 trouble for sleeping in class.

5 MS. NELSON: All I want to ask is whether there are any
6 discipline for sleeping in class on her disciplinary report.
7 And there are not, so I would expect the answer to be no,
8 there aren't.

9 THE COURT: Okay. I'm going to allow it. I don't
10 think really the State is prejudiced by failure to disclose
11 documents that are not going to go into evidence. I'll
12 allow -- I'll allow the questioning.

13 Ms. Nelson, what do you want to do about the attendance
14 records that were subpoenaed this morning? This witness
15 says she could get some. I don't know if you want to
16 explore that or not.

17 MS. NELSON: They were actually subpoenaed when I got
18 the other records. They just weren't -- I asked for all
19 records on Ms. Minor and those just were not provided.

20 MR. SHEEK: Can I ask that we be shown these?

21 THE COURT: Yeah. Yeah. Well, that's going to be my
22 next thing, but I just wanted to see what she wanted to do
23 about the attendance records.

24 MR. SHEEK: You know what, that's fine, Judge. Let's
25 go with that. I'll withdraw my objection.

LORI LINDLER - CROSS EXAMINATION

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1 THE COURT: Okay. Did you want this witness to try to
2 obtain legible attendance records since your copy is not
3 legible?

4 MS. NELSON: If I am not going to get it before she
5 leaves the stand I don't know if it's going to help me.

6 THE COURT: Well, what we'll do is once you finish
7 examining this witness we'll see how quickly she could maybe
8 contact her school and have it faxed over to the clerk's
9 office.

10 THE WITNESS: I think that's the problem is it was
11 faxed over, and maybe sometimes that happens. The dates
12 should have been listed along this side.

13 MS. NELSON: That's what I was --

14 THE WITNESS: And that's sort of a darker color there.
15 And it appears that in the fax that -- you know how a fax
16 tends to darkens things, and it blotted out those dates.

17 MS. NELSON: And when I realized that I couldn't read
18 it I asked my assistant to contact the school for a more
19 legible one, but she was told that -- I think Ms. Lindler
20 was the one who was out.

21 MR. SHEEK: Is that what you're talking about?

22 MS. NELSON: Do you all actually have one?

23 MR. SHEEK: Yes.

24 MS. NELSON: That's something that has never been
25 provided to me.

LORI LINDLER - CROSS EXAMINATION

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1 MS. NELSON: You actually had this in --

2 THE WITNESS: I didn't have it in my permanent records.

3 MS. NELSON: Oh, okay.

4 THE COURT: Do you need to take a minute to look at
5 that before we bring the jury back out?

6 MS. NELSON: Yes, Your Honor. If you don't mind.

7 THE COURT: Sure. Take your time. Everybody just be
8 at ease for just a moment.

9 (Whereupon, there was a pause in the proceedings.)

10 THE COURT: Okay. Bring the jury out, please, sir.

11 (Whereupon, the jury entered the courtroom at 2:45
12 p.m.)

13 THE COURT: Let the record reflect the jury is back in.

14 And, Ms. Nelson, we're still on your cross examination.

15 MS. NELSON: Thank you, Your Honor.

16 Q Ms. Lindler, I think I was asking you whether you had a
17 copy of any disciplinary reports on Ms. Minor

18 A Yes.

19 Q And are there -- was she ever disciplined during the
20 2009 to 2010 school year for falling asleep in class?

21 A If she was disciplined for falling asleep in class it
22 was not to the extent that it made it to a referral.

23 Q Okay. Are there -- are there other potential minor
24 infractions at school that do make it to referrals?

25 A Typically what occurs in a classroom, if something is

LORI LINDLER - CROSS EXAMINATION

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1 minor and it occurs in the classroom, the teacher may give a
2 child a warning. If it occurs again, the teacher may make
3 contact with a parent. If it occurs again, the teacher may
4 insist that they stay for teacher detention. Usually if
5 it's something that those -- those avenues do not take care
6 of, then it may make it to a referral. And there's really
7 no documentation that I know of that would -- you know,
8 unless they were just teachers' records, which they keep
9 from time to time, stating that, you know, this child chews
10 gum in my class, or this child is tardy, or this child is
11 sleeping and this is their first offense, or this is their
12 second offense and I made parent contact. Typically if
13 those first lines of defense do not take care of it, then it
14 makes it to a referral. So there's not anything in her
15 discipline record that shows that it made it to a referral.

16 Q And a referral means it would show up on this
17 discipline report?

18 A Right.

19 Q Is that what you mean?

20 A That's correct. A referral would be written up by the
21 teacher, it would be turned into the office, and at that point
22 in time it would make it into the computer system. The
23 student's records.

24 Q So what you're saying is that sometimes if it's not a
25 repeated offending it won't end up on a report?

LORI LINDLER - CROSS EXAMINATION

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1 A That's correct.

2 Q Okay. And I'm not going to ask you what they are, but
3 did Ms. Minor get referrals for other -- for some other minor
4 things?

5 A I believe there were -- she received four referrals.

6 Q Thank you, ma'am. It turned out that you actually did
7 have an attendance record. It just wasn't up on the stand
8 with you?

9 A That's correct.

10 Q But you did bring those with you today?

11 A Right.

12 MS. NELSON: May I approach, Your Honor?

13 THE COURT: Sure.

14 Q Could I show this to you and ask you if Ms. Minor was
15 ever absent from school during the months of April 2010?

16 A She was not, according to this.

17 Q Thank you, ma'am.

18 MS. NELSON: May I have just a moment, Your Honor?

19 THE COURT: Sure.

20 MS. NELSON: That's all I have. Thank you, Your Honor.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MR. SHEEK:

24 Q Those four referrals she asked you about, were they
25 major offenses, fighting, stealing, carrying a gun, bringing

LORI LINDLER - REDIRECT EXAMINATION

262

1 a knife to school?

2 A No, sir.

3 Q What were they for?

4 A There was a phone violation, another phone violation --

5 Q Now, tell us -- let me stop you there. Phone
6 violation. When I went to school we didn't have cell
7 phones.

8 A That just means --

9 Q I mean, we barely had regular phones.

10 A That just means that the student was caught potentially
11 having their phone out in class or maybe using that phone
12 during the school day when they're not supposed to.

13 Q Has that gotten to be a problem in schools now, kids
14 texting and stuff in class?

15 A There was a time where it was, but they -- they've
16 learned that if it's out we'll take it and it's gotten
17 better.

18 Q You've got pretty much a zero tolerance policy on that?

19 A Just that the phone is confiscated and -- on the first
20 offense, and then it's returned to a parent at the end of
21 the day. And then it's -- you know, if the offenses occur
22 more and more it becomes a little more severe.

23 Q Okay. So you had two phone violations.

24 A Right.

25 Q What else do you have?

LORI LINDLER - RECROSS EXAMINATION

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1 A We have one that was listed as other. And when I went
2 into the system just to see exactly what that -- the details
3 on that one, she was chewing gum in class. And then there
4 was one more where she had a refusal to obey.

5 MR. BROWN: Thank you, Ms. Lindler. I have nothing
6 else.

7 THE COURT: Thank you, ma'am, for your testimony. You
8 can step down.

9 MS. NELSON: Can I have just one more quickly from --

10 THE COURT: Oh, sure. Sure.

11 RECROSS EXAMINATION

12 BY MS. NELSON:

13 Q The dates of those phone violations were September 16th
14 of '09 and October 8th of '09?

15 A That is correct.

16 Q So Ms. Minor would have had a phone at school in order
17 to been referred for that?

18 A Well, it could have been her phone or someone else's.
19 If a student is in possession maybe of someone else's phone
20 and they're caught with it then they're written up for
21 having the phone out.

22 MS. NELSON: Okay.

23 THE COURT: Thank you, ma'am, for your testimony.
24 You're free to leave the courthouse or you're welcome to
25 remain with us.

ROGER HUNNICUTT - DIRECT EXAMINATION

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1 (Whereupon, the witness steps down from the witness
2 stand.)

3 THE COURT: All right, Solicitor.

4 MR. BROWN: The State calls Roger Hunnicutt.

5 ROGER HUNNICUTT, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Mr. Hunnicutt, the first thing I'm going to get you to
10 do is state your name and spell it for the court reporter.

11 A Roger Hunnicutt, R-o-g-e-r, H-u-n-n-I-c-u-t-t.

12 Q Mr. Hunnicutt, where do you work now?

13 A Right now I work part-time for the Town of Iva, and I'm
14 also self-employed.

15 Q And how long have you been doing that?

16 A For two years.

17 Q And where did you work before you worked for Iva and
18 being self-employed?

19 A The town of Calhoun Falls with the Calhoun Falls Police
20 Department.

21 Q How long were you there at Calhoun Falls?

22 A Approximately eight years.

23 Q What was your rank there?

24 A Lieutenant.

25 Q And on a day-to-day basis what would you do?

ROGER HUNNICUTT - DIRECT EXAMINATION

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1 A Conduct investigations, and narcotics investigations
2 and traffic details. Just a little bit of everything.

3 Q Now, Mr. Hunnicutt, do you remember hearing a case or
4 being involved on a case concerning Minor and Keith
5 Denver Tate?

6 A Yes, sir. On 8/25 of 2010.

7 Q What was the alleged crime?

8 A Sexual assault.

9 Q And when you got involved -- tell me how you got
10 involved with it.

11 A I was notified by Officer Connelly with the Calhoun
12 Falls Police Department that he needed me to meet him at the
13 Calhoun Falls Charter School in reference to this case. And
14 then at that time I did respond to the Charter School to
15 meet with Mr. Connelly and was made aware of the
16 investigation that had already started.

17 Q And based on talking with Mr. Connelly and -- and who
18 else did you meet with at Calhoun Falls Charter School?

19 A It was Officer Connelly, Ms. Lindler, and then Ms.
20 Holland was also present in the guidance counselor's room.

21 Q And after you met with all those folks, Ms. Holland,
22 Ms. Lindler, Connelly, what did you all decide to do?

23 A We decided to obtain a -- to fill out an affidavit for
24 a search warrant for the residence where the incident had
25 taken place, and also arrest warrants for the individual.

ROGER HUNNICUTT - DIRECT EXAMINATION

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1 Q And where did the sexual assaults allege to have taken
2 place?

3 A I'll have to actually look at the file. I'm not sure
4 of the exact address. But it was Lee Street Apartments
5 within the town limits of Calhoun Falls. But I'm not sure
6 of the exact apartment number?

7 Q And that's in Abbeville County?

8 A Yes, sir.

9 Q And were you able to secure a search warrant?

10 A Yes, sir. I was.

11 Q And did you all execute that search warrant?

12 A We did.

13 Q When did you execute that search warrant?

14 A On 8/25 of 2010 at approximately 2:45 p.m. in the
15 afternoon.

16 Q And that would be after you talked with the folks at
17 Calhoun Falls Charter School?

18 A That's correct.

19 Q When you executed the search warrant at the house did
20 you all seize anything?

21 A We did.

22 Q What did you all seize?

23 A I would have to look at the search warrant in itself to
24 be able to look at the list of items that were obtained.

25 MR. BROWN: May I approach, Your Honor?

ROGER HUNNICUTT - DIRECT EXAMINATION

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1 THE COURT: Sure.

2 Q I'm going to show you a document and see if you
3 recognize that document there.

4 A Yes, sir. It's a copy of the search warrant that was
5 obtained for the residence.

6 Q And did you execute that search warrant?

7 A I did.

8 Q How can you tell?

9 A It has my signature on the search warrant where I
10 executed the search warrant on 8/25/2010 at 3:00 p.m.

11 Q And what was the location that you executed that search
12 warrant on?

13 A In apartment located at within the
14 town limits of Calhoun Falls, further described as a brick
15 single-story structure.

16 Q And after you executed that search warrant did you
17 seize anything?

18 A I did.

19 Q What did you seize in that apartment -- or why did you
20 -- tell me what you seized and then I'll go further.

21 A Yes, sir. There was five blue Samsung cell phones, one
22 blue and gray LG cell phone, one composition notebook, one
23 ID of Keith Denver Tate, three cushions off the couch on the
24 livingroom -- in the livingroom, one blue and gray blanket,
25 one white blanket, one couch mattress and covering from the

ROGER HUNNICUTT - DIRECT EXAMINATION

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1 couch in the livingroom.

2 Q And why did you take those items?

3 A The items that were taken -- there were a folder that
4 was obtained during the search warrant. And also prior to
5 the search warrant, given from the victim when Officer
6 Connelly was talking with the victim, that described the
7 incidents that happened within the location and the
8 locations of the incident inside the residence, and that's
9 why the items were seized.

10 Q And where did you seize these items from?

11 A The mattress, the covers, the blanket was seized from
12 the couch in the livingroom area, and then the cell phones
13 were seized throughout the house, and the ID was seized in
14 the residence.

15 Q And after you seized these items what did you do with
16 them?

17 A They were transported from the scene to the Calhoun
18 Falls Police Department and placed in the evidence room.

19 MR. BROWN: No further questions.

20 THE COURT: Cross examination?

21 MS. NELSON: Thank you, Your Honor. May it please the
22 court.

23 CROSS EXAMINATION

24 BY MS. NELSON:

25 Q Hi, Mr. Hunnicutt.

ROGER HUNNICUTT - CROSS EXAMINATION

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1 A Hello, ma'am.

2 Q So you were -- you were at the school to talk to Ms.

3 Minor about the allegations?

4 A I was there assisting the officer. The investigating
5 officer. Yes, ma'am.

6 Q And that was Mike Connelly?

7 A Yes, ma'am.

8 Q So you were there when she was giving details about the
9 various dates that things happened?

10 A I was there partial of the time. Yes, ma'am. Like I
11 said, the investigating officer was Officer Connelly and I
12 had came in to assist him. So I wasn't there the whole
13 time.

14 Q The parts that you were there for, how was Ms. Minor
15 able to arrive at the dates that she gave you?

16 A If I'm not mistaken, there was a calendar of -- that
17 they were looking at that had sporting or athletic events
18 that pertained to the dates.

19 Q Do you remember anything else more specific about that?

20 A It's maybe after football games, or some type of games
21 that -- the dates that the victim was giving the
22 investigating officer when the incidents took place.

23 Q Okay. And the dates -- she gave 10 dates, right?

24 A If that's what's in the report, ma'am. I'm not aware
25 of the dates without looking at them.

ROGER HUNNICUTT - CROSS EXAMINATION

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1 MS. NELSON: May I approach, Your Honor?

2 THE COURT: Sure.

3 Q And I actually emailed you this report last week,
4 didn't I?

5 A Yes, ma'am.

6 Q Could you take a look at that report and confirm for me
7 that there were 10 dates reported?

8 A Yes, ma'am. It has 10 dates within the report.

9 Q And those dates are -- the first one is August 29th of
10 2009?

11 A Yes, ma'am. That's what's in the report.

12 Q And you or Mr. Connelly then obtained a warrant for
13 that date, didn't you, for August 29th?

14 A I would have to look at the warrant, ma'am.

15 MS. NELSON: May I approach, Your Honor?

16 THE COURT: Sure.

17 Q I'm handing you the 10 warrant.

18 A Yes, ma'am.

19 Q They may be in numerical order rather than date order.
20 I tell you what. Why don't I --

21 A Yeah, they're all out of order.

22 Q Let me take them back and I'll hand them to you,
23 because you don't have anything to rest them on --

24 A Thank you, ma'am.

25 Q -- or anything.

ROGER HUNNICUTT - CROSS EXAMINATION

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1 A Thank you, ma'am.

2 Q Was there any point in your discussions with Ms. Minor
3 or overhearing what she was talking to Officer Connelly
4 about that she said that any of these events took place
5 anywhere other than Lee Street Apartments in Calhoun Falls?

6 A I don't recall any other place that they had taken
7 place.

8 Q And if they had -- if you had been told they took place
9 somewhere else you wouldn't have -- that was out of
10 Abbeville County you wouldn't have -- or out of Calhoun
11 Falls you wouldn't have obtained a warrant for that?

12 A I wouldn't have had jurisdiction.

13 Q Right. I'd like to show you one of the warrants and
14 ask you if that was taken out for an alleged incident on
15 August 29th, 2009.

16 A Yes, ma'am.

17 Q And then the next date she gave you, according to the
18 warrant, was October 31st, 2009, according to the report.
19 I'm sorry.

20 A Yes. Yes, ma'am. According to the incident report.

21 Q And so, you took out a warrant for that date as well?

22 A I would have to look at the warrant. No, ma'am. I did
23 not.

24 Q That's not a warrant for October 31st?

25 A It is, but it's not my signature, ma'am.

ROGER HUNNICUTT - CROSS EXAMINATION

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- 1 Q Did the police department --
- 2 A Yes.
- 3 Q -- take out a warrant --
- 4 A Yes, ma'am.
- 5 Q -- for October 31st? Mr. Connelly did that?
- 6 A Yes, ma'am.
- 7 Q Okay. The next date she gave you was December 14th,
- 8 according to the report, of 2009?
- 9 A Yes, ma'am. That's what's in the report.
- 10 Q And did you take out a warrant for that date?
- 11 A Yes, ma'am.
- 12 Q The next date she gave you was September 26th, 2009?
- 13 A Yes, ma'am. That's what's in the officer's report.
- 14 Q And the police department took out a warrant for that
- 15 date?
- 16 A Yes, ma'am.
- 17 Q And again, that was a warrant alleging that this
- 18 incident on December 26th occurred in Calhoun Falls at the
- 19 Lee Street Apartments in the livingroom?
- 20 A Yes, ma'am.
- 21 Q And if you had been told that the incident on that date
- 22 occurred in Greenville, the police department would not,
- 23 again, have taken out that warrant, right?
- 24 A Yeah, the officer would have been told that. That's
- 25 correct.

ROGER HUNNICUTT - CROSS EXAMINATION

273

1 Q The next date was February 6th, 2010?

2 A Yes, ma'am. That's what's in the report.

3 Q Did the police department take out a warrant for that
4 date as well?

5 A Yes, ma'am.

6 MR. SHEEK: Your Honor, if it helps, the State will
7 stipulate the warrants were taken out for each day testified
8 to.

9 MS. NELSON: It's not accurate as to one of the
10 warrants.

11 THE COURT: Okay. You may proceed.

12 MS. NELSON: It's -- all of the dates match except this
13 next one.

14 THE COURT: Okay. You may proceed.

15 Q The next date that she alleged was February 14th, 2010?

16 A That's what's in the report, ma'am.

17 Q According to the report?

18 A Yes, ma'am.

19 Q And then the police department took out a warrant, but
20 it was for February 13th?

21 A Yes, ma'am. And on the warrant is that on or about.

22 Q But all the other dates were the exact dates that --
23 the other dates match up with the incident report; is that
24 right?

25 A That's correct.

ROGER HUNNICUTT - CROSS EXAMINATION

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1 Q So it's probably a mistake.

2 A Well, it states on the report that on or about
3 2/13/2010.

4 Q Well, I guess what I'm asking is you didn't -- the
5 police department didn't adjust the dates on any of the
6 other --

7 A I'm not the officer on this warrant, so I can only
8 testify to what I have in front of me.

9 Q Okay. The report says 2/14 and the warrant says 2/13?

10 A It says, "That on or about." Yes, ma'am.

11 Q The report says on February 14th, 2010 and not on or
12 about, right?

13 A That's correct. It says March 14th, 2010.

14 Q February 14th.

15 A That's correct. February the 14th, 2010.

16 Q And then she gave you dates of March 14th, March 15th
17 and March 18th?

18 A That's correct.

19 Q Actually, she gave you four more. I'm sorry. March
20 3rd, 14th, 15th and 18th?

21 A That's what's in the officer's report, ma'am.

22 Q I'll try to streamline it a little bit. And did the
23 police department take out warrants for all of those dates?

24 A Yes, ma'am.

25 Q And all of these warrants again allege that Mr. Tate

ROGER HUNNICUTT - CROSS EXAMINATION

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1 had sexual intercourse with Ms. Minor by putting his penis
2 into her vagina in the livingroom of apartment 2-42 at 209
3 Lee Street in Calhoun Falls. And I can -- I believe the
4 language on all of them is the same. If you want to confirm
5 that for me.

6 A Yes, ma'am.

7 MS. NELSON: May I have just a moment, Your Honor?

8 THE COURT: Sure.

9 Q So you were -- you were there for at least part of the
10 discussion with Ms. Minor and you participated in getting
11 some of these 10 warrants, right?

12 A Yes, ma'am.

13 Q And you executed the search warrant?

14 A Yes, ma'am.

15 Q The phones--that--were obtained through the search
16 warrant, one of those phones belonged to Ms. Minor is that
17 right?

18 A I would have to look at the documentation and stuff.
19 But there were those phones that were seized. I'm not sure
20 who they all belonged to without looking.

21 Q And I'm wish I had something I could show you. I
22 don't.

23 MR. BROWN: Objection, Your Honor. That's an improper
24 statement.

25 THE COURT: Okay. Stricken from the record.

ROGER HUNNICUTT - CROSS EXAMINATION

276

1 Q The police department would have provided all of the
2 available records on what phones were taken to the
3 Solicitor's Office, wouldn't they?

4 A The phones were put into evidence at the Calhoun Falls
5 Police Department and then transferred to the State Law
6 Enforcement Division.

7 Q So the phones that were taken by the police were sent
8 to SLED for analysis?

9 A Yes, ma'am.

10 Q And what's the purpose of having SLED analyze the
11 phones?

12 A You can look for photos, text messages, emails,
13 depending on the phone.

14 Q Do you know what the results of that analysis are?

15 A No, ma'am. I do not. Because I wasn't employed with
16 the agency when they got the results back.

17 Q When did you leave Calhoun Falls?

18 A It's been approximately two years ago. I don't know
19 the exact date. It wasn't soon enough.

20 Q And you said that when you took these items from the
21 house you put them in the evidence locker at the police
22 department?

23 A When they were taken from the apartment. Yes, ma'am.

24 Q You put them into evidence, and then what happened to
25 them?

ROGER HUNNICUTT - CROSS EXAMINATION

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1 A They were transferred to SLED for analysis.

2 Q Did you do that?

3 A Yes, ma'am.

4 Q Did the Calhoun Falls Police Department have -- isn't
5 it typical for a law enforcement agency, when they're
6 logging items into evidence to have a form that tells what
7 was logged in and when it was logged in and who it was
8 logged in by?

9 A It is.

10 Q And there -- that form doesn't exist in this particular
11 case, does it?

12 A I can't say what's there now and what's not. Like I
13 said, I'm not -- I haven't been there for two years now.

14 Q Was it your practice to fill out that kind of form when
15 you logged evidence?

16 A If I can look at the folder, I'm sure there's some
17 transfer reports in there. I mean, I don't -- but, yes, it
18 is. And when I took it to SLED, they actually make you sign
19 forms there that they received the information. So there
20 should be documentation, ma'am.

21 Q Well, I'm talking about documentation from Calhoun
22 Falls Police Department though.

23 A Yes. When you log evidence in you put it in the
24 evidence room and secure it. Yes, ma'am.

25 Q So if that form doesn't exist it either wasn't filled

ROGER HUNNICUTT - CROSS EXAMINATION

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1 out, or it had been lost, or --

2 A I can't state as to what -- I haven't been there in two
3 years. But, I mean, as to it existing or not, I mean, I
4 can't -- I know that the evidence is logged in when it's
5 placed into the evidence room at the police department two
6 years ago. Well, this would have been four years ago.

7 Q Were you the -- you were the person who went before the
8 grand jury to present these charges, weren't you?

9 A I would have to look at the indictments. But it's
10 possible, because I was the Court Officer, ma'am.

11 Q Take a look at that.

12 A Yes, ma'am.

13 Q And let me know when you're ready.

14 MR. BROWN: Judge, can I see that?

15 MS. NELSON: Oh, I'm sorry.

16 MR. BROWN: Judge, we'll stipulate this went to the
17 grand jury.

18 THE COURT: Are you going to accept the stipulation or
19 do you want to continue --

20 MS. NELSON: I want to ask him about some of the dates
21 on here, Your Honor.

22 THE COURT: Okay.

23 Q Just let me know when you're ready. Were you a witness
24 for the grand jury for all 10 of those indictments?

25 A Yes, ma'am. Yes, ma'am.

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1 MR. BROWN: Judge, may we have a side bar?

2 THE COURT: Sure.

3 (Whereupon, a side bar was held.)

4 Q So this was an indictment for an incident on March 18th
5 of 2010?

6 A Yes, ma'am. That's the date on the document.

7 Q And that matches up with what's in the incident report
8 and what was on the warrant?

9 A Yes, ma'am.

10 Q This is one for March 15th, 2010?

11 A Yes, ma'am.

12 Q That date also matches up? March 14th, 2010?

13 A Yes, ma'am. As on or about March the 14th. Yes,
14 ma'am.

15 Q And that was one of the dates in the incident report as
16 well?

17 A Yes, ma'am.

18 Q This indictment is for October 31st, 2009?

19 A Yes, ma'am. On or about October 31st.

20 Q And again, that matches up with a date in the incident
21 report --

22 A Yes.

23 Q -- and on the warrant?

24 A Yes, ma'am.

25 Q This indictment is for August 26th of 2009; is that

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1 right?

2 A It's got on or about.

3 Q On or about August 26th?

4 A Yes.

5 Q And that is a different date than the August 29th date
6 in the incident report; is that right?

7 A Yes, ma'am.

8 Q Do you know which date is right? August 26th or August
9 29th?

10 A On the incident report, ma'am, it has the 29th, and it
11 has on or about, so...

12 Q And do you have any independent recollection of which
13 date she would have told the police?

14 A No, ma'am. I can't speculate on that date. Like I
15 said, the officer had it in the report here. In his report.

16 Q Okay. And there was a different date presented to the
17 grand jury than the one in the incident report?

18 A Yes. On or about.

19 Q And this is the indictment for December 14th of 2009?

20 A Yes, ma'am.

21 Q And that does match up with the date in the incident
22 report, doesn't it?

23 A Yes, ma'am.

24 Q One for February -- I'm sorry. I need another hand.
25 February 4th, 2010?

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1 A No, ma'am.

2 Q I'm sorry. I think I read the date that it was before
3 the grand jury. February 6th of 2010?

4 A That's correct.

5 Q That matches up with the incident report?

6 A Yes, ma'am.

7 Q This is on or about the 13th day of February, 2010?

8 A That's correct. On or about the 13th day.

9 Q And the incident report actually has February 14th?

10 A Yes, ma'am.

11 Q Right. This is one for the 3rd day of March, 2010?

12 A Yes, ma'am.

13 Q That date matches the incident report?

14 A Yes, ma'am.

15 Q And then finally this one is for the 26th day of
16 December 2009?

17 A Yes, ma'am.

18 Q And that was the date that you presented to the grand
19 jury?

20 A Yes, ma'am.

21 Q And you would not have presented that date if you had
22 any information that that incident actually occurred in
23 Greenville? Isn't that right?

24 A No, ma'am. That's correct.

25 Q So we've talked about you executing the search warrant

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1 and putting the evidence in the -- logging in the evidence,
2 taking it to SLED, and part of what you took did include
3 cell phones in the house, right?

4 A That is correct, ma'am.

5 Q Part of what you took included -- included this
6 journal?

7 A That I took where, ma'am?

8 Q From the house.

9 A Yes, ma'am.

10 Q And this was something that Minor had said she
11 recorded all the dates in, wasn't it?

12 A I would have to look in the incident report that had
13 information pertaining to the case. Yes, ma'am.

14 Q So --

15 A But I can't say the dates. That the dates were in
16 there.

17 Q You can't say that the date were in there?

18 A I can't -- I'm not --

19 Q I'm just trying to understand what you're telling me.

20 A Yeah, I can't -- I mean, without looking at it I can't
21 tell you the dates are in there.

22 Q Was it your understanding, or do you have a memory, of
23 whether Ms. Minor told law enforcement that she had recorded
24 these dates in a journal?

25 A I can't speak for what she told Officer Connelly, who

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1 was the initial investigating officer, but I know that there
2 were dates that were -- that she had sat down and talked
3 with law enforcement about. Yes, ma'am.

4 Q So if she hadn't have said something about this
5 journal, why would it have been important for you to take
6 it?

7 A As I referred to earlier, I said it did have
8 information pertaining to the case in it, ma'am.

9 Q And what information pertaining to the case did it
10 have?

11 A Ma'am, I'd have to look at it. It's been four years.

12 MS. NELSON: May I approach, Your Honor?

13 THE COURT: Sure.

14 A I also need the incident report, ma'am.

15 Q Okay. And I can't speak on Officer Connelly's behalf.

16 MR. SHEEK: Your Honor, just for clarification, is the
17 Defense asking his opinion on why he thinks it is or is not
18 important in the composition book?

19 THE COURT: I think this witness has testified that
20 there was information related to the case, and I think
21 counsel asked him what information is in there. I think
22 that was the question.

23 A And again, ma'am. I can't speak on Officer Connelly's
24 behalf, and I can't assume that anything is in here. But it
25 was made known that there were information wrote down

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1 pertaining to the case, and that's why this was taken.

2 Q So when you executed the search warrant you took that
3 journal and that was based on information that there was
4 stuff written down about the case?

5 A Yes, ma'am. But I can't -- I can't assume what is in
6 there.

7 Q Okay. Now, other than the things that we've talked
8 about already, did you have any further involvement in this
9 case?

10 A As?

11 Q As an investigating officer? As an officer of the
12 Calhoun Falls Police Department?

13 A No, ma'am.

14 Q Did you ever speak to Ms. Minor mother?

15 A When we served the search warrant she was present.

16 Q Did she give you a statement?

17 A No, ma'am. Not that I can recall.

18 Q Did you have any knowledge just from Calhoun Falls
19 small community, did you -- did you have any knowledge of
20 Ms. Reed, who is --

21 A I can't --

22 Q -- Ms. Minor mother, prior to that date?

23 A I can't really speculate when you say as the Calhoun
24 Falls Community speculating. I mean, my kids believe in the
25 Easter Bunny but I can't tell them it's not real.

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1 Q I just meant from -- did you have any interactions with
2 her in the community where you knew her at all?

3 A We might have had some cases before that. I mean, I
4 would have to look at the records pertaining to -- to her --
5 and the Defendant.

6 Q Did you have any understanding at all that she had some
7 mental health issues or physical health issues?

8 A Now, I was aware that she had some medical issues,
9 because they were -- and I would have to look at the
10 statements. But there -- in one of the statements the
11 victim stated that when his mother -- when her mother was
12 given medication; that's when the incidents would take
13 place.

14 Q Now, were any -- was any medical information obtained
15 about Ms. Reed?

16 A No, ma'am. Not that I'm aware of.

17 Q Okay. Were any of the other family members talked to?

18 A By me?

19 Q By you, or to your knowledge by anyone?

20 A To my knowledge -- by me, no. To my knowledge, I can't
21 -- I can't say of any other officer that might have spoken
22 with them, or any other person pertaining to this case.

23 Q Were you aware that there were two younger brothers
24 living in the household?

25 A I was.

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1 Q And you did not speak to either of them?

2 A No.

3 Q And you don't have any independent knowledge of anybody
4 else talking to them?

5 A Not that I'm aware, ma'am.

6 Q All right.

7 MS. NELSON: I'm sorry. Can I have just a moment, Your
8 Honor?

9 THE COURT: Sure.

10 Q Did you have any knowledge about -- about Ms. Minor
11 later giving an interview at the Child's Place in Greenwood?

12 A I knew there was an appointment set up for her to go,
13 but I did not attend.

14 Q Did you ever review the video of that interview?

15 A No, ma'am.

16 Q So you didn't know how that interview might stack up
17 against --

18 A No, ma'am.

19 Q -- what she told you and Mr. Connelly?

20 A No, ma'am.

21 Q Did you take any witness statements in this case
22 yourself?

23 A I would have to look at the case file.

24 Q Well, I sent that to you last week.

25 A It was very -- what you emailed me, I guess you scanned

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1 it and it was -- I couldn't read it.

2 Q I believe that's what I sent to you. If you could take
3 a look at it and let me know if you took any witness
4 statements.

5 A If this is the complete case file, no, ma'am.

6 Q And you don't have any independent recollection of
7 taking any, do you?

8 A No, ma'am.

9 Q Did you have any involvement with asking Ms. Minor to
10 provide any statements on or after August 25th, 2010?

11 A No, ma'am.

12 Q When you went to execute the search warrant you
13 obviously would have had to go in the apartment?

14 A Yes, ma'am.

15 Q And it's a small three bedroom apartment? Is it a
16 three bedroom apartment?

17 A Without seeing the layout of it now, mean, I can't --

18 Q You don't remember?

19 A No. It's been four years now.

20 Q So you don't remember the size of any of the rooms or
21 anything like that?

22 A No, ma'am. I've served hundreds of search warrants.

23 Q I understand. Did you take any photographs of the
24 living room where these incidents allegedly took place?

25 A I didn't myself, but there were other officers there.

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1 If it's not in the case file I can't tell you yes or no if
2 photographs were taken.

3 Q You don't have any independent memory of anybody taking
4 photographs?

5 A No, ma'am.

6 MS. NELSON: That's all I have. Thank you.

7 THE WITNESS: Thank you, ma'am.

8 MR. BROWN: No redirect, Your Honor.

9 THE COURT: Thank you for your testimony, sir. You can
10 step down.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You're free to leave the courthouse or
13 you're welcome to remain with us.

14 THE WITNESS: Thank you.

15 (Whereupon, the witness stepped down from the witness
16 stand.)

17 THE COURT: Let's take a 10 minute break. I caution
18 the jury not to begin to discuss this case, anything about
19 this case, and we'll be back in about 10 minutes.

20 (Whereupon, court was in a brief recess.)

21 THE COURT: Bring the jury out, please, sir.

22 (Whereupon, the jury entered the courtroom.)

23 THE COURT: Let the record reflect the jury is back in.
24 Solicitor, you may proceed.

25 MR. SHEEK: Thank you, Your Honor. The State calls Dr.

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1 Lyle Pritchard to the stand.

2 DR. LYLE PRITCHARD, having

3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SHEEK:

6 Q Doctor, if you would, please tell us your first and
7 last name and spell the name for the court reporter.

8 A I'm Lyle Pritchard, P-r-I-t-c-h-a-r-d.

9 Q And spell Lyle for us.

10 A L-y-l-e.

11 Q Thank you, Dr. Pritchard. Where are you currently
12 employed now?

13 A At Self Regional Hospital in Greenwood, South Carolina.

14 Q And you are a physician?

15 A I am a physician.

16 Q If you would, ma'am, tell the jury a little bit about
17 your education and your area of practice.

18 A I did -- I went to college at the College of William
19 and Mary, and I went to medical school at the Medical
20 University of South Carolina. I did pediatric residencies
21 at both Birmingham, Alabama and Charleston, South Carolina,
22 and I've been in the practice of pediatrics since 1991.

23 Q And as part of your practice in pediatrics have you
24 taken any extra education or extra training regarding the
25 areas of child abuse?

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1 A I have. I'm part of the South Carolina Child Abuse
2 Medical Response System, and with that I'm required to have
3 extra training in child abuse. I'm part of a network of
4 physicians who meet together, review each other's cases, and
5 receive extra training in that area.

6 Q And how long now have you been practicing in the area
7 of pediatrics?

8 A I've been in pediatrics for 23 years.

9 Q And I believe you, along with one of your medical
10 partners, Dr. Grattan-Smith, do the majority of physical
11 examinations on children alleging child abuse?

12 A That's correct.

13 Q In this area obviously?

14 A Right.

15 Q Have you ever been qualified as an expert in the
16 circuit courts of this state in the area of pediatric child
17 abuse?

18 A I have.

19 MR. SHEEK: Your Honor, based on her training and
20 experience, the State would proffer her as an expert in the
21 area of pediatric child abuse.

22 THE COURT: Okay. And, Ms. Nelson, any examination of
23 this witness on the issue of qualification?

24 MS. NELSON: No, Your Honor.

25 THE COURT: All right. Then I will find on the record

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1 that Dr. Lyle Pritchard is an expert in the area of
2 pediatric child abuse. You may proceed, Solicitor.

3 Q Dr. Pritchard, as part of your medical practice, did
4 you have an opportunity to perform a forensic medical
5 examination on Minor.

6 A I did.

7 Q And did you bring some records with you today?

8 A I did.

9 Q Can you tell us the dates you performed that medical
10 examination?

11 A I saw her on November 23rd, 2010.

12 Q And tell the jury what you do when you're doing a
13 medical examination? First of all, do you gear the
14 examination based on different allegations?

15 A I do.

16 Q When you are deciding how you are going to perform this
17 medical examination what information do you look at?

18 A I review the referring incident report from law
19 enforcement, as well as the forensic interview that's been
20 done with the patient. And then I review the patient's
21 medical history, along with usually a parent or the adult
22 taking care of them, and review any past medical history
23 that might be important. Take a history from the child of
24 any problems that they're having and what their concerns
25 are. Why they've been brought in to see me. And then I do

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1 a complete physical exam. And if there's an allegation of
2 sexual abuse, that physical exam includes a colposcopic
3 exam, and with that we use a colposcope which we use to
4 examine the genitalia. It makes any kind of injuries or
5 scars easier to see. It enlarges some and brightens the
6 area.

7 Q And with dealing with Minor did you talk with her
8 regarding any allegations she had, whether or not she had
9 been physically or sexually abused?

10 A I did.

11 Q And did she indicate whether or not she had been a
12 victim of physical or sexual abuse?

13 A She did.

14 Q Did she indicate what kind of abuse she was alleging
15 had occurred?

16 A Well, basically I explained to her that I'm a doctor
17 who sees children who have been hurt by some other person or
18 touched in a way they shouldn't be touched. I ask them to
19 tell me about what had happened to her and she basically
20 gave me a description of what had happened.

21 Q And as a result of that conversation, did you perform
22 that exam on Minor that you just described to the jury?

23 A I did.

24 Q And what were the findings for your examination?

25 A Overall she was a healthy appearing young woman,

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1 cooperative with the exam. Her physical exam, as far as
2 heart, lungs, abdomen, ears, eyes, nose and throat was all
3 normal. On her genital exam, the hymen is the tissues that
4 surrounds the opening into the vagina, and she had what's
5 called a transection. That's where there's actually a
6 little divot of the hymen.

7 Q And to you, what is that indicative of?

8 A The medical literature suggests that that's consistent
9 with something being forced into the vaginal opening.

10 Q Now, when you say forced in, are you able from a
11 medical standpoint to differentiate between consensual sex
12 or non-consensual sex?

13 A No.

14 Q So what you're simply saying is that something has been
15 pushed into the vagina, but the circumstances of which you
16 couldn't medically determine?

17 A That's correct.

18 Q When that cleft or that transection occurs, would it
19 normally cause bleeding?

20 A It can cause bleeding, yes.

21 Q Now, Dr. Pritchard, in your practice dealing with kids
22 who are subject to child abuse whether sexual or physical,
23 do you have a rough estimate how many cases you've dealt
24 with?

25 A Probably -- I've examined children for allegations of

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1 abuse between six and 700.

2 Q And in your training and experience, is it common for
3 reports of abuse to be delayed? That is, there will be some
4 past time between the abuse and the actual telling?

5 A The large majority of cases of sexual abuse involving
6 children there's a delay in the disclosure. A delay in the
7 time between when it happens and when the child tells
8 someone.

9 Q So if there were a, say, a five month delay or more
10 would you find that to be odd or unusual at all?

11 A Actually that's usual.

12 Q Now, if Minor had reported some type of physical
13 abuse, a hitting or a striking or something that would cause
14 bruising, would you have expected to find any medical
15 information -- or any medical evidence of that when you
16 examined her in August? And for that purpose of that
17 question you would have to assume the physical abuse had
18 stopped by March of 2010.

19 A And then when I saw her in November.

20 Q November. I'm sorry. November.

21 A So if there had been no abuse between March and
22 November would I expect there to be physical findings of
23 abuse? Is that the question?

24 Q Yes, ma'am.

25 A No, I wouldn't -- I would not. Any sort of bruising I

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1 would have expected -- or, you know, lacerations I would
2 have expected to be resolved by then.

3 Q Were your physical findings, the result of your
4 physical examination, in your expert medical opinion,
5 consistent with the allegations Minor gave you of what her
6 step-father had done to her?

7 A Yes.

8 MS. NELSON: Objection. Calls for --

9 THE COURT: Excuse me. The nature of your objection?

10 MS. NELSON: That this is bolstering testimony, Your
11 Honor.

12 MR. SHEEK: Your Honor, she's been qualified as an
13 expert. I think she's certainly qualified to make that
14 determination.

15 MS. NELSON: Well, what she has testified to is that
16 what she saw is consistent with either consensual or non-
17 consensual vaginal penetration by something, and -- and
18 that's consistent with something other than abuse.

19 MR. SHEEK: This particular question, Your Honor, was,
20 was her finding consistent with the history that Minor had
21 given, based on her medical expert opinion.

22 THE COURT: Let me see the lawyers side bar for just a
23 moment.

24 (Whereupon, a side bar was held.)

25 THE COURT: Madam Forelady and ladies and gentlemen of

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1 the jury, the last answer that Dr. Pritchard gave will be
2 stricken from the record and you are not to consider that
3 last bit of testimony at all in your consideration at the
4 appropriate time of this case. So objection sustained.

5 MR. SHEEK: Thank you. No further questions, Your
6 Honor.

7 CROSS EXAMINATION

8 BY MS. NELSON:

9 Q Hi, Dr. Pritchard.

10 A Hi.

11 Q And again, this examination took place November 23rd of
12 2010?

13 A That's correct.

14 Q And this was done at the Child's Place; is that right?

15 A That's correct.

16 Q And that is an agency that works in conjunction with
17 law enforcement and prosecution to develop evidence to
18 generally support allegations of sexual abuse; is that
19 right?

20 A It's an allegation where really children, through law
21 enforcement or through the Department of Social Services, or
22 for other medical providers, like other pediatricians, have
23 concerns that there are findings in the child's behavior or
24 on physical exam that -- or things that the child has said
25 that their suggestions that the child may have suffered some

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1 sort of abuse. And so, we do a full evaluation there,
2 including interviews and physical exams.

3 Q And this particular case was referred by law
4 enforcement?

5 A That's correct.

6 Q Right?

7 A Yeah.

8 Q You had a chance to review the forensic interview in
9 this case?

10 A I did.

11 Q And that was done with Ms. Jessica Bell at the Child's
12 Place?

13 A Yes.

14 Q Do you have a recollection of the interview?

15 A I've read the interview. I don't know all the details
16 of it.

17 Q So did you read the report of the interview or did you
18 actually watch the video?

19 A No, I read the report, not the video.

20 Q Do you recall that being a pretty extensive report?

21 A Yes.

22 Q Ms. Minor provided a significant amount of detail during
23 that interview?

24 A I believe she did, yes.

25 Q Okay. And you testified that you explained to the

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1 child that you're -- to this person you're seeing that

2 you're there to talk to people who are hurt or --

3 A Specifically what I tell them is that I'm the doctor

4 who sees children who may have been hurt by someone or

5 touched in a way or place that they shouldn't be touched and

6 ask them if something has happened to them.

7 Q Well, what I heard you testify to, and what I see in

8 your report, is that you told the patient that you're the

9 doctor who sees patients who have been hurt by other people

10 or touched in a way they don't like.

11 A That's correct, yeah.

12 Q So you're assuming that the -- that there was actual

13 hurt or that there was actual touching?

14 A Or that they've told somebody that that's happened,

15 yes.

16 Q Okay. And you have testified that this transection

17 that you saw is not necessarily a result of someone being

18 held down and raped, it's consistent with something being

19 pushed into the vagina?

20 A That's correct.

21 Q And that could be a penis, it could be something else?

22 A An object, yeah.

23 Q Okay. And once that transaction occurs, if there is

24 penetration later would there be significant continued

25 bleeding?

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1 A No.

2 Q Part of the -- you obtained some information before you

3 --

4 A Right.

5 Q -- examined Ms. Minor because you base what you do on
6 that information --

7 A Exactly.

8 Q -- right?

9 A Yes.

10 Q Was part of the information that you obtained that Ms.
11 Minor was using contraceptives?

12 A Yes.

13 MS. NELSON: Thank you, ma'am. That's all I have.

14 THE COURT: Anything on redirect?

15 MR. SHEEK: Nothing, Your Honor.

16 THE COURT: Thank you, Doctor, for your testimony.

17 THE WITNESS: Thank you.

18 THE COURT: You may step down. You're excused from the
19 courthouse.

20 (Whereupon, the witness steps down from the witness
21 stand.)

22 THE COURT: Solicitor?

23 MR. SHEEK: The State rests, Your Honor.

24 THE COURT: Okay. Madame Forelady and ladies and
25 gentlemen of the jury, the State has indicated that they are

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1 resting. That means they have concluded their case in
2 chief. There will be a few matters that I need to deal with
3 the lawyers, so I'll ask that you recess to your jury room.
4 I believe I'll get you back out fairly soon. And after I
5 talk with the lawyers it may be situation where we will
6 conclude for the day. But I'm not exactly sure of that yet,
7 so don't hold me to it. But you'll go back to your jury
8 room. And again, don't start talking about this case among
9 yourselves.

10 (Whereupon, the jury exited the courtroom at 4:00 p.m.)

11 THE COURT: Okay. The Defense?

12 MS. NELSON: Your Honor, we move for a directed verdict
13 at this time, particularly on the indictment for August
14 26th, 2009. The testimony from law enforcement officers and
15 -- at least from law enforcement officers, and based on the
16 warrant that was obtained originally for Mr. Tate's arrest,
17 the original date that was given was apparently August 29th,
18 but then when it was presented to the grand jury it was
19 represented as August 26th. So there's conflicting evidence
20 on that charge if the date is -- if the incident report date
21 is correct, then the date on the indictment is wrong. I
22 know there's some case law about on or about language being
23 sufficient, but in this case where there's a lot of
24 contradictory evidence how far are you supposed to extend on
25 or about. My -- what my -- what I think that is used for is

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1 when you're not sure whether something happened at 11:58
2 p.m. on one day or 12:02 a.m. on the next day. There has
3 been no evidence presented at all about what time that
4 incident date is supposed to have occurred, and both the
5 warrant and the incident report are clear that that's the
6 date that was given. There's also been no clear evidence on
7 any of the other dates about why those dates were
8 particularly arrived at. I think there's been conflicting
9 testimony from the witnesses already about the different
10 stories that Ms. Minor told in this case, even though she did
11 not remember a lot of what she said to the forensic
12 interviewer, and for -- there was no description of what
13 happened on these other occasions other than a generalized
14 statement that it was sexual intercourse. But that does not
15 comport with what was told to the forensic interviewer. For
16 all those reasons, Your Honor, we'd ask for directed verdict
17 in this case, particularly on the August 26th date.

18 THE COURT: Okay. Anything from the State?

19 MR. SHEEK: Your Honor, taking the evidence most
20 favorable to the State, the majority of the Defense's
21 argument clearly go to the weight of the evidence and not to
22 admissibility and not to sufficiency, which, of course, your
23 determination at this point is whether or not there's any
24 evidence to support the verdict, not whether or not it's
25 high enough level. And the child clearly testified that on

1 the nine days that she identified that occurred in Abbeville
2 County, that each of those included penetration of the
3 vagina with the penis, and on one occasion it's also the
4 penetration of the anus and her mouth. So she clearly
5 testified to sexual battery occurring on the nine days.

6 Turning specifically to the August 26th, I think
7 Defense counsel's characterization of the case law is
8 clearly in error. Cases are not somewhat dealing with days.
9 They are well settled that the dates are not a critical
10 issue particularly in these types of cases because of the
11 unique nature of sexual assault of children and trying to
12 think back and the delayed reporting, and it's not a
13 situation where the case is dealing with did it happen at
14 11:58 or 12:01. The cases are quite clear that the dates
15 are not essential. Now, if she it happened in 2009 and
16 testified it happened in 1998, we've probably got a big
17 problem. But the on or about language is clearly within the
18 realm of the well settled case law regarding these
19 allegations.

20 THE COURT: Thank you very much. The court does find
21 that there does exist evidence to justify all nine
22 indictments being presented to the jury for determination.

23 Did you want to add anything to your previous argument?

24 MS. NELSON: This isn't going to make any difference.

25 Just for the record I was going to add that it's frequently

LYLE PRITCHARD - CROSS EXAMINATION

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1 in these types of cases, because of the things Mr. Sheek
2 talked about, there's a timeframe alleged, and that was not
3 what the State chose to do in this case. They chose to
4 issue 10 separate indictments for 10 specific dates. And I
5 think that makes a difference, Your Honor.

6 THE COURT: I understand. So noted for the record.
7 Motion denied.

8 MS. NELSON: Yes, sir.

9 THE COURT: And, Ms. Nelson, I think during lunch break
10 you indicated that your witnesses in the morning --

11 MS. NELSON: Yes, sir, Your Honor.

12 THE COURT: So you will not have anything to put up
13 this afternoon?

14 MS. NELSON: I told everybody tomorrow instead of
15 today. And the time I gave was 9:30, based on the time --

16 THE COURT: 9:30 is fine.

17 MS. NELSON: Is that okay?

18 THE COURT: 9:30 is fine. And if agreeable with you,
19 Ms. Nelson, I'll wait to hear what is in your case and chief
20 before I make a firm ruling on your motion to have jury view
21 of the apartment.

22 MS. NELSON: Thank you, Your Honor.

23 THE COURT: Is that satisfactory?

24 MS. NELSON: Sure.

25 THE COURT: Okay. Then we'll be in recess then until -

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1 - well, let me bring the jury back out. Wait one second,
2 please.

3 On jury charge. This appears to be a pretty
4 straightforward charge, at least kind of what Lyon and I
5 have been looking at. Do you have any particular requested
6 charge that you want to try to get to me or get to Lyon this
7 evening?

8 MR. SHEEK: Your Honor, the only charges that we would
9 be seeking is, I think, based on where we've gone with a lot
10 of questioning, I think a charge on the time not being
11 essential, date not being essential would be proper.

12 THE COURT: Look, I came across a couple cases about
13 that when I was looking for something else. I'll -- if
14 you've got something on that, try to send it to Lyon, but
15 we'll look at it, an email. Is there anything in particular
16 you can think of right now?

17 MR. SHEEK: Do you normally charge that corroboration
18 is not required in a case of a rape allegation? Which is
19 statutory. I just didn't know if you normally charged it.
20 We would request it.

21 THE COURT: Okay. I'll take a look at that. Anything
22 else in particular?

23 MR. SHEEK: Not from the State, Your Honor.

24 THE COURT: Ms. Nelson, do you have anything?

25 MS. NELSON: I don't have anything at this point, Your

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1 Honor.

2 THE COURT: You know how to do it. I'm going to give
3 you all a draft copy of the proposed charge and let you all
4 mull it over and, you know, add to, take away, and try to
5 get something that we can all live with.

6 MS. NELSON: And, Your Honor, I am going to oppose any
7 charge being in there about timing, because Ms. Minor clearly
8 agreed with every one of those dates that I wrote down on
9 the paper. The only one she wasn't sure about was February
10 13th or 14th.

11 MR. SHEEK: And I agree and she did testify to that.
12 But for the purposes of convicting on the indictment, the
13 time alleged in the indictment is on or about and it is not
14 critical. I just want to the jury to understand they don't
15 have to find it happened on the 29th or the 26th.

16 THE COURT: We'll take a look at that and we can
17 further discuss that.

18 Okay. Let's bring the jury out and I'm going to go
19 ahead and excuse them for the day.

20 (Whereupon, the jury entered the courtroom at 4:08
21 p.m.)

22 THE COURT: Let the record reflect the jury is back in.
23 Madam Forelady and ladies and gentlemen of the jury, we're
24 going to go ahead and recess for the evening. We'll start
25 back at 9:30 in the morning. So everyone be prompt in

LYLE PRITCHARD - CROSS EXAMINATION

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1 returning back to the courthouse. And once again, I'll
2 remind you not to start discussing this case among
3 yourselves or with any family members, friends, anyone you
4 come into contact with this afternoon or this evening, and
5 we will see you back here promptly at 9:30 in the morning.
6 Have a great evening.

7 (Whereupon, the jury was released for the day at 4:09
8 p.m.)

9 THE COURT: Ms. Nelson, have you had an opportunity to
10 explain to Mr. Tate what I need to do now about --
11 concerning the right to testify?

12 MS. NELSON: Actually, we've talked about whether or
13 not he will testify, but I did not explain to him that you
14 would advise him about that. But can I do that?

15 THE COURT: Sure. You can take a minute at this time
16 and let him know what we're going to do here for just a
17 moment.

18 (Whereupon, there was a pause in the proceedings.)

19 THE COURT: Mr. Tate, would you please stand, and Madam
20 Clerk, would you swear him in, please.

21 KEITH DENVER TATE, having
22 been first duly sworn, testified as follows:

23 THE COURT: Okay. Mr. Tate, remain standing. At this
24 time I'm going to explain to you certain of your rights. If
25 you do not understand anything I say, please let me know.

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1 If you want me to explain anything in more detail, please
2 let me know that as well. Do you understand, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: We have now reached the stage in the trial
5 where you may present your defense. You have the right to
6 claim the protections given to you by the Fifth Amendment to
7 the Constitution of the United States. This amendment
8 states in part, "No person shall be compelled in any
9 criminal case to be a witness against himself." This means
10 that you cannot be required to testify in this case. You
11 have the right to testify on your own behalf; however, no
12 one can make you testify. This is a personal right and no
13 one can waive this right except you, sir. If you decide to
14 testify you will be subject to the same rules that govern
15 other witnesses and you may be examined and cross examined
16 on any relevant issue in this case. In addition, if you
17 have any convictions involving dishonesty or false statement
18 or for crimes punishable by imprisonment for more than one
19 year and this court determines that the probative value of
20 admitting this evidence outweighs it's prejudicial effect to
21 you, the Solicitor will be able to introduce your record to
22 attack your credibility. If you decide to testify, this
23 decision on your part must be freely, voluntarily and
24 intelligently made with knowledge of the protections given
25 to you by the Fifth Amendment and the consequences of your

LYLE PRITCHARD - CROSS EXAMINATION

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1 decision to testify. However, if you decide not to testify,
2 I will instruct the jurors that they cannot give the fact
3 that you did not testify any consideration whatsoever and
4 there's to be absolutely no prejudice to you because you did
5 not testify. It is left entirely up to you whether or not
6 you testify. I'm sure you've already talked with your
7 attorneys. You can talk with your family members, your
8 friends, anyone else that you choose to, but the final
9 decision, of course, will be left entirely up to you. Have
10 you understood what I have explained to you, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions about what I have
13 explained to you?

14 THE DEFENDANT: None, sir.

15 THE COURT: Have you had sufficient time to discuss
16 this with your attorney whether or not you testify or not?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you need to talk with your attorneys any
19 more concerning this issue?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has there, Ms. Nelson, been a decision
22 whether or not he will testify?

23 MS. NELSON: Not a firm decision at this time, but I
24 think it's unlikely, Your Honor.

25 THE COURT: Okay. Well, let's do this. Mr. Tate,

BART CAVE - DIRECT EXAMINATION

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1 we'll wait until in the morning when we start back, and then
2 you can inform me at that time what your firm decision is.
3 Okay?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Since Ms. Nelson said even though you're
6 leaning towards not testifying, you can give me a firm
7 decision in the morning. Is that okay with you, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Thank you very much.

10 THE DEFENDANT: Thank you.

11 THE COURT: All right. We'll be in recess until 9:30
12 in the morning.

13 (Whereupon, court adjourned for the day.)

14 DAY 3 - 5/29/2014

15 THE COURT: We're back on the record this morning in
16 *State vs. Keith Denver Tate*, and I believe we were at the
17 stage where the Defense is going to put up a case. Is that
18 correct, Ms. Nelson?

19 MS. NELSON: Yes, sir, Your Honor.

20 THE COURT: Has a decision been made concerning whether
21 or not Mr. Tate will testify in this case?

22 MS. NELSON: We still do not expect him to testify,
23 Your Honor.

24 THE COURT: The final decision -- we'll just wait until
25 you present your other witnesses and then we'll go on the

BART CAVE - DIRECT EXAMINATION

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1 record and you and Mr. Tate can inform the court at that
2 time.

3 MS. NELSON: Okay. Thank you, Your Honor.

4 THE COURT: Thank you very much. Anything we need to
5 take up before we bring the jury out?

6 MR. SHEEK: Nothing from the State, Your Honor.

7 MS. NELSON: No, sir.

8 THE COURT: All right. Bring the jury out, please,
9 sir.

10 (Whereupon, the jury entered the courtroom at 9:47
11 a.m.)

12 THE COURT: Let the record reflect the jury is back in.
13 Good morning everybody. We are now at the stage of the case
14 where the Defense is going to put up their case.

15 Ms. Nelson, I'll turn it over to you now.

16 MS. NELSON: Thank you, Your Honor. The Defense calls
17 Mr. Bart Cave. May I go out and get him?

18 THE COURT: Sure.

19 (Whereupon, there was a brief pause in the
20 proceedings.)

21 BART CAVE, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. NELSON:

25 Q Good morning, Mr. Cave. Would you give your full name

BART CAVE - DIRECT EXAMINATION

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1 for the record and spell it for the court reporter, please.

2 A Bart Cave, B-a-r-t, C-a-v-e.

3 Q Where do you work, Mr. Cave?

4 A South Carolina Law Enforcement Division.

5 Q In any particular department?

6 A I work in the computer crime center.

7 Q How long have you been there?

8 A Eight years.

9 Q What's your job?

10 A I do computer forensics, cell phone forensics, imaging.

11 I'm a network administrator.

12 Q What kind of education or experience do you have that

13 qualifies you for that position?

14 A Training and experience in doing computer forensics,

15 cell phone forensics, different training classes for

16 extracting data from cell phones, GPSs, doing computer

17 forensics doing EnCase, FTK, Cellebrite, Parabon, Secure

18 View. Numerous products that we have to use on a daily

19 basis for doing examinations.

20 Q Have you ever been qualified in circuit courts in South

21 Carolina as a forensic phone analyst either by the

22 prosecution or the defense?

23 A Yes, ma'am.

24 Q About how many times?

25 A Seven.

BART CAVE - DIRECT EXAMINATION

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1 MS. NELSON: Your Honor, I'd move to have Mr. Cave
2 qualified as an expert in the field of forensic phone
3 analysis.

4 THE COURT: Okay. And what says the State? Do you
5 have any examination concerning qualifications?

6 MR. SHEEK: Not at all. We're well aware of his
7 qualifications.

8 THE COURT: All right. He is deemed by this court to
9 be an expert in the field of phone forensic science. You
10 may proceed, Ms. Nelson.

11 Q Mr. Cave, how did you come to be involved in this
12 particular case?

13 A We received phones that needed to be examined.

14 Q And did you examine them?

15 A Yes, ma'am.

16 Q Did you find photographs on those phones?

17 A I did.

18 Q Did you find any inappropriate photographs on any of
19 those telephones?

20 A Yes, ma'am.

21 Q How many phones did you find inappropriate photographs
22 on?

23 A One.

24 Q How many photographs were there?

25 A Three.

BART CAVE - DIRECT EXAMINATION

313

1 Q And from your analysis are you able to tell when those
2 pictures were put on that phone, or saved to that phone? I
3 don't know how you'd characterize it.

4 A There's a date and time that's associated with the
5 pictures of when they were on the device.

6 Q Were you able to determine that from your analysis?

7 A Yes, ma'am.

8 Q Can you tell me for those three pictures what date and
9 time you associated with them --

10 A Yes, ma'am.

11 Q -- based on your report?

12 A On the first picture the file name is 0814100929. It
13 has a date and time of August 15th, 2010 at 12:36 a.m.

14 Q Okay. What about the next one?

15 A Picture two with a file name of 0814100932. We have
16 the date of August 14th, 2010, 11:59 a.m.

17 Q And then the last one?

18 A 0814100938, August 15th, 2010, 12:36 a.m.

19 Q So just to recap. One of them came in shortly before
20 midnight on August 14th --

21 A Correct.

22 Q -- of 2010?

23 A Yes, ma'am.

24 Q The other two came in 12:36 a.m. the next day, August
25 15th?

MARION ROBINSON - DIRECT EXAMINATION

314

1 A Yes, ma'am.

2 MS. NELSON: That's all I have, Mr. Cave. Please
3 answer any questions that the State might have for you.

4 MR. SHEEK: No questions.

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you for your testimony, sir.

7 THE WITNESS: Yes, sir.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you, sir.

10 THE COURT: You are free to leave or you are welcome to
11 remain with us.

12 THE WITNESS: All right. Thank you, sir.

13 (Whereupon, the witness stepped down from the witness
14 stand.)

15 THE COURT: You may proceed, Ms. Nelson.

16 MS. NELSON: We call Marion Robinson, Your Honor.

17 THE COURT: Okay. Thank you.

18 MS. NELSON: Marion Robinson.

19 THE COURT: Okay.

20 MARION ROBINSON, having
21 been first duly sworn, testified as follows:

22 MR. SHEEK: Your Honor, may we approach?

23 THE COURT: Sure.

24 (Whereupon, a bench conference was held.)

25 THE COURT: Madam Forelady and ladies and gentlemen of

MARION ROBINSON - DIRECT EXAMINATION

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1 MS. NELSON: I don't even think with what little -- I
2 think he can testify from memory at this point with what
3 little I'm going to ask him.

4 THE COURT: Ready?

5 MS. NELSON: I am ready whenever Mr. --

6 THE COURT: Okay. Let's bring the jury out, please.

7 (Whereupon, the jury entered the courtroom at 10:03
8 a.m.)

9 THE COURT: All right. Let the record reflect the
10 jury is back in. Thank you, Madam Forelady and ladies and
11 gentlemen of the jury for your patience.

12 Ms. Nelson, you may proceed, ma'am.

13 MS. NELSON: Thank you very much, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. NELSON:

16 Q Mr. Robinson, would you give your name for the court
17 reporter and spell it, please.

18 A Thomas Marion Robinson. T-h-o-m-a-s, M-a-r-I-o-n, R-o-
19 b-I--s-o-n.

20 Q Where do you work, sir?

21 A South Carolina Regional Housing Authority. The main
22 office in Laurens, South Carolina.

23 Q And what is your position there?

24 A Executive director.

25 Q How long have you been with -- is it -- how long have

MARION ROBINSON - DIRECT EXAMINATION

321

1 you been with the Housing Authority? I'm sorry.

2 A It will be 33 years in June.

3 Q Does your division of the Housing Authority manage the
4 apartments that are called the Lee Street Apartments in
5 Calhoun Falls?

6 A Yes, ma'am.

7 Q Do you know the address of those apartments?

8 A Not particularly. We just call them Lee Street
9 Apartments.

10 Q Okay. Can you describe the general layout of those
11 apartment buildings?

12 A That particular set of apartments is four buildings.
13 Two buildings when you pull into the -- there's parking in
14 front. At one end you pull in and face the apartments.
15 When you pull in the parking lot you've got two buildings on
16 this side. The main -- main walkway going down the middle.
17 Two buildings on this side and two buildings on that side.

18 Q If you're facing the apartments which side is apartment
19 2-42 on?

20 A It would be on the right.

21 Q In the first or the second --

22 A Second building.

23 Q The second building?

24 A Yes, ma'am.

25 Q And if you're facing that building itself, the second

MARION ROBINSON - DIRECT EXAMINATION

322

1 building, is the apartment on the right or the left?

2 A If you're facing the building it is on the right.

3 Q This side?

4 A Yes, ma'am.

5 Q Can you just describe that apartment in general, how
6 many rooms it has and what those rooms are?

7 A Okay. It's a three bedroom apartment with --
8 consisting of a livingroom, kitchen, three bedrooms, hallway
9 and one bath, constructed out of concrete block and brick in
10 the early '50s. We do various modifications during the
11 years. And the only thing that has been done since the
12 original construction of those structurally -- well,
13 actually, not structurally. The closets were not -- they
14 were opened. They had curtains that closed them. And in
15 the last 15 years we've gone through all of our apartments
16 and put closet doors on those. The bedrooms all have
17 locking doors. The closets do not have locking doors. They
18 secured the screens on the outside. And that's basically
19 it. Tile floors, concrete block walls.

20 Q So, and that is -- those walls and floors are in the
21 same state they were in --

22 A Yes.

23 Q Is it correct that they are in the same state now that
24 they were in 2010?

25 A Yes, ma'am.

MARION ROBINSON - DIRECT EXAMINATION

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1 Q There wouldn't have been any carpeting in the house
2 back then?

3 A No, ma'am. Only if the tenant had did it themselves.
4 We did not -- we allow them to put carpet over our floor
5 tile, but it's not allowed to be glued down. So you could
6 put --

7 Q Are you aware of any carpet being in that apartment in
8 2010?

9 A I have no knowledge of that.

10 Q Do you know what the square footage of that apartment
11 is?

12 A Approximately 1,013 feet.

13 Q And can you tell me from the right side of the
14 apartment to the far wall, from one side to the other,
15 what's the width of that apartment?

16 A It's 35 feet.

17 Q From one end to the other?

18 A Yes.

19 Q You mentioned that the closet doors don't lock from the
20 inside?

21 A No.

22 Q And you mentioned that all the bedroom doors have
23 locks?

24 A Yes.

25 Q Why is that?

MARION ROBINSON - DIRECT EXAMINATION

324

1 A Well, it's a HUD regulation that you have to have
2 privacy locks on all your interior doors that -- for each
3 space.

4 Q How --

5 A Bedrooms and bathrooms. Now, of course, anybody -- you
6 know, they are made so that in case a child was locked in
7 the apartment inside a bedroom door you can take a nail or
8 some kind of other instrument and pop that lock.

9 Q Like with a little hole in the outside?

10 A Yes. Yes.

11 Q And is the kind of privacy lock you're talking about
12 one of those that -- well, you describe it for me. What do
13 you mean by privacy lock?

14 A Well, just a basic lock. You come in and you got your
15 -- either your tulip or your bulb handle, and then on the
16 inside of that it has a little thumb thing that you twist.

17 Q Okay.

18 A Which would be normal for any house anywhere basically.
19 We use materials that are bought from local suppliers.

20 Q And how do you ensure that those locks stay on the
21 rooms they're supposed to be on?

22 A We do an annual inspection, as required by HUD, one
23 time a year. We just completed that inspection toward the
24 end of April and we inspected 1,326 apartments.

25 MS. NELSON: Just one moment, please, Your Honor.

MARION ROBINSON - CROSS EXAMINATION

325

1 THE COURT: Sure.

2 MS. NELSON: Thank you, Mr. Robinson. Please answer
3 any questions Mr. Sheek might have for you.

4 THE WITNESS: Okay.

5 CROSS EXAMINATION

6 BY MR. SHEEK:

7 Q Mr. Robinson, four buildings are at Lee Street
8 Apartments, correct?

9 A Yes.

10 Q They're not all the same size, are they?

11 A No.

12 Q The buildings that Ms. Reed lived in are actually the
13 largest of those buildings, correct?

14 A I think that's correct.

15 Q How many of them are smaller and how many of the
16 larger? Do you know?

17 A I think there's -- one duplex had one bedrooms, and
18 then you have two duplexes that are two bedroom duplexes and
19 one three bedroom complex, duplex.

20 Q Okay. And we were talking about those locks. You said
21 that they're designed so that if a child or something is
22 inside you could pop the lock easily, couldn't you?

23 A Yes. Well, I'm not going to say it's real easy because
24 some of them aren't easy. But theoretically you're supposed
25 to be able to do that to get in and out.

MARION ROBINSON - CROSS EXAMINATION

326

1 Q Well, assuming they're working correctly?

2 A Yes.

3 Q And I'm assuming that part of y'all's regulations are
4 to keep them working correctly, correct?

5 A Correct.

6 Q So actually what you've got is inside you lift the
7 little thumb that you talked about to lock it, correct?

8 A That's correct.

9 Q But outside you've got a round door handle. That's
10 what you turn to open it. In the center of it is a small
11 hole, correct?

12 A Correct.

13 Q And anything straight, even like a paperclip, you just
14 push it straight in and it pops that lock up?

15 A It's not that easy, but yes.

16 Q Well, okay. What are you supposed to do to pop that
17 lock if it's not that easy?

18 A Well, what I'm saying -- what I'm trying to say is that
19 the paperclip itself you've got to hit the center spot to
20 open it basically.

21 Q Well, let me ask you this. If a child were locked
22 inside and you needed to get a child --

23 A I could get in.

24 Q -- would it be difficult? Would it be difficult?

25 A Not that difficult.

MARION ROBINSON - REDIRECT EXAMINATION

327

1 MR. SHEEK: Thank you.. That's all I have.

2 THE COURT: Anything on redirect?

3 REDIRECT EXAMINATION

4 BY MS. NELSON:

5 Q Are there any three bedroom apartments at Lee Street
6 Apartments that are bigger than the one that you described?

7 A No, ma'am.

8 MS. NELSON: Thank you, sir. That's all I have.

9 THE COURT: Thank you, sir, for your testimony. You
10 can step down. You are free to leave the courthouse or
11 you're welcome to remain with us.

12 (Whereupon, the witness steps down from the witness
13 stand.)

14 THE COURT: Ms. Nelson?

15 MS. NELSON: Your Honor, I do have -- let me see if my
16 other witness is --

17 THE COURT: Sure. Take your time.

18 MS. NELSON: I asked at 10:00, so...

19 THE COURT: Okay.

20 (Whereupon, a brief recess was taken.)

21 MS. NELSON: Your Honor, the Defense calls Ms. Jessica
22 Bell.

23 THE COURT: Okay.

24 JESSICA BELL, having been
25 first duly sworn, testified as follows:

JESSICA BELL - DIRECT EXAMINATION

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1 DIRECT EXAMINATION

2 BY MS. NELSON:

3 Q Hi, Ms. Bell.

4 A Hello.

5 Q Could you give your name and spell it for the court
6 reporter, please, ma'am.

7 A Yes. My name is Jessica Bell, J-E-S-S-I-C-A, B-E-L-L.

8 Q Where do you work, Ms. Bell?

9 A I work at Beyond Abuse.

10 Q Did that ever go by any other name?

11 A It did. It was Sexual Trauma and Counseling Center and
12 the Child's Place.

13 Q Were you employed there back in August of -- or
14 September, excuse me, of 2010?

15 A I was.

16 Q And what kind of work do you do there?

17 A Currently I'm the sexual assault program director and a
18 therapist. Previously I've been a forensic interviewer.

19 Q In September of 2010 were you a forensic interviewer?

20 A I was.

21 Q Were you the person who conducted the interview of Ms.

22 Minor

23 A I was.

24 Q And what date was that on?

25 A That was September 28th, 2010.

JESSICA BELL - DIRECT EXAMINATION

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1 Q And you -- how did you -- how did that case come to
2 you? Who referred that to you?

3 A It looks like Monique Bell from Calhoun Falls Police
4 Department.

5 Q Does -- can you describe the function of the Child's
6 Place, now called Beyond Abuse, and how that correlates with
7 law enforcement and prosecution of sex assault cases?

8 A Yes. We're called a children's advocacy center, and
9 basically our role is to help make the investigation of
10 child abuse easier on children. So child friendly. We
11 bring everybody together so we're working together well,
12 sharing information. And we operate off of Child First. So
13 we don't want to make children upset and make it as easy as
14 possible for them.

15 Q When you interviewed Ms. Minor in September of 2010
16 approximately how much time did you spend with her? Do you
17 remember?

18 A I don't recall off the top of my head.

19 Q Did you write a report about the interview?

20 A I did write a report.

21 Q Is it a -- would you characterize it as a -- or how
22 would you characterize your report? You can tell me.

23 A It's a detailed report.

24 Q Did you try to be as thorough in that report about the
25 things that were told to you by Ms. Minor as you possibly

JESSICA BELL - DIRECT EXAMINATION

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1 could?

2 A Yes, I did.

3 Q When you write those reports -- well, let me go back.

4 When these interviews are done are they videotaped?

5 A Yes, they are.

6 Q And is that something that you tell the child that's

7 happening?

8 A Yes, definitely.

9 Q When you write these reports do you -- do you use the
10 video to help you or do you write them from memory?

11 A Yeah. When I'm in my office I have the video playing
12 as I'm typing. Sometimes I would write notes from the video
13 as I was listening to it and then go type from the notes.

14 Q Okay. When you interview a child who's been referred
15 to you for an allegation of sexual assault what do you --
16 what's one of the first things you tell them as the
17 interview starts about kind of the rules of the room?

18 A I tell them that they need to tell me the truth. If I
19 say something wrong, or I get something mixed up, to
20 definitely correct me. And that if I ask a question that
21 they don't know the answer to, to tell me they don't know.

22 Q Were there any times, or very many times, that Ms. Minor
23 was unable to answer your questions?

24 A Not that I recall.

25 Q Did you ask her for a lot of details about what

JESSICA BELL - DIRECT EXAMINATION

331

1 happened?

2 A Yes.

3 Q And she was able to give that to you?

4 A Yes.

5 Q What I'd like to do is, if you would, go for me to the
6 -- well, I'm sorry. I'm used to doing cross and not direct.

7 A Okay.

8 Q Did you ask Ms. Minor about the very first -- let me
9 start back this way. When you -- before you interview a
10 child do you get some information from law enforcement if
11 it's a law enforcement referral?

12 A We do. We get an incident report.

13 Q And did you look at that incident report before you
14 interview her?

15 A Yes, I did.

16 Q Did that --

17 A Well, wait a minute. Sometimes I do, sometimes I
18 don't. I can't remember exactly if I did in this situation.
19 I know when I write the report I have to fill in, you know,
20 what the allegations were, and that's usually after the
21 fact. So I can't say 100 percent if I had read it
22 beforehand or not.

23 Q Did the report give you any dates that were alleged?

24 A Yes. When I looked at it afterwards there were some
25 dates. I'm not sure how they came up with the dates since

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1 children typically aren't able to give exact dates on
2 things. So I don't know exactly where that came from, but
3 it was in the incident report.

4 Q Did you try to elicit any specific dates from Ms. Minor
5 or did you just ask her about things like first time, second
6 time, last time?

7 A No. I avoid exact dates. Because in general, unless
8 there's some type of landmark, children can only really say
9 like the age they were, you know, what things were going
10 around the time. That kind of thing. And, sometimes -- you
11 know, if there's like a journal, that could work. Other
12 things could help them remember.

13 Q Did you ask her about the first time it happened?

14 A Yeah. Usually we only do three incidents, because if
15 it's more than that it's hard to remember exact details of
16 everything happened with children.

17 Q What did she tell you about that first incident?

18 MR. SHEEK: Your Honor, if this would help in the
19 interest of expediency, we will stipulate to the playing of
20 the video.

21 THE WITNESS: Yeah, that would be helpful for me.

22 MS. NELSON: I am happy to do that under -- with the
23 same thing I told Your Honor when this came up the other
24 day. We should be doing this outside of the presence of the
25 jury.

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1 THE COURT: All right. If we need to discuss it
2 further. Madam Forelady and ladies and gentlemen of the
3 jury, again I need for you to briefly go back to your jury
4 room. Thank you for your patience.

5 (Whereupon, the jury exited the courtroom at 10:20
6 a.m.)

7 THE COURT: Ms. Nelson, refresh my memory what you told
8 me the other day when we were discussing the video.

9 MS. NELSON: Yes, Your Honor, there are a couple of
10 times in the video, and I probably could look at my notes
11 and find around the area of the video where that happens
12 because I tried to make a -- when I was taking notes I tried
13 to make notes of the time in the video when stuff was
14 happening. There are, I think, a couple of times when Ms.
15 Minor talks about Mr. Tate saying things to her like he had
16 done this to other girls before and his father had done it
17 to other girls and taught him that that was okay. That's
18 obviously something that I think that at this point should
19 not be in front of the jury. So I don't have any problems
20 to the -- with most of the video. What I do have is a
21 transcript of the video. The interview that I had prepared
22 by a court reporter. I think this would be a whole lot
23 easier to redact. So my proposal would be we could simplify
24 all of this, redact those portions that are overly
25 prejudicial and don't have any -- you know, are not

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1 supported by any allegation ever and just let the jury have
2 the transcript --

3 THE COURT: Well, again, this is --

4 MS. NELSON: And I have provided that.

5 THE COURT: Right. Again, this is your witness. You
6 know, if you want to offer the transcript, offer the video
7 with or without redaction, I mean, that's your decision to
8 make, and then whatever position the State takes, and then I
9 can, you know, make a ruling. So I don't want to tell you
10 don't play the video, or put in the transcript, or don't do
11 any of that and just examine this witness. It's going to be
12 your call.

13 MS. NELSON: Well, my -- I think the most efficient
14 thing to do would be to introduce the transcript with those
15 redactions and -- if the Solicitor can agree with that,
16 that's fine.

17 MR. SHEEK: I don't, Your Honor. I don't know who
18 prepared this transcript. I've been given a transcript that
19 says it was prepared by a court reporter. I don't know who
20 it is. It has no foundation for it.

21 MS. NELSON: She's a certified court reporter, and I've
22 got the sealed originals.

23 MR. SHEEK: Your Honor, if I may.

24 THE COURT: Sure.

25 MR. SHEEK: I would think -- I -- those statements that

1 the child says the Defendant made are admissible. The child
2 could've testified if that had been asked. It's a statement
3 by a party.

4 MS. NELSON: Because 403 would exclude it.

5 MR. SHEEK: I think it would. Absolutely. I mean, she
6 says that he sexually molested her. That's prejudicial.
7 It's not inadmissible. It's not a prior bad act.

8 MS. NELSON: But that's the part you're trying to
9 prove. You're not trying to prove he had done it to anybody
10 else.

11 MR. SHEEK: My point is it's not an inadmissible
12 statement. But to simply say, "Hey, it hurts our case so we
13 want to redact it," wouldn't be a proper objection.

14 MS. NELSON: But overly prejudicial and irrelevant is,
15 Your Honor.

16 MR. SHEEK: It's certainly not irrelevant if it goes to
17 the pressure that he was putting on this child not to tell.
18 Here's where the State is, Judge. We're going to have a
19 situation where bits and pieces are pulled out of this video
20 and they're going to want this witness to testify from a
21 transcript to this statement but not this statement. It's a
22 75 page transcript. Then in closing argument I have a
23 feeling I'm going to hear things like we brought in these
24 statements. You know, they have a video of it. You never
25 got to see it. I've heard that before. And, you know,

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1 under the rules I can't present it. She was over 12. I
2 can't play that. So I have a big objection to a transcript
3 that I never saw before we got here to pick this jury being
4 presented and used in court. Under the rules of
5 completeness, if you're going to ask her about a prior
6 statement that this child gave, a complete and prior
7 statement is required. I think the State is prejudiced when
8 you start picking and choosing and then argue to a jury
9 somehow the State's failure to bring in evidence.

10 MS. NELSON: And I did try to email Ms. Bell the
11 transcript last night in case it would help her and she
12 never got it. I wasn't going to ask her to testify from the
13 transcript. Her report is very extensive. And what I'm
14 doing is talking about inconsistent statements that Ms. Minor
15 has made that she did not admit to on cross examination.

16 THE COURT: Right.

17 MS. NELSON: And there was nothing in any of her
18 testimony about -- about these supposed statements about
19 doing this to other people.

20 MR. SHEEK: In that respect I think I would get to
21 rehabilitate her on cross examination with prior consistent
22 statements the State will then move to introduce the tape
23 and we'll go ahead and address it that way.

24 THE COURT: Well, don't we need to look at the statute
25 that deals with -- of course, the statute deals with

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1 videotaped testimony to be used at trial. This is not
2 videotaped testimony. It just happens to be an interview --
3 a forensic interview that happened to be videotaped.

4 MS. NELSON: Yes, sir. And in some circumstances, if
5 the child is young enough, can sometimes be used in trial --

6 THE COURT: Right.

7 MS. NELSON: -- and that's not the case.

8 THE COURT: Yeah. Let me -- let me pull up and look at
9 that statute.

10 MS. NELSON: And I wouldn't be calling Ms. Bell at all,
11 if Ms. Minor had admitted to the things she said to her.

12 THE COURT: You don't have that statute number, any of
13 you?

14 MR. SHEEK: I'm looking it up right now, Judge. I'm
15 sorry. I don't remember that.

16 MS. NELSON: I'm sorry. The one on forensic
17 interviews?

18 THE COURT: Well, yeah. I want that one and the one
19 about the videotaped testimony of a child.

20 MR. GORANSON: Videotaped testimony of alleged victim,
21 16-3-1550, I think is one relevant statute.

22 MS. NELSON: And, Your Honor, I just want to clarify.
23 The only thing that I'm suggesting is appropriate to redact
24 is statements about him doing this to other people. Prior
25 bad act stuff that there's -- that there's no evidence of

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1 and that was represented to me there wouldn't be any
2 evidence of. And I'm not asking for parts to be taken out
3 where he told her not to tell, or he said this or that any
4 other time, and there's a lot of that in there.

5 THE COURT: Is there a particular statute dealing with
6 forensic interviews?

7 MR. SHEEK: There is, Your Honor.

8 THE COURT: Can you get that for me, too, please.

9 MR. SHEEK: Yes, sir.

10 MS. NELSON: Your Honor, may I have --

11 THE COURT: What was that statute again, Mr. Goranson?

12 MR. GORANSON: South Carolina Code 16-3-1550 deals with
13 videotaped testimony. That's not the forensic interview
14 statute.

15 MS. NELSON: May I get my computer cord, Your Honor?

16 THE COURT: Sure. That's not the statute, Mr.

17 Goranson. That - 1550 deals with restrictions on employers
18 of victims and witnesses. Protection of rights of victims
19 and witnesses.

20 MR. GORANSON: I'm sorry.

21 MR. SHEEK: It's Title 17, Judge. Just let me get
22 there.

23 MS. NELSON: And, Your Honor, as to one of the other
24 things Mr. Sheek said about me saying they've got a video
25 and you didn't get to see it. They've already heard him say

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1 twice we'll stipulate to the video being played, and then

2 I'm the one who asked them to go out, so...

3 THE COURT: Does anybody have that statute yet?

4 MR. SHEEK: Just about. I'm sorry. Okay. 17-23-175,

5 Your Honor.

6 THE COURT: Okay. Thank you. She was not under 12 at

7 the time of the interview, was she? She was 12?

8 MR. SHEEK: That's right. She was over the age of 12

9 at the time of the interview. So I think under that statute

10 we cannot admit it. Well, actually, I know under that

11 statute we can't. The situation we've got here is I believe

12 under the rules of evidence, when we have a recorded

13 statement and the Defense wants to use it for impeachment

14 purposes, then I can use the entire recorded statement

15 showing the consistent portions of that statement. I don't

16 believe -- and, of course, the court can correct me if I'm

17 wrong. I don't believe they can pick part of a prior

18 statement out and not let me then, on redirect, go into the

19 rest of it.

20 MS. NELSON: Well, Your Honor, she would have had to

21 say something in her testimony on the stand that I have --

22 that I've refuted somehow for him to go back and pick prior

23 consistent statements. And that's -- Mr. Sheek has got this

24 report and video, of course, and could have asked her

25 anything he wanted to ask her to elicit the testimony he's

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1 talking about.

2 THE COURT: Well, it seems to me that unless you can
3 agree in full as to the admissibility of either the video or
4 the transcript -- and I don't have a problem with the
5 transcript, per se, as to -- Solicitor, you indicated you
6 didn't know who prepared it, if it was a certified court
7 reporter. I think that takes care of that. But lay that to
8 the side. It appears to me that because the child was not
9 under the age of 12 under 17-23-175 unless both sides agree
10 as to the admissibility in full of either the video and/or
11 the transcript, it would appear that it's not going to come
12 in, certainly the Defense can question this witness about
13 prior inconsistent statements. I think she can do that
14 because the child did testify. And then, of course,
15 whatever cross examination the Solicitor wants to conduct.
16 So unless both sides can agree in full as to the video
17 coming in and/or the transcript I'm not going to allow it
18 and you'll just have to cross examine this witness
19 concerning whatever prior inconsistent statements you
20 believe that she made to this witness, even though it was
21 under a forensic interview environment.

22 MS. NELSON: Yes, sir. And again, I would -- I would
23 be fine with either the transcript or the video with just
24 those portions I've talked about redacted.

25 THE COURT: Right. And the State is fine with it, too,

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1 but wants no redaction. So I just don't see how I can allow
2 either one in, unless y'all can come to some agreement.

3 MR. SHEEK: I guess -- one issue, Judge. I have no
4 problem under 613 of a prior inconsistent statement. I want
5 to be clear though under Rule 613 of the Rules of Evidence
6 that the witness, whom they are claiming gave the prior
7 inconsistent statement, must be advised of the date, place
8 of the alleged statement, the substance of the statement, to
9 whom it was made, and given an opportunity to deny it or
10 explain it. So I don't want to go into any statements that
11 that child was not specifically confronted with under Rule
12 613.

13 MS. NELSON: And, Your Honor, I'm trying to make sure I
14 don't do that. I've got my notes from my cross with --
15 where I asked Minor these questions. I'm -- I'm going to do -
16 - I would assure you that I'm going to do the best I can not
17 to ask about anything. I don't recall her admitting to very
18 much. But I don't have an intention of going outside the
19 specific things I asked about, and I can -- I can ask -- I
20 can ask Ms. Bell about it the same -- the same way; did she
21 say this, did she say this.

22 THE COURT: Well, I guess we'll just have to wait until
23 it comes up. And if you feel like, you know, that the
24 question would be in violation of the rule then, of course,
25 you can make an objection. So we'll just have to wait until

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1 it comes up, if it does come up. So the ruling of the court
2 is just -- you know, you proceed with your examination. The
3 video and transcript are not going to come in. And I do not
4 -- I don't think either side is going to argue about the
5 video. I think the Solicitor maybe alluded to the fact that
6 he anticipated, Ms. Nelson, you arguing, well, there's a
7 video and it's not -- it hasn't been played. But --

8 MS. NELSON: They've already heard him say twice that
9 he would --

10 THE COURT: Yeah. They're aware of it. Let them raise
11 the question, well, we didn't get to see the video. But
12 I've already ruled, so...

13 MS. NELSON: Yes, Your Honor.

14 THE COURT: Okay. Anything further?

15 MR. SHEEK: No, sir.

16 THE COURT: Okay. Thank you very much. Appreciate
17 your fine arguments. And let's bring the jury out.

18 (Whereupon, the jury entered the courtroom at 10:41
19 a.m.)

20 THE COURT: All right. Let the record reflect the jury
21 is back in. Madam Forelady and ladies and gentlemen of the
22 jury, again, I appreciate your patience. I tell juries
23 sometimes when you have very good lawyers like I have here
24 they're always raising a lot of legal issues that the court
25 has to deal with. That's just -- that's just part of the

1 process. And so, that's why you've already experienced
2 this. You had to be sent out so we could deal with those
3 legal issues.

4 All right. Ms. Nelson, I think we're in direct
5 examination of this witness.

6 MS. NELSON: Thank you, Your Honor.

7 Q Ms. Bell, I think my last question was related to Ms.
8 Minor ability to answer your question, if I remember right.

9 A Yeah, I don't remember either.

10 Q Okay. And how would you characterize her ability to
11 answer your question?

12 A I feel like she was able to answer them pretty well.

13 Q Where there a lot of times that she had to tell you she
14 didn't know something or couldn't remember something?

15 A Not that I recall.

16 Q Okay. What I'd like to do is go to where you began
17 asking her about the first time something had happened to
18 her.

19 A Okay.

20 Q Can you describe for me what her initial statement
21 about that was?

22 A Do you want me to just talk about the first time or the
23 things that changed right before the first time happened and
24 then go into the first time?

25 Q I'm not sure what the things were that changed before

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1 the --

2 A She talked about that he changed where he was sleeping.

3 That kind of thing.

4 Q No, ma'am. I'm just asking you about when you asked

5 her about the first incident did she tell you that he threw

6 her on the couch. She said no. He hit her in the face with

7 his fist?

8 A Okay. So what I've got is later the same night he came

9 into her room. Picked her up. Threw her onto the couch bed

10 in the livingroom and he started taking her clothes off. He

11 pulled his clothes down. He got on top of her and started

12 kissing her neck. Minor told him no and he hit her in the

13 face with his fist. She denied that this left a mark on her

14 face. She told her dad that she didn't want to and he said

15 yes, you do. I'm the one that's going to teach you --

16 Q That's all I wanted to know was what happened the first

17 -- what the acts were in the first time. And what I can do

18 is --

19 MR. SHEEK: Your Honor, if I can -- if the witness can

20 finish, I think she was describing the first event.

21 THE COURT: Did you want to complete your answer,

22 ma'am?

23 THE WITNESS: Yeah.

24 THE COURT: Okay. Allow her to complete the answer,

25 please.

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1 A Hold on and let me go back and find it. She -- he said
2 yes, you do. I'm the only one that's going to teach you how
3 to do everything, and then he put his penis into her vagina.
4 She screamed when this happened and he put -- and he put his
5 hand over her mouth.

6 Q She said she screamed?

7 A Yeah.

8 MS. NELSON: May I have just one moment, Your Honor.

9 THE COURT: Sure.

10 Q I'm looking at page nine of your report, Ms. Bell.

11 A Okay.

12 Q And that is the -- that's the part where -- excuse me.
13 Hold on just one second. I'm basically looking at the two
14 full paragraphs on page nine. Is that the part -- is that
15 your record of where you asked Ms. Minor about the second
16 incident?

17 A Yeah, the first paragraph starts off and asked about
18 the second time that he did something to her.

19 Q What did she tell you about that second incident?

20 A She told me that the second time he stuck it up her
21 butt, and so she said when he started that time she was
22 watching TV in her room. She indicated that it happened at
23 1:00 a.m. Her dad told Minor that Minor momma needed her.
24 Minor momma had fallen asleep and Minor helped her dad carry
25 her momma to her momma's room. Minor laid down in the bed

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1 with her momma, and then her dad told Minor to come get her
2 momma's stuff from the livingroom. When she walked into the
3 livingroom her dad threw her down onto the small couch. Minor
4 was on her back and her dad's penis was touching her leg.
5 Then her dad flipped her onto her stomach and stuck his
6 penis inside of her butt hole. She screamed when he did
7 this and he hit her in the mouth with an open hand. She
8 indicated that this busted her lip. Then her dad grabbed
9 her by her hair and pushed her head down into the pillow and
10 she had difficulty breathing. Minor indicated that her nose
11 was covered by the pillow but she had a little air around
12 her mouth. Minor had to breath softly because she couldn't
13 breath heavy because she had asthma. Minor kicked her dad in
14 between his legs and her foot connected with his penis. Her
15 dad went down to the ground with his arms wrapped around
16 himself and he was crying. At this time Minor underwear and
17 shorts were pulled down and her shirt was still on. Then he
18 got up and hit her. Minor indicated that this happened so
19 fast that she doesn't even know where he hit her, but she
20 doesn't remember anything else after that. The next thing
21 she does remember was waking up with her head in the pillow
22 in the livingroom 7:30 the next morning. Her shorts were
23 up, her panties were around her ankles, and her shirt was on
24 the lamp when she woke up. I asked her if anything was
25 covering her body when she woke up and she told me she still

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1 had her bra on. Her ride to school was pulling off and no
2 one else was gone when she woke up. And she indicated that
3 her brothers were already gone because the school bus comes
4 at 7:00. So Minor thought her mom was at a doctor's
5 appointment or something and she didn't know where her dad
6 was at. She gathered her clothes and went to the bathroom
7 where she saw blood on her lip. And then when her mom came
8 home she took Minor to school, and her mom didn't see her lip
9 because she covered it with her hand. And her mom did ask
10 her what was wrong and Minor shook her head no, there's not.

11 Q And it was clear the whole time you were talking to Minor
12 about that incident that it was the second time something
13 had happened?

14 A It started off that way, so I'm -- yeah, I think so.

15 Q Did you actually review the video --

16 A No, I hadn't --

17 Q -- before coming? So you're relying on what you wrote
18 in your report?

19 A Yeah, my report. Yeah.

20 MS. NELSON: May I have just a moment, Your Honor?

21 THE COURT: Sure.

22 Q Ms. Bell, I just want to be clear on that second time
23 Minor talked to you about -- and I'm just asking you to
24 clarify, because when it -- when it gets read out I just
25 want to make sure that we're hearing some of these details.

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1 A Okay.

2 Q The second time with the allegation of anal sex, Minor
3 told you that when she woke up the next morning it was about
4 7:30?

5 A Let me double check and make sure. Yes, 7:30 the next
6 morning.

7 Q Did she describe to you that her -- that her underwear
8 was down around her ankles?

9 A Yes.

10 Q And her -- but her shorts were pulled up?

11 A Yes.

12 Q And her bra was on and her shirt was over the lamp?

13 A Yes.

14 Q And no one else was at home?

15 A Yes.

16 Q Her father was gone -- or Mr. Tate was gone, her mother
17 was gone, her brothers were gone?

18 A Well, she said she didn't know where her dad was at.

19 I'm assuming he might have been gone. But she didn't know
20 where he was at.

21 Q She thought her mother might be at the doctor?

22 A Yes.

23 Q And her brothers had already left for school --

24 A Yes.

25 Q -- because their bus came at 7:00.

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1 A Yes.

2 Q And she had missed her ride to school?

3 A Yes.

4 MS. NELSON: Your Honor, I believe that's all I have.

5 Please answer any questions Mr. Sheek might have.

6 THE COURT: Solicitor, any cross?

7 CROSS EXAMINATION

8 BY MR. SHEEK:

9 Q Ms. Bell, how long have you been doing this kind of
10 work?

11 A Almost 11 years. Ten years now, so...

12 Q So would it be safe to say in that amount of time you
13 have interviewed a lot of children?

14 A Yeah, 368.

15 Q In your experience, is it uncommon for a child who
16 alleges to this type of abuse, who's been subject to this
17 type of abuse, to delay their disclosure of that?

18 MS. NELSON: Objection, Your Honor. She has not been
19 qualified as an expert to talk about these kinds of issues
20 with any kind of disclosure. This is assuming that
21 everything child she's talked to was telling the absolute
22 truth and that she can make a determination based on
23 assuming those truths, and I think this is improper
24 questioning.

25 THE COURT: I'll sustain the objection.

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1 Q What was Minor demeanor when she was talking to you?

2 A I know there was times where she was tearful as, you
3 know, my report indicated. Seems to be, you know, open
4 about what happened in some ways, but I'm sure it was hard
5 for her since she was tearful.

6 Q Turn to page six of your summary. Are you there now?

7 A I am.

8 Q Okay. Looking at the second full paragraph that Ms.
9 Nelson was asking you about. It starts with later that same
10 night, referring to the first incident that Minor told you
11 about. Do you see that?

12 A I do.

13 Q If you go about two-thirds or three-fourths the way
14 through that paragraph, did Minor tell you that the Defendant
15 told her if you tell, she, meaning Minor mother, is going to
16 have a seizure?

17 A She did say that.

18 Q And Minor indicated she didn't tell because she didn't
19 want her mother to have a seizure and go to the hospital.

20 A That's true.

21 Q Did she also tell you that she bled on a sheet and that
22 he, Defendant, threw that sheet away?

23 A She did.

24 Q Now, if you look in the next paragraph about halfway
25 through. Did she tell you that she went to the room where

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1 her brothers were watching TV and then cried that night
2 because she thought it was her fault?

3 A Let me find it. Yeah, that's there.

4 MR. SHEEK: That's all the questions I have, Your
5 Honor.

6 THE COURT: Anything in redirect?

7 MS. NELSON: Just one or two.

8 REDIRECT EXAMINATION

9 BY MS. NELSON:

10 Q In the interview did Ms. Minor ever tell you anything
11 about waking up in a tub of bloody water?

12 A No, she did not.

13 MR. SHEEK: Your Honor, that would be outside the scope
14 of cross.

15 THE COURT: Well --

16 MS. NELSON: He talked about the blood on the sheet,
17 Your Honor.

18 THE COURT: I'll overrule the objection.

19 Q And the statement that Mr. Sheek just had you read
20 about she went to the room -- or he asked you about. She
21 went to the room that her brothers were in watching TV?

22 A Uh-huh.

23 Q So her brothers were awake watching TV?

24 MR. SHEEK: Your Honor, this witness can testify to
25 what she was told. She can't testify what the brothers were

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1 or weren't doing. It's an improper question.

2 THE COURT: Rephrase the question if possible.

3 Q She went in the room where her brothers were watching
4 TV. Is that what she told you?

5 A Yes.

6 Q And this was -- this was when she was discussing the
7 first incident?

8 A I believe so, yes.

9 MS. NELSON: Okay.

10 THE COURT: Thank you, ma'am, for your testimony. You
11 can step down. You are free to leave the courthouse or you
12 are certainly welcome to remain with us.

13 THE WITNESS: All right. Thank you.

14 (Whereupon, the witness steps down from the witness
15 stand.)

16 MS. NELSON: Your Honor, the Defense rests at this
17 time.

18 THE COURT: All right. Thank you very much. --All
19 right. Madam Forelady and ladies and gentlemen of the jury,
20 a few legal issues. The Defense has rested. I'll need to
21 discuss with the State whether or not they intend to put up
22 what's called a reply case or not. So I hope it won't be
23 too long. If you'll just go back to your jury room. And
24 I'll remind you not to begin discussion of this case or
25 start any deliberations.

1 or you can't convict.

2 THE COURT: Right. And I don't have a problem with
3 that. I think in some of your cross examination has been on
4 some discrepancies with dates and I think that would be
5 proper argument.

6 MR. SHEEK: And that general argument I would not
7 object to. But I guess what I'm advising, because I don't
8 like to object ever in closing, is if a statement is made
9 that I feel is contrary to the law, they've got to prove
10 August 26th. If it's August 27th --

11 THE COURT: They have to prove that. Therefore, ladies
12 and gentlemen of the jury, you've got to find the Defendant
13 not guilty.

14 MR. SHEEK: If that were made I would then object.

15 MS. NELSON: I didn't really -- I'm not sure whether --
16 how much I'm going to say, but I didn't intend to say they
17 have to get this -- if it's perfect, then I might address
18 it.

19 THE COURT: Let's take a little recess and let's get
20 you what we've worked up. And --

21 MS. NELSON: And, Your Honor, I do have a motion about
22 the order of closing. I had -- I have a written motion
23 that's supposed to be being sent to me, but I could -- I
24 could either submit that or I can just argue it orally. And
25 I can do that now or later. But it's generally a motion to

1 require the State to open in full and use their final
2 argument for rebuttal only. I think I made it in front of
3 you before in another case.

4 THE COURT: How did I rule? Let's deal with that when
5 we put on the record concerning charges or whatever we do.
6 So just let's hold on to that.

7 MS. NELSON: Okay. And I just walked out of the office
8 this morning --

9 THE COURT: That's fine.

10 MS. NELSON: -- without my printout of it or I would
11 have it to give to everybody.

12 THE COURT: Right. And if you don't have a written
13 copy of it then we'll just take -- take it orally.

14 MS. NELSON: And I would have one other proposal about
15 the verdict -- the verdict form that we can either talk
16 about now or later, too.

17 THE COURT: Yeah. Well, just take a look at what we've
18 got. All right. We'll be at recess.

19 MS. NELSON: Thank you, Your Honor.

20 (Whereupon, the court was in recess until 12:45 p.m.)

21 THE COURT: Okay. We're back on the record. We had a
22 short conference in chambers concerning charges, and the
23 State requested a corroboration charge, charging the
24 corroboration statute which I have denied that request. As
25 I understand it, apart from that, the State is okay with the

1 THE COURT: And this is certainly a lot of validity to
2 the argument. I know that doesn't make you feel any better.
3 But I think there's a lot of validity to your argument. But
4 after considering everything I deny that request, and just
5 make sure that that gets marked as a court's exhibit.

6 MS. NELSON: As far as the argument on requiring the
7 state to open in full, I think the written motion that I
8 have filed, Your Honor, pretty much covers it. But the only
9 thing I would add is that if this is -- if this is the way
10 it's done in civil cases where you're not dealing with
11 somebody's constitutional rights, and that's the way it's
12 done, then that's the process that needs to be used in
13 criminal cases where the State has the burden of proof
14 beyond a reasonable doubt. The standard of proof is higher.
15 There are constitutional rights implicated, and for all
16 those reason we think that this practice of allowing it the
17 way it's been done needs to change.

18 THE COURT: I understand, and that's denied as well.
19 But again, a lot of validity to that argument as well.

20 Okay. Anything else on the record before we bring the
21 jury out?

22 MR. SHEEK: Nothing for the record, Your Honor.

23 MS. NELSON: I'm sorry to do this. But may I just
24 quickly run to the restroom?

25 THE COURT: Don't apologize.

1 THE COURT: Yes, sir, Solicitor.

2 CLOSING ARGUMENT

3 BY MR. SHEEK: Madam Forelady and ladies and gentlemen of the
4 jury, again, my name is Lance Sheek. I've seen you here
5 through this trial and I appreciate the attentiveness that
6 I've seen in all of you as we've gone through this
7 testimony. I'm going to briefly talk to you about the law
8 that is going to be used in this case and then I'll sit down
9 while Ms. Nelson addresses you. I'm going to have an
10 opportunity to talk a little bit about the facts of the
11 evidence after that.

12 In this case you've been selected as a jury in a
13 criminal case in the *State of South Carolina vs. Keith*
14 *Denver Tate*. Mr. Tate is charged in nine counts criminal
15 sexual conduct with a minor in the second degree. Now, one
16 thing to keep in mind is at the end of all of our arguments
17 the judge is going to charge you with the law. He's going
18 to literally read to you from the law the standards you need
19 to apply to the facts as you find them. So as I talk to you
20 about it, if he says something different, he's the only
21 judge of the law here so you ignore that. But criminal
22 sexual conduct with a minor simply means that a defendant
23 has committed a sexual batter upon a child. It is in the
24 second degree if that child is between the ages of 11 and
25 14. A sexual battery is defined by our statute as either a

1 cunnilingus, fellatio, a lot of people call it oral sex,
2 vaginal or anal intercourse, or any intrusion, however
3 slight, into the anal or vaginal openings of the victim by
4 the defendant. That's sexual battery. So what the State
5 has to prove to you is that the Defendant did commit sexual
6 battery upon the body of the victim, Minor that she was
7 between the ages of 11 and 14, and that he committed some
8 type of intrusion, however slight, into one of those
9 openings, or committed some other type of sexual battery as
10 defined by the law. And we're going to talk about the
11 testimony and evidence after that. But that's the law that
12 you have. Each count is that same charge because the State
13 alleges it happened on nine different instances. Now, the
14 State has to come to you and prove these charges beyond a
15 reasonable doubt. The judge is going to talk to you about
16 that. It's been defined by our court several different ways
17 over the years, but the most current definition I think the
18 Judge will tell you is that reasonable doubt is if the
19 evidence leaves you firmly convinced of a fact then that's
20 beyond a reasonable doubt. He'll give you that definition
21 at the end of this case. And he'll tell you that things can
22 always have some type of doubt. But that's not what we're
23 here about. We're here about proof beyond a reasonable
24 doubt. The State has the burden of proof. Defendant
25 doesn't have to prove anything. A defendant never comes

1 into a courtroom having to proof something, and we
2 acknowledge that, and that's why we've come here today.

3 MS. Nelson will get to talk to you about the evidence
4 and the testimony. I'll get a chance to talk to you after
5 that. But I just want you to keep in mind what we're here
6 about. Those are the charges, the counts are those are the
7 elements. And I'll talk to you in a few minutes.

8 MS. NELSON: Thank you, Your Honor. May it please the
9 court.

10 THE COURT: Thank you, Ms. Nelson.

11 CROSS EXAMINATION

12 BY MS. NELSON: Mr. Sheek just talked to you about reasonable
13 doubt. What's the reasonable doubt in this case. There are
14 lots of things that should -- that should cause you not to
15 be firmly convinced of these allegations that have been made
16 against Mr. Tate. One of the other things that is sometimes
17 said about reasonable doubt is that it's the kind of doubt
18 that would cause you to hesitate to act on important
19 decisions in your life. Kind of the -- you go to a doctor
20 and he tells you you need some major surgery. That might be
21 something you want to go get a second opinion on. You've
22 got some reasonable doubt about what he's recommending for
23 you. Something that might cause you to hesitate to act.
24 Something that firmly convinces you beyond a reasonable
25 doubt that what's being -- that this evidence you've been

1 given is the truth.

2 So what are the reasons that you shouldn't be convinced
3 beyond a reasonable doubt in this case. Why you can't be.
4 First, nobody else in this house sees or hears anything.
5 This is happening repeatedly over a period of several months
6 in a small apartment with hard surfaces with the rooms very
7 close together. Bedrooms all very close together. Nobody
8 ever sees or hears a thing. There's a lot of screaming
9 going on. There's a lot of punching going on. People being
10 thrown down on the floor, thrown down on couches. Minor says
11 she -- the first time -- one of her stories she said she was
12 punched in the face. A man Keith's size punched a 12-year-
13 old girl in the face and that doesn't leave a mark that
14 anybody ever sees. Apparently she's alleging that most of
15 this took place in the open area of the house -- of the
16 apartment in the livingroom. A small front room with a wall
17 that is shared by the brothers' bedroom. A room that you
18 can get to in just a few steps from any of those three
19 bedrooms. It's all happening right there. But nobody ever
20 sees it. And what sense does it make to call her into that
21 room, or pick her up when she's asleep and bring her in that
22 room, when there's a lock on her bedroom door and there's a
23 bed in her bedroom? But you're -- you're so brazen and so
24 fearless that you're going to do all of this right in the
25 open area of the house.

1 Ms. Reed, Ms. Minor mother, she and the government
2 want you to believe that she couldn't possibly have known
3 any of this was going on because she was taking so many
4 medications and she was just in this sort of drug stupor all
5 the time. Sleeping almost all the time. But remember she
6 was supposedly able to wake up when Minor bit Keith on the
7 penis and he started cussing? Everybody in the house wakes
8 up. You remember the story in Terrence's statement about
9 how Minor phone happened to be laying there in the bed next
10 to Ms. Reed and just a text message wakes her up? Now, she
11 denied that that happened, but that was something Terrence
12 wrote about in his statement, and the only person he could
13 have gotten that story from was Ms. Minor She's able to
14 wake up enough to tell Minor to move the dresser out of the
15 way of the bedroom door. But when Minor repeatedly screamed,
16 when Keith screams when his penis is bitten, she doesn't
17 wake up. Any of these 10 times -- nine times she doesn't
18 hear any of that.

19 She does talk about seeing a busted lip one time, and
20 we'll talk more about that allegation and the busted lip.
21 But you heard from Ms. Bell today in her notes from that
22 forensic interview where she talks about how Minor said she
23 hid that. She hid the busted lip from her mother and that
24 her mother never knew about it. And isn't it interesting
25 that this is the first time that Ms. Reed ever decided to

1 mention to anybody that she saw that kind of injury? The
2 police come to her house to arrest Keith and she doesn't
3 say, hey, you know what, I saw where he had hit her one
4 time. It's almost four years later and this is the first
5 time she's ever said that, from what we know.

6 Doesn't appear that anybody working with law
7 enforcement, after getting this story from Ms. Minor talked
8 to her mother, talked to her brothers about these
9 allegations that have been made. If you were investigating
10 this case wouldn't you want to -- wouldn't you want to talk
11 to the family members that are supposed to be asleep in the
12 house when all of this is happening? Don't you want to go
13 over -- at least with the mother don't you want to go over
14 all these different dates that are alleged and say, hey, do
15 you remember anything about these? You know, one of these
16 was Valentine's Day, where were you? One of these is the
17 day after Christmas. What was going on? Were you guys
18 really here? Do you -- do you really not remember hearing
19 any of this? There's also a statement from Terrence about
20 the first time this happened how -- if you remember how one
21 of Ms. Minor brothers comes in, what's going on. And this
22 was in Terrence's statement. One of the brothers comes in,
23 Minor says, get mom, and Keith whips the brother, slaps Minor
24 The police had that in Mr. Crawford's statement, but they
25 didn't ask any brothers. And again, Mr. Crawford wasn't

1 there. He would have gotten that story about the brother
2 walking in from Minor So it doesn't make sense and
3 it casts all kinds of reasonable doubt on these stories when
4 nobody else, when none of these other three people ever see
5 or hear a thing.

6 What about Ms. Reed's hospital visits? Why is that
7 important in this case? Why did I talk to her about all
8 that? She's got some physical problems and she's -- you
9 know, she's talked about that. And you heard her testify
10 that during the time period in question she was probably in
11 the hospital about 20 times. And the reason I asked her
12 about some of those specific visits were because the dates
13 were either consistent with the ones that Minor had given to
14 law enforcement or they were pretty close in time to those
15 dates. So she could remember -- after we talked about it a
16 little bit, she could remember a visit on February 14th to
17 St. Francis in Greenville. February 14th was the date that
18 was originally alleged in the incident report. And I know
19 you had to listen to me talk about those dates and go
20 through those warrants and those indictments and I know
21 that's all hard to keep straight. But Mr. Hunnicutt
22 testified that in the incident report February 14th was
23 listed. But then the warrant was taken out for the 13th for
24 whatever reason that at this point nobody remembers anymore
25 and nobody can explain. But Ms. Reed remembers being at St.

1 Francis on the 14th in Greenville, and she testified that
2 the only reason she would have gone to that hospital is if
3 they were in Greenville. And she said Keith was with her.
4 I don't recall there being any testimony about where the
5 kids were, so I don't know if they would have been with
6 them. That wasn't -- that wasn't brought out. But if the
7 children were -- either the children were there or Ms. Minor
8 would be -- is the one we need to worry about. Either Ms.
9 Minor was there in Greenville with them on the 14th when Ms.
10 Reed went to the hospital or she was somewhere else. If
11 they were in Greenville did that incident happen in
12 Greenville, too? Are we sure that could have happened in
13 Calhoun Falls? When I asked Ms. Minor about it she
14 said I -- you know, what I remember her saying was that she
15 couldn't distinguish between the 13th or 14th. Maybe it was
16 late at night is what I think she was trying to tell me.
17 But when did they go to Greenville. That was Valentine's
18 weekend. Were they there the night before? Did they spend
19 the night there the night before? We don't know because
20 none of that -- none of that has been explained to you. You
21 haven't been given a lot of details about any of these dates
22 exact this one. So that's something you need to think about
23 that Keith and Ms. Reed -- at least the two of them were in
24 Greenville for her to be in the hospital on the 14th.
25 She also remembered a hospital visit -- let's see, to

1 Self Regional Hospital in Greenville on this date. I asked
2 her about going to Abbeville Hospital on the March the 15th
3 date and that one she couldn't remember. And the purpose
4 wasn't to say, well, if she -- if she was in the hospital
5 then Keith was with her, so he couldn't have been there.

6 What I thought was significant about pointing out those
7 dates is that in the explanation of how all this was arrived
8 at, what little explanation you've gotten, there's never
9 anything mentioned by Ms. Minor about why I know it was that
10 date. I know it was March 3rd because my momma came home
11 from the hospital and then he raped me in the livingroom.
12 My momma was asleep in the bed after coming home from the
13 hospital. Never any mention of that. And you've got one,
14 two, possibly three of those dates where a hospital visit
15 coincides with that. But nothing ever about that. Just
16 some vague reference about sporting events. Looking at a
17 school calendar and sporting events.

18 The other thing that's really important about those
19 hospital visits, you heard about two admissions in Anderson
20 where Ms. Reed went into the hospital in April for seven
21 days on the first visit. A week in April. She's in the
22 hospital. She told you it was on the psych ward. The kids
23 went back home with Keith. The last attack is supposed to
24 have been March 18th. Just a few weeks -- less than a month
25 after that Ms. Reed is in the hospital for a week in

1 Anderson. Why in the world is Keith Tate not raping Minor
2 Minor with impunity with her mother gone admitted to the
3 hospital for seven days? Nothing in April.

4 One of the things Ms. Minor seems to offer as an
5 explanation for why the attacks stopped is that she started
6 sleeping with her mother. If she's in there sleeping with
7 her mother then he won't bother me.. Her momma is gone for a
8 week and nothing. She's gone again in July before Ms. Minor
9 reports any of this. She's gone for another five days to
10 Anderson and nothing. And going back to the April, we know
11 that Minor must have been in Calhoun Falls. Must have been
12 there because she was in school. She didn't miss any school
13 in April.. So those hospital visits are important when you
14 consider the reasonable doubt that you have in this case.

15 The story. Changes in the story. I started off by
16 telling you at the very beginning of this case that it
17 reminded me of some kind of horror novel because some of it
18 seems like it could be real life and other things just seem
19 -- just seem too out there. So let's talk about some
20 discrepancies in the story, inconsistencies and how things
21 change, how things don't match up. It reminded me of a
22 Rubik's Cube, too, doing this because you -- I can't work
23 them. But, you know, you work really hard. You get all the
24 oranges and that looks all right. That side's fine. Then
25 you start working on the white, and when you do that it

1 messes up the orange. That's what all these stories and
2 wild details remind me of is trying to -- trying to get that
3 put together. And I don't see how you can take everything
4 you've heard and make that all fit and work.

5 Initially this whole thing starts off with Ms. Minor
6 telling the police that this would happen when everybody was
7 asleep. Momma would take her medicine and go to bed. He'd
8 make the boys go to bed, and this would all happen when
9 everybody was asleep. But then you'd hear -- one of the
10 last things you heard from Ms. Bell on the stand today in
11 the interview was that when Minor described that first
12 incident to her, after it's all over she goes to the room
13 where the boys are watching TV. She's been in the
14 livingroom screaming, she's been in the livingroom getting
15 punched, and the boys are right there a few feet down the
16 hall watching TV. Mr. Sheek asked her why she waited to
17 report what was going on. She said she didn't have a phone
18 to call 911. And then in other parts of her testimony she's
19 talking about how one of the things she would do to protect
20 herself was just to stay up all night long texting. I'll
21 just -- I'll text all night. I'll stay awake. And somehow
22 magically he won't bother me if I'm awake. But doesn't she
23 also say he bothers her plenty of other times she's awake?
24 He's coming in her room. He's calling her into the
25 livingroom. But she's got a phone to text to stay up all

1 night so that he won't bother her.. She's also got this
2 phone violation at school, although, of course, we don't
3 know whose phone that was.

4 I think one of the things that the government is going
5 to point to to try to convince you that this is real is kind
6 of things that Ms. Holland says. Ms. Holland -- Ms. Rebecca
7 Holland, the band director who talked to you all about how
8 she took Minor back and forth from -- or she brought Minor home
9 from band practice every day. This lady said that Minor would
10 cry every day when she took her home. She would say she
11 didn't want to go home. Every day through the whole, I
12 guess, marching band season. Every day. And never once
13 does Ms. Holland say, what's -- a 12-year-old child starts
14 bursting into tears in your car and says I don't want to go
15 home and you don't say why, what's wrong? And you need to
16 consider the fact that she wrote that down after she was
17 told these things by Ms. Minor. Now, I don't know what
18 happened or didn't happened. It just strikes me as
19 extremely odd that someone would talk about a child having
20 that kind of reaction and not do anything about it. And
21 what goes along with that is she told -- she told you, and
22 she read from her -- she read her whole statement to you.
23 Ms. Minor told her about this on August 23rd. The 23rd.
24 And she says, you know what, it's too late in the day. You
25 just go home and we'll take care of this tomorrow. Well, it

1 didn't get taken care of tomorrow. It got -- it got talked
2 about on the 25th, and Ms. Lindler testified that that's the
3 first time Ms. Holland came to her. So she's got -- she's
4 got Minor giving all these graphic details about
5 these events, telling her every time he attacks me I end up
6 in this tub of bloody water, and she's going to send her
7 home to this monster for two more days because it's too late
8 in the day. Is it too late in the day to call 911? Does
9 that tell you anything about what Ms. Holland originally
10 might have thought about what she was told?

11 There was a discrepancy about whether any oral sex
12 occurred. At least -- I'm talking about cunnilingus. I
13 asked Ms. Minor the question, when you had your forensic
14 interview didn't -- do you remember Ms. Bell asking you if
15 anybody had ever put their mouth on your vagina and you said
16 no. Well, she didn't remember that. She didn't remember a
17 lot of things that I asked her about. Didn't know or didn't
18 remember. But then remember those five sheets of notebook
19 paper that Ms. Minor wrote after the fact? Some of them had
20 a couple of dates. Some of them didn't. And I showed her
21 the one piece of notebook paper where she wrote he pulled my
22 pants down and put his mouth on my area between my legs. So
23 when she's talking to the forensic interviewer who she knows
24 is trying to get her information to help with this case she
25 says no -- or she doesn't admit to saying no. So that's not

1 in evidence. She said she didn't remember. But on this
2 piece of paper where she's crafting more of this story after
3 the fact she talks about oral sex. There's also another
4 piece of notebook paper. The fifth day after band started.
5 He ripped a hole in my pants and in his shorts. The only
6 time there's any mention anywhere on anything you've heard
7 about about holes being ripped in her shorts. And guess
8 what? She's still got them. She said I still have them.
9 But those -- you haven't seen those. And that's because she
10 was continuing to craft this story. There's another notebook
11 paper -- piece of notebook paper where she's writing about
12 an incident on August 20th. Did she get the date wrong on
13 the first incident? Is she talking about something
14 completely different?

15 And the tub of bloody water. The image that she first
16 gives to **Terrence C.** about how she would wake up in a
17 tub of bloody water. This is the image to me that sounds
18 like the killer clown or the vampire. She tells Ms. Holland
19 that every single time there's an attack he puts her in the
20 tub of bloody water to clean up. She tells Ms. Holland --
21 not Ms. Holland, but Lindler about the bloody water. But
22 again, when she's talking -- you heard Ms. Bell testify.
23 When she's talking to the forensic interviewer, who she's
24 given all these different details to, who's questions she
25 had no trouble answering, she was forthcoming with all of

1 these details, that this image that -- the scary image that
2 she starts with there's not one mention of a tub of bloody
3 water in that entire forensic interview. She doesn't tell
4 the police about it because they're men and she doesn't know
5 them. The explanation. So there's a tub of bloody water.
6 There's Terrence's statement where Keith will attack her
7 even when she's having her period and the blood will be
8 coming out fast and Keith -- but he still won't stop. Well,
9 you saw that law enforcement, one of the things they did do
10 was gather up the covers from that sofa bed in the
11 livingroom. You saw two coverlets that Mr. Sheek showed to
12 Ms. Minor and then some sort of sheets I think it was
13 described as. Where is the blood? Now, I know she said
14 that the he threw a sheet away. So there's also this story
15 to Terrence about this happening while she's on her period.
16 She mentions the second time that she saw blood that time,
17 too. So all of these -- all of these covers and blankets
18 and there's none of that blood.

19 The second incident, the one with the anal sex on
20 October 31st of 2009. Ms. Bell just read to you from her
21 report about what she was told about that incident where he
22 threw her down on the couch, flipped her onto he stomach and
23 stuck his penis into her butt hole. She screamed, another
24 scream. He hit her -- he somehow hits her in the mouth
25 while she's flipped over on her stomach and he's anally

1 penetrating her he somehow hits her in the mouth and busts
2 her lip, and then he shoves her face into the pillow. And
3 then she describes to Ms. Bell how she -- how she had a
4 little air around her mouth from the pillow and she has to
5 breath softly because she has asthma and she can't breath
6 too heavily. So the story she's given she's able -- she's
7 thinking about controlling her breathing while she's being
8 anally penetrated and her face is shoved into a pillow and
9 she's somehow been punched in the mouth? And then from this
10 position she's somehow able to kick her dad in between his
11 legs and her foot connected with his penis. The next thing
12 she remembers is waking up with her head in the pillow in
13 the livingroom 7:30 the next morning. This is a big deal.
14 She wakes up at 7:30 the next morning, October 31st. It's a
15 Saturday. And you know that because you heard about the
16 football game. The only real detail you got about how these
17 dates were determined was that football game in Twiggs
18 County, Georgia on October 30th. And I think, if I remember
19 right, I'm the one that asked Ms. Minor about that. She
20 thought it was a home game. Ms. Holland confirmed it was in
21 Twiggs County, Georgia, which would explain her coming home
22 late. But at any rate that's the one incident you got some
23 details about. So she goes to that football game on Friday
24 night. She gets home early in the morning on Saturday,
25 October 31st and this terrible thing happens to her. She

1 wakes up with her face in the pillow at 7:30 on Saturday
2 morning, everybody's gone, and what does she talk about to
3 Ms. Bell? She talks about how her brothers' bus for school
4 has already come. How she thinks her momma might be at a
5 doctor's appointment. How her ride for school has already
6 left so she has to wait for her momma to come home to take
7 her to school on Halloween on a Saturday. There wasn't any
8 school on Saturday when she supposedly woke up and the house
9 was empty after this thing had been done to her. And if
10 that's the -- that's the date you've got the most detail
11 about, what does that tell you about how little you know
12 about the rest of it. What does that tell you about whether
13 this is something that's being created? If she wakes up and
14 no one is there. Her underwear is down here all around her
15 ankles. This is all what Ms. Bell read to you from her
16 report. Her shorts were up. Her shirt is off and it's on
17 the lamp. Everybody's gone. And you've heard, I think,
18 several times about how the only way in and out of that
19 apartment -- you can't get in and out of that apartment
20 without seeing the living room. The front door opens into
21 the living room. The backdoor opens off the kitchen. You
22 can see it straight through. If everybody in that house was
23 gone when she woke up they would have had to have walked by
24 her in that state and just totally ignore it. Did the
25 police -- did the police check out this forensic interview

1 and then say, oh, my gosh. She woke up and everybody was
2 gone. Let's go ask them if they saw anything. Did Ms. Reed
3 tell you she ever left the house one morning and saw Minor in
4 that state? Would she have wondered what was going on? She
5 didn't talk to you about it because it didn't happen.

6 And finally I'll move on to something else. But think
7 about the different things that you were told about the very
8 first time. There's Terrence's statement where the first
9 time this happened the brother walks in. Minor says get mom.
10 He whips the brother and slaps Minor That's -- Terrence is
11 the first person she tells. That's the first story about
12 the first incident. Terrence had to get that from Ms. Minor
13 I suppose he could have made it up. I'm certainly saying he
14 did. But the only place he could have gotten it was from
15 Ms. Minor We know the brother didn't see anything. If her
16 brother had seen something you know the government would
17 have brought him in here and had him tell you about it. So
18 that's the first story you get. Then the second story was
19 the one she told Ms. Bell, and Ms. Bell read that to you
20 from her report. About how he called her in the livingroom,
21 and that's when the punch in the face that didn't leave a
22 mark and the scream. And then the final revision that she
23 gives to that story about the first time is the one that she
24 gave you from the witness stand. And that was the story
25 about how she -- she thought Keith was just being a good dad

1 because he wanted to see her underwear and wanted to see
2 what size her underwear was. First time ever in almost
3 years that there's anything -- that there's any kind of
4 story about he wanted to see my underwear so he could see
5 what size it was and I just -- I didn't think anything of
6 it. Isn't that a vastly different beginning to that
7 incident than calling somebody or dragging somebody in the
8 livingroom and throwing them down on the couch, punching
9 them in the face? But that's the version of the first time
10 that you heard when Ms. Minor testified. That was her final
11 edit on that story. I've already talked to you about some
12 about this, but the 10 dates that were given. The December
13 26th one. Now we know that happened in Greenville. And I
14 know Ms. Lindler told you that she heard about that the day
15 that she talked to Minor about this, but she doesn't -- she
16 doesn't have any notes. And I am sure that she is trying to
17 remember everything the best that she can, and it has been a
18 while. But she can't give you any details about how these
19 dates were arrived at. Again, except for some vague
20 description. I think it was around sporting events. She
21 said she knew about Greenville incident. Well, apparently
22 the police didn't get told about that, because they took out
23 a warrant for that December 26th incident saying it happened
24 in the livingroom in Calhoun Falls. The livingroom of that
25 apartment. And now, I'll be the first one to say that there

1 were things that should have been done in this investigation
2 that weren't done. They did do some things. They took some
3 stuff out of the house. They sent the phones to be
4 analyzed. But even -- even the slackest law enforcement
5 officer I don't think is going to go approach a judge to
6 swear out an arrest warrant for somebody when they've been
7 told that that incident did not occur. Mr. Hunnicutt told
8 you, no, if -- if I'd been told it was in Greenville then we
9 wouldn't have had jurisdiction to take out that warrant. So
10 the police took the information they got and they believed
11 all of this happened in Calhoun Falls. Well, it's not until
12 just recently that now all of a sudden December 26th is in
13 Greenville.

14 The other thing that's interesting is that it seems
15 like this activity sort of escalates until you've got this
16 gap here between the first and second time. But then by the
17 time you get to March there are four attacks in basically
18 about two weeks and then it's over. And there's no
19 advantage -- there's no advantage taken of these times when
20 momma's in the hospital. It just -- it just stops. And
21 again, you don't -- you don't have any other real details
22 except for this one about how any of this was arrived at.
23 Was it August 26th or 29th? Was it February 13th or 14th?
24 Was that really in supposedly Calhoun Falls. You didn't get
25 -- people just couldn't seem to answer that question. How

1 do you come up with these specific dates. Oh, well, we used
2 a calendar and I think it was that sport. Nobody explains
3 it.

4 I've heard sometimes prosecutors use this analogy about
5 how defense will come in and try to muddy the water. You
6 know, like you've got this nice shinny quarter and it's --
7 you can put it in this clear water and then the lawyer will
8 come along and stir it up and stir up all the muddy and you
9 can't see the shiny coin anymore until everything settles.
10 So, you know, I'm trying to trick you by making you look at
11 the mud. In this case it's Ms. Minor story that creates
12 the mud, and it's so thick that there isn't any way you're
13 able going to be able to see the shiny coin. I'm just
14 showing you where that is. I'm just pointing those things
15 out to you.

16 And I know Ms. Minor got really upset on the stand, and
17 I hope you don't think that it's fun -- I don't know what
18 Mr. Sheek is going to say, and I don't get to talk to you
19 again and I know you've had to listen to me a lot. But this
20 is -- this is important and I want to make sure that I saw
21 everything I need to say for Keith. And I thought that
22 maybe one of the things that might be said is that Ms. Minor
23 has been revictimized or retraumatized by having to come in
24 here and tell you what happened. And it certainly is not my
25 intention to contribute to that. I'm not the reason she's

1 on the stand. The reason she has to take the stand is
2 because the government is choosing to prosecute this case
3 and the evidence that she -- that they have to offer you is
4 coming from her. And when somebody is accused of something
5 like this, our country's constitution gives them the right
6 to fully defend themselves. You get to -- you get to
7 question what's being said about you. They're calling him a
8 child molester. So yes, he gets to have an advocate who
9 gets up and says that's a story. That is not true. And if
10 it really isn't true, is it worst to be called a storyteller
11 than it is to be called a child molester? The first time
12 you see Ms. Minor emotional reaction is when I was giving
13 you my opening statement and telling you how I was going to
14 be talking about these different versions of her story. And
15 when she knew that was going to happen she got upset. And
16 when it happened on the stand she got upset. And you can
17 interpret that, I guess, one of two ways. She was crying
18 because what happened to her was so horrible and she doesn't
19 like having to go through it again or she's crying because
20 somebody is pointing out the problems with the things she's
21 saying and the reason that you shouldn't believe it, and
22 that -- and that is difficult for her. And there may be
23 other ways to interpret it. I don't know.

24 The State has also given you some medical evidence.
25 What I want you to remember about that is that it was taken

1 in November. November 23rd of 2010. That's about eight
2 months; if I'm counting right, after this last attack. And
3 Dr. Pritchard finds something that she says indicates some
4 sort of something being pushed into the vagina. Whatever
5 that is. She also knew at that point when she performed
6 that exam that Ms. Minor was using contraceptives. She said
7 that transection could be consistent with forced sex, I
8 guess, or consensual sex. And again, that's eight months
9 after this last supposedly event and after Ms. Minor has gone
10 -- started using some sort of contraceptive..

11 But that goes along with one of the last things I want
12 to talk to about which is why would she make this stuff up.
13 And we don't have to -- we don't have to give you an answer
14 for that. I've talked to you -- when I talked to you at the
15 beginning of the case and talked to you about the
16 presumption of innocence that every single person who is
17 accused of a crime in this country has. You must start --
18 when you're listening to this case and evaluating this
19 evidence you must start with the presumption he didn't do
20 anything wrong. And you know that he's pled not guilty and
21 he's saying he didn't do anything wrong. That's why we're
22 having this trial. But you start with that presumption, and
23 you have to decide if the evidence you've been given has
24 overcome that starting point to the extent that you're
25 firmly convinced beyond a reasonable doubt that the State

1 has proved these allegations for each of these nine days.
2 You'll have to evaluate those nine dates separately. Did
3 they prove it for August 26th or 29th. Did they prove it
4 for October 31st. It's not enough for you to just be
5 suspicious that something might have happened. Something
6 might have happened sometime. I'm not sure where it was,
7 but surely if she's telling the story something happened.
8 It's not enough just to be suspicious. It's not even enough
9 if you think it probably happened. That's enough to get
10 somebody arrested, but it is not enough for you to convict
11 somebody of these kinds of crime. Any crime. It's more
12 than that. It's not -- it's not even the level of proof
13 that you would have in a civil case. Something like a trial
14 about a car wreck where somebody is asking for money for the
15 injuries they've gotten. All the proof you need in that is
16 a preponderance of evidence. Just enough to tip the scales
17 in one person's favor or another. This is even more than
18 that. Proof beyond a reasonable doubt. Doubt based on
19 reason. Doubt -- the doubt's been erased and you are firmly
20 convinced. So you need to -- you need to look at each one
21 of these nine dates separately, as I said. I think you've
22 got some of these date discrepancies that we've talked
23 about. I think the State will tell you that doesn't matter.
24 Those have to be perfect. They don't have to give you the
25 exact dates for you to convict. Do what you will with that

1 information. That was brought out. But each one of those,
2 what proof were you given for those dates that that proof
3 makes sense. And every single one of you who is evaluating
4 this case is entitled to your own opinion about what those
5 verdicts ought to be. You're entitled to stand by those
6 opinions. You have to have a unanimous verdict. But each
7 and every one of you is entitled to come to a conclusion on
8 his own. That standard of reasonable doubt doesn't get
9 changed any at all just because the government's star
10 witness is a teenager. It doesn't mean that they don't have
11 to -- just because she's young, it doesn't mean they don't
12 have to get all the way to convincing you the way you need
13 to be convinced to convict Keith Tate of any or all of these
14 crimes.

15 So again, it's not our obligation to prove to you these
16 things did not happen. I think I've given you a lot of
17 reasons to have reasonable doubt about this whole story and
18 the version of the story. But we don't have to prove to you
19 that this didn't happen. We don't have to -- we don't have
20 to give you -- we don't have to answer why. Why would she
21 have made this up. But I think the evidence gives you an
22 explanation for that. And that is Ms. Minor boyfriend,
23 Terrence C. , who really meant a lot to her, who she
24 started seeing on March 23rd after this stuff was all over.
25 And I think you have to assume that's March 23rd of 2010,

1 because from my recollection of the testimony again -- if I
2 say something that's inconsistent with your memory, then
3 you've got to go with your memory. And I know you've heard a
4 lot of things and you don't get to take notes. But at any
5 rate, I think based on the evidence, as I recollect it, they
6 weren't in that Calhoun Falls apartment yet in March of
7 2009. So she starts dating Terrence shortly after the
8 events stop March 23rd of 2010. And then it's not until
9 later that she says that things had happened, and Terrence
10 says, well, I'll keep it myself as long as it doesn't keep
11 happening. Well, it didn't. It didn't keep happening. Her
12 -- her momma and Keith are making things difficult for her
13 where Terrence is concerned. They won't let her go to his
14 house. They won't let him come over to her house. She's
15 12-years-old. So they're making things difficult for her
16 and what -- what's really important? How important is that
17 first boyfriend to a teenage girl. I know some of you were
18 not teenage girls. But that is a big thing for her. I
19 think when you look at her journal -- which again, this
20 whole thing started with I've got all this written in my
21 diary. I wrote about it after every time it happened. And
22 what you've been shown is a poem that's supposed to be about
23 how she felt about it, but it doesn't mention any incident
24 or any date or Mr. Tate. But I think when you look --
25 you'll have that journal with you and I think you'll be able

1 to tell how she felt about Terrence from looking at that
2 journal. So she isn't getting to spend as much time with
3 him and have as much interaction with him as she wants. And
4 then the culmination of all that is when those inappropriate
5 pictures turn up on the phone on August 14th and 15th. Mr.
6 Cave told you about. Minor one of the things she was able
7 to admit to was those pictures on her phone. Her mother
8 admitted to seeing those. Her phone gets taken away. It
9 gets talked about with Terrence's parents. And then just,
10 what, a week and a half later. The pictures are there the
11 14th and 15th, so they've got to be found some time after
12 that while they're at Blue Hole. And then on August 23rd
13 all of this starts coming out. And then Keith is gone. The
14 person who was awake most of the time, who stayed with the
15 kids when Ms. Reed went to the hospital, who Ms. Reed still
16 is happy for her -- their son together, Takevis, still going
17 and seeing Keith in spite of these awful allegations. She
18 said, yeah, I'll let him go if he wants to. He was just
19 there a few weekends ago. But he -- he's out of the picture
20 and the boyfriend problem won't be a problem anymore. And
21 then Ms. Minor at some point starts using contraceptives, and
22 then in November there's an exam that shows some sort of
23 penetration. So that's the only thing I know of to point to
24 to explain to you why this would have started coming up.
25 And then once that story starts getting told, how do you

1 back off of it. Once Terrence goes to his mother, and then
2 she goes to the guidance counselor, and then they go to the
3 police, how do you back off of it? She's creating the whole
4 thing as she goes along, even up to the point that she took
5 the stand yesterday and told you about this needing to see
6 the size of the underwear.

7 I appreciate how much -- how well you've listened and
8 how hard you've worked. I appreciate you listening to me.
9 I'm going to ask you to go back there and think about these
10 things. I don't -- I'm not going to get an opportunity to
11 get back up and respond to any of the things Mr. Sheek says
12 to you. But please remember -- please remember these
13 things. Nobody else sees or hears anything. The hospital
14 visits that aren't ever correlated with any of these dates.
15 She goes to the hospital 20 times. She says most of the
16 time Keith stayed back. But none of those -- none of those
17 event dates will come about because Minor said, yeah, he raped
18 me while my momma was at the hospital. The changes to the
19 story, how did they get to these 10 dates and why would she
20 do this.

21 Please think about the burden of proof that you've got
22 to be convinced beyond a reasonable doubt. Consider
23 everything heard, and we ask that you come back and give us
24 a verdict of not guilty on all nine counts. Thank you.

25 THE COURT: Thank you, Ms. Nelson.

1 MS. NELSON: Thank you, Your Honor.

2 THE COURT: Solicitor, are you ready?

3 MR. SHEEK: Yes, sir. May it please the court.

4 CLOSING ARGUMENT

5 BY MR. SHEEK: Madam Forelady and ladies and gentlemen of the
6 jury, I know you've been sitting there listening for a good
7 while, so I will try not to go too long, but there are
8 things that I certainly do want to cover with you because
9 this is an important case. I'm not sure what Defense
10 counsel thinks we've come here to do this week, but I can
11 promise you I'm not looking for quarter in the river. I
12 don't care. I'm here for one thing and one thing only. I'm
13 here because that man right there chose to rape his nine --
14 I mean, 12-year-old step-daughter nine times. And if they
15 want to sit there say, well, it's not my fault we're in
16 court, it's the government's, I'll never make an apology for
17 that because I'm not ashamed to be doing what I'm doing here
18 today. I will come back into this courtroom. I will
19 prosecute these cases. I don't know what they think we're
20 doing here, but that's why we're here today. It seems to be
21 the latest fad now with them to refer to us as the
22 government, because the government has a bad connotation
23 now. It's some nameless, faceless entity somewhere that we
24 all have to pay taxes to. Let me explain something to you.
25 Your Solicitor's office and your elected Solicitor, David

1 Stumbo, represents the people of the Eighth Judicial
2 Circuit. This is *State of South Carolina vs. Keith Denver*
3 *Tate*. We represent the people in this community. These
4 lawyers come in here and they're good at what they do.
5 Don't get me wrong. They're good at what they do. But they
6 have a different ethical obligation than I have. They have
7 an oath to Keith Denver Tate and to him alone. No one else.
8 They're not here about the victim. They're not here about
9 justice. They're here about Keith Denver Tate and getting
10 him off. I don't represent Minor I don't represent Minor
11 family. I don't represent the police. I represent the
12 people. That's why we're here. And you'll forgive me if I
13 get a little bit wound up. This is what I do. I prosecute
14 crimes where children are victims and I believe it whole
15 heartedly. The Apostle Paul wrote to the very early church
16 and he said take care of your widows and your orphans. It
17 wasn't because he believed that widows and orphans had a
18 greater value in God's eyes than anybody else, but it was
19 because in that society widows and orphans had no power.
20 They didn't have a husband, they didn't have a father, and
21 that's where you got power in that society. So what Paul
22 was saying is those that can, stand up for those that can't.
23 As long as I have breath in my body I will stand up for the
24 victims of these types of crimes and I will never be ashamed
25 of it.

1 From the get-go you were told by this lady it's a
2 fiction. It's a story. It's all lies. It's all
3 fabricated. Was she there? Is she testifying to you? No.
4 She can't give you evidence. Evidence comes from that stand
5 and that stand only. When you took that oath it was to find
6 this verdict based solely on the testimony and evidence. It
7 comes to you from that witness stand. That's who testified
8 to you, and that's the only thing that you have to base your
9 verdict on.. Not on her standing up here saying oh, it's all
10 a fiction, from the get-go, before she's ever heard this
11 testimony. I understand why. She's here for Keith. She's
12 her for Bo, and that's it. So of course she's going to say
13 it's all a lie. It's all fiction. What did she say? She
14 said, oh, it's like a vampire, killer clowns. You know,
15 fiction, the horror to scare you. That's what you were
16 told. Let me introduce you to somebody. John Wayne Gacy.
17 1978, John Wayne Gacy was arrested in Texas. One of the
18 first world documented serial killers. Thirty-three
19 convictions, young boys murdered. That's Mr. Gacy's mug
20 shot, and that's Mr. Gacy also. You know what else name he
21 went by? What else he's known as? The killer clown. A
22 fiction. In 15th century present day Romania, Vlad the
23 Third lived. He also went by the name Dracula. He had a
24 habit of impaling people on sticks, on posts outside his
25 castle if they were his enemies and leaving their bodies for

1 everybody to know not to mess with him. He's commonly known
2 as Vlad the Impaler, and that's where Bram Stoker got his
3 story that we know as Dracula the vampire. Because you see,
4 folks, those things that scare us, those things that go bump
5 in the night that we fear, they have their basis in reality.
6 Now we come to this case. We're not talking about aliens,
7 we're not talking about vampires, and we're not talking
8 about John Wayne Gacy or killer clowns. We're talking about
9 Keith Denver Tate. And don't let some cheap parlor trick
10 get your mind off of what we're doing here. Because there
11 are some things that haven't changed. I mean, we come in
12 here and we say, well, was it August 26th or was it August
13 29th? Was it February 13th or February 14th? We don't
14 know. And she told you that I'm going to say the dates
15 aren't required because she knows that and that's what the
16 law says, because of the very unique nature of these type of
17 crimes. When you've got a child who was victimized in a way
18 that most of us probably could never imagine, who then a
19 year later is trying to come up with dates, the law says you
20 don't have to give an exact date because we know you can't.
21 This isn't an armed robbery where I've got a videotape at
22 the Citgo that at 12:37 a.m. somebody came in wearing a mask
23 and robbed somebody. By the very nature of this crime it's
24 done in -- it's done in private. And these guys are no
25 different from what you see on the Discovery Channel. I saw

1 a show where a leopard was killing a water buffalo. I
2 thought how in the world a big ole strong water buffalo.
3 It's because they don't go after the big strong young bulls.
4 What do they go after? They go after the sick, they go
5 after the calves, they go after the small, they go after the
6 weak, just like him. Because what did he tell you?
7 Uncontradicted testimony from the stand that Minor said, you'd
8 better not tell. It's going to mess up your family. Nobody
9 will believe you. She knew from the get-go from this guy
10 that if she ever told what happened to her in this courtroom
11 this week was going to happen. He comes into this
12 courtroom. He comes in with a skilled defense lawyer who
13 just calls her a liar from the get-go. That's their whole
14 defense. I'm going to call you a liar, call you a liar, call
15 you a liar, call you a liar. And then I'm going to go
16 through nine events that happened over a span of a year,
17 long before the report ever comes out, and if you don't get
18 the dates right, you don't get which way your face was
19 pointed right, you don't get where your clothes were right,
20 then we're going to say, well, you can't -- can't rely on
21 it. Can't rely on it.

22 Last fall -- and I'm sorry. Getting close to
23 wintertime, I had to go to the hospital. Terribly sick.
24 Ended up passing out at home. A friend of mine had to call
25 911. An ambulance comes and picks me up. I can tell you it

1 was in December because I was supposed to be going to a
2 Christmas party with a friend that weekend. I can't tell
3 you what I was wearing that night. I can't. I can't tell
4 you exactly what date it was. But I went to the hospital.
5 Of that I am absolutely positive and I remember clearly.
6 Two years before that I had to go when I slipped and busted
7 my leg on the front porch of my house. I know it was in
8 January because we had that big snow storm. I know I went
9 because I busted my leg bad. But I can't tell you what date
10 it was. I can't tell you what I was wearing. And so much
11 more than that, as a grown man getting sick, as a grown man
12 falling and hurting myself, you got to consider a 12-year-
13 old child being sexually molested, being raped, and we're
14 going to come in here and if she don't get the details right
15 we're going to say, well, she's a liar, she's a lair, she's
16 a lair. She's telling story. I find that offensive. I
17 can't imagine. I went last night and visited my folks. I
18 think my father is the greatest man in the world. When I was
19 a kid I thought he was 10 foot tall and bulletproof. I
20 still kind of think that. I can't imagine those hands,
21 those arms, that hugged me, that protected me, that would
22 have stood up for me at any time being the hands and the
23 arms that violate me in the worst possible way. And I can't
24 imagine the emotional trauma of coming in here and having to
25 talking about it four years later. But one of the greatest

1 things you've got to judge credibility -- because this is a
2 case of credibility. And the reason it's a case of
3 credibility is because from the get-go they called her a
4 liar. If you judge her credibility, her credibility. But
5 let me tell you something, folks. Somebody lying to you if
6 it didn't happen. So you just her credibility. And the
7 one thing you got is you get to judge the demeanor of the
8 people in the courtroom. Their manner, their body language,
9 how they testified to you. You saw the raw emotion of that
10 young lady. You saw her to say to Ms. Nelson, I don't want
11 to think about it. You're making me go back and back
12 through and I don't want to think about it. I don't want to
13 relive it. Don't you understand that. That's what that
14 child said to this lady. Now, I understand as a grown
15 attorney, having done this over and over again, maybe it's
16 not a big deal. To that child, it was a very, very big
17 deal. And they come in here and they say, well, it must be
18 motivated by these text messages, or pictures. What's
19 interesting, the pictures came in, as they said, their
20 testimony from their witness Mr. Cave, on August the 15th
21 and August the 14th. Some 10 days -- 10 days prior to this
22 report at school. But the uncontradicted testimony from
23 Terrence and from Minor was that Minor had told Terrence what
24 was going on when? About a month and a half before that. A
25 month before these pictures ever got sent. The police come

1 and serve a search warrant on August 25th. They take this
2 journal. Minor didn't have a chance to go back home after
3 talking with the police and write something up to get a
4 story that hopefully they'll find and take that maybe can be
5 used in court later. So if it really is the story and the
6 fiction the Defense wants you to believe then this little
7 girl knew, one, to make up the story to tell Terrence a
8 month before any pictures get sent just in case pictures get
9 sent a month later and then she gets put on restriction so
10 that she can do this in some classic revenge move against
11 Mr. Tate. Oh, yeah, and she knows also to write something
12 in the journal just in case it does happen that way and the
13 police get there and take the journal before she gets home,
14 then she'll have something in writing. That's the way it
15 would have had to happen to be the great work of setup and
16 revenge that they're going to tell you about. Of course,
17 they need to come up with some reason, because why would
18 that young girl go through what she's gone through at
19 school, talking to the police, the forensic interview, the
20 medical exam in November, and then come into this courtroom
21 and going through that hour and a half long cross
22 examination. Why would she do that but that that this
23 happened. Because why they want to talk about
24 inconsistencies between the 26th or the 29th, 13th or the
25 14th, was she facing this way, was she not facing that way.

1 There are things that have never changed. Never changed
2 every time that story has been told. Why is that? It's
3 happened nine times. This guy raped her in that house,
4 penetrated her, and that's never changed. And why would the
5 Defense come up here and stand in front of you and say,
6 well, why would she say that every time she woke up in a tub
7 of bloody water. Well, folks, she didn't say that, did she?
8 As a matter of fact, Mr. Brown got up on redirect with that
9 witness and said just go ahead and read what you wrote in
10 the statement. What did she say? On occasion. On occasion
11 she came to in a tub of bloody water. Now, I don't know
12 what the child thought bloody water. You know when you get
13 cut and bleed, it goes through that water and the whole
14 thing looks horrible. So I don't know. I don't know. But
15 she didn't say every time. She never said that. Not to
16 anybody. But the Defense gets up here and characterizes it
17 that way. So who's the one trying to mislead you, and why
18 are they trying to mislead you. She said she got put into
19 the water to clean her up. It's not necessarily blood.
20 There may be other things to be cleaned up there. And then
21 they want to talk about these bed covers. She identified
22 whose beds they came off of, and they were in there on that
23 sofa couch that she said Keith is the one that slept in. So
24 is the State going to run and do a DNA analysis on it to say
25 his blanket has got his DNA on it? That would kind of be

1 like fingerprinting my car to see if I've been in it,
2 wouldn't it?

3 But we know, if we don't bring it into this courtroom
4 to show it to you then we're going to be called, well, they
5 didn't do this and they didn't do that. And I promise you,
6 no matter what the police had done, no matter what testimony
7 we brought to you, something wouldn't be good enough for
8 them. I promise you that. I mean, this isn't new ground
9 we're plowing here. This is the way it is time and time
10 again.

11 These kind of guys count on one thing. There's no
12 pictures. There's no videos. There's no witnesses. It's
13 my word against her's. He told her that from the beginning.
14 And they count on that, reasonable doubt. All I've got to
15 go in the courtroom and call her a liar and say you can't
16 prove it and then I'll walk out of there. They count on
17 that.

18 Now, ladies and gentlemen, you've heard testimony. You
19 saw those witnesses that sat on that stand. Don't get
20 sidetracked by what a lawyer tells you. You look at what
21 those witnesses said and you decide if you're convinced that
22 this man did penetrate that child. Was that a emotion you
23 watched real. Because if she's made all this up and she's
24 put on that kind of act, she deserves an Academy Award,
25 because that was compelling.

1 They talked about the screaming. Well, it had to be
2 heard. Well, what actually was the testimony? Where did he
3 put his hand when she screamed -- started to scream? He put
4 his hand over my mouth. That was her testimony. So in her
5 mind she was screaming. But his hand was over her mouth,
6 and that's not contradicted by Terrence or anybody else.

7 This is the writing of a child that didn't know the
8 police were going to be called. This was the writing of a
9 child that didn't know the police were coming to take this
10 book. "Should I stay or should I go. Should I walk away
11 from all fear or should I be strong. Should I love him.
12 Should I hate him. Should I keep it to myself. Should I
13 let them know. So many questions. Would she still love me
14 for me, or hate me for him. It wasn't my fault. Will she
15 kick me out because she didn't believe me. Should I run
16 away or should I stay. So many questions that have no
17 answers. Do he know how I feel. Do he know. So many
18 questions." That's from the mind of a 13-year-old. We
19 would hope that children would run to the phone and call
20 911, immediately tell their teacher. It doesn't happen.
21 Dr. Pritchard is the only person that was qualified as an
22 expert in the area of child abuse and she told you that more
23 often than not that children don't initially report, for a
24 variety of reasons. It think that pretty well spells it
25 out. That fear. That fear.

1 What was Minor fears though? It tells you a lot about
2 that young lady. Momma's health, brothers lose their daddy,
3 nobody will believe me. So what do you do? What do you do?
4 When momma is so sick and on so many medications that she
5 can't physically be there to protect you, she's out of it on
6 these medications, you're going to run to your seven and
7 five-year-old brothers? Are you going to tell somebody you
8 don't really know at school and then not know what's going
9 to happen when you get back home and this man's found out
10 what you've told. What do you do? Well, in the mind of
11 that 12-year-old and that 13-year-old she did the only thing
12 she could do. She internalized it. She wrote about it.
13 But otherwise she kept her mouth shut. But she told
14 Terrence, and Terrence didn't keep it quiet.

15 I wished we lived in a different world. I would be a
16 happy, happy man if I had no work to do in this line of
17 business. I can't begin to tell you what goes on in the
18 mind of a man who would do this. I heard Ms. Nelson stand
19 up here and say does that make sense that he would do it
20 that way. Is that reasonable? Folks, how in the world do
21 you decide what goes on in the mind of a child rapist.
22 There ain't nothing about that reasonable. Nothing about
23 that makes sense. And I couldn't begin to tell you what
24 kind of lust, passions or perverted desires would make you
25 do that to a child, or how your mind works when you decide

1 to do it. But you as a jury don't have to decide that
2 either. Suffice it to say, it happens, and it will never
3 make sense. It'll never be reasonable. But if Minor was
4 lying, let's go with their story, she's lying to get even.
5 She's lying for revenge. If Minor was lying why would it have
6 stopped in March? She did the statement in August. Why
7 wouldn't it have continued? Why wouldn't she say he did it
8 in April, he did it in May, he did it in June, he did it in
9 July, he did it last week. Why wouldn't you have said that
10 if you're making it up. Of course, they say, well, why did
11 it stop? I don't know. Minor said it's because she started
12 to sleep with her momma. Maybe she did that. Maybe he knew
13 if he didn't stop she was going to tell. I don't know. I
14 don't have to know. But if Minor was making it up why would
15 that have been her story. And why would she have said
16 before we got to Calhoun Falls he was the one I could count
17 on. He was the one I thought I could turn to? He was the
18 one that took care of me. I never thought this would
19 happen. Why wouldn't she say it's always been happening and
20 it kept right on happening? But she didn't. And that
21 story, folks, has never changed. It's never changed where
22 it happened. It's never changed how many times it happened.
23 It's never changed who did it. It's never changed what it
24 was. And coming in and picking around the details four
25 years later from this horribly emotionally ravaged child,

1 and being able as a skilled attorney to reduce her to tears
2 on the stand doesn't create reasonable doubt where it
3 doesn't otherwise exist.

4 Only one group has come in here and taken an oath to be
5 fair and unbiased and that's y'all. That's y'all. That's
6 wall we want from you here today. We come in here seeking
7 justice. Did he come in here presumed innocent? He did.
8 The Defense tells you he sits there an innocent man. No.
9 No. He has the legal presumption because we have to prove
10 the case to you. But that legal presumption can be removed
11 by you and should be. Take that cloak of innocence that
12 they talk about and pick it up and see him as he really is.
13 And all we ask from you here today is justice. Thank you.

14 THE COURT: Thank you, Solicitor. Madam Forelady,
15 ladies and gentlemen of the jury, let's take about a 10
16 minute break before we go to the corresponding charge. So
17 if you'll go back to your jury room and we'll bring you back
18 out in about 10 minutes. I again remind you not to start
19 discussing the case.

20 (Whereupon, the jury exited the courtroom at 2:09 p.m.)

21 (Whereupon, a recess was taken until 2:26 p.m.)

22 THE COURT: All right. Let's bring the jury out,
23 please.

24 (Whereupon, the jury entered the courtroom at 2:26
25 p.m.)

1 THE COURT: Let the record reflect the jury is back in.
2 Madam Forelady and ladies and gentlemen of the jury, I will
3 now charge you on the law applicable to this case, and you
4 must consider this charge as a whole and not focus on some
5 portions to the exclusion of other portions. All the
6 indictments charge the Defendant with criminal sexual
7 conduct with a minor in the second degree. And I'll remind
8 you once again that the fact that the Defendant was
9 arrested, charged, and indicted in this case is not evidence
10 in this case and cannot be considered by you as evidence of
11 guilt in this case, nor does it create any presumption or
12 inference of guilt. These documents, the nine indictments,
13 again as I told you at the outset, are simply the formal
14 written instruments which contain the charges made against
15 the Defendant. These are the formal documents by which this
16 case is brought into this court. All of the indictments in
17 this case and the indictments numbers 2011-GS-0145, 46, 47,
18 49, 50, 51, 52, 53, 54 charge the Defendant with criminal
19 sexual conduct with a minor in the second degree. Each
20 indictment charges a separate and distinct offense. You
21 must decide each indictment separately on the evidence and
22 the law applicable to it uninfluenced by your decision as to
23 any other indictment. The Defendant may be convicted or
24 acquitted on any or all of the offenses charged. You'll be
25 asked to write a separate verdict of guilty or not guilty

1 for each indictment. Now, at the conclusion of my charge I
2 will show you the verdict form that you will use.

3 Now, Madam Forelady and ladies and gentlemen of the
4 jury, I'll remind you again that during this trial you and I
5 have had certain duties to perform. As the trial judge it's
6 been my responsibility to preside over the trial of this
7 case, and I've also had the duty to rule on the
8 admissibility of the evidence often during this trial. You
9 are to consider only the competent evidence before you. If
10 there was any testimony ordered stricken from the record in
11 this case during this trial, and I believe that there was
12 once or twice, I believe, if my memory serves me correctly,
13 you must disregard that testimony. You are to consider only
14 the testimony which has been presented from the witness
15 stand any exhibits which have been made a part of the record
16 in this case and any stipulations of counsel. I have the
17 additional duty, as I'm doing now, to charge you the law
18 applicable to this case. As the presiding judge I am the
19 sole judge of the law of this case, and it is your duty as
20 jurors to accept and apply the law as I know state it to
21 you. As I told you at the outset, if you already had any
22 idea as to what the law is or what the law ought to and it
23 does not agree with what I now tell you the law is you must
24 abandon this idea because you are sworn to accept the law
25 and apply the law exactly as I state it to you.

1 In every case tried in this court before a jury, the
2 jury becomes the sole and exclusive judge of the facts in
3 the case. A trial judge can never intimate, state, comment
4 on or make any statement to a trial jury about the facts in
5 a case. Since you the jury are the sole judge of the facts
6 in this case you are not to infer from what I have said
7 during the progress of this trial in ruling upon the
8 admissibility of evidence or otherwise, or anything that I
9 say now during the course of this instruction to you that I
10 have any opinion about the facts in this case. I do not
11 have an opinion about the facts in this case. The law does
12 not allow me to have an opinion about the facts in this
13 case. This is a matter solely for you, the jury, to
14 determine. As jurors it is your duty to determine the
15 effect, value, weight and truth of the evidence presented
16 during this trial.

17 The Defendant has pled not guilty to all of the
18 indictments. Consequently, that plea of not guilty puts the
19 burden on the State to prove the Defendant guilty of each
20 indictment. A person charged with committing a criminal
21 offense in South Carolina is never required to prove himself
22 innocent. I charge you that it is an important rule of the
23 law that the defendant in a criminal trial, no matter what
24 the seriousness of the crime or charges may be, will always
25 be presumed to be innocent of the crime for which the

1 indictment was issued unless guilt has been proven by
2 evidence satisfying of that guilt beyond a reasonable doubt.
3 This presumption of innocence does not end when you begin
4 your deliberations but it accompanies the Defendant
5 throughout the trial unless you reach a verdict of guilt
6 based on the evidence satisfying you of that guilt beyond a
7 reasonable doubt. The presumption of innocence is like a
8 robe of righteousness placed about the shoulders of the
9 Defendant which remains with the Defendant unless it has
10 been stripped from the Defendant by evidence satisfying you
11 of the Defendant's guilt beyond a reasonable doubt.

12 Now, I'll tell you Madam Forelady and ladies and
13 gentlemen of the jury, the presumption of innocence is not
14 mere legal theory. It's not just a legal phrase which we
15 use, it is a substantial right to which every defendant is
16 entitled unless you, the jury, are satisfied from the
17 evidence of the Defendant's guilt beyond a reasonable doubt.
18 The State has the burden of proving the Defendant guilty
19 beyond a reasonable doubt as to each indictment.

20 Now, some of you may have served as jurors in civil
21 cases, and I think this may have been alluded to in closing
22 arguments, where you were told that it is necessary to prove
23 that a fact is more likely true than not true, such as by
24 the greater weight or preponderance of the evidence, but in
25 criminal cases the State's proof must be more powerful than

1 that. It must be beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is proof that leaves you firmly convinced
3 of a defendant's guilt. Now, there are very few things in
4 this world that we know with absolute certainty, and in
5 criminal cases the law does not require proof that overcomes
6 ever possible doubt. If based on your consideration the
7 evidence you are firmly convinced that the Defendant is
8 guilty of the crimes charged you must find the Defendant
9 guilty. If on the other hand you think there is a real
10 possibility the Defendant is not guilty as to the crimes
11 charged you must give the Defendant the benefit of the doubt
12 and find him not guilty.

13 Now, Madam Forelady and ladies and gentlemen of the
14 jury, there are two types of evidence which are generally
15 presented during the trial; that being direct evidence and
16 circumstantial evidence. Direct evidence directly proves
17 the existence of a fact and does not require deduction.
18 Circumstantial evidence, however, is proof of a chain of
19 facts and circumstances indicating the existence of a fact.
20 Crimes may be proven by circumstantial evidence. The law
21 makes no distinction between the weight or value to be given
22 to either direct or circumstantial evidence. However, to
23 the extent the State relies on circumstantial evidence, all
24 of the circumstances must be consistent with each other and
25 when taken together point conclusively to the guilt of the

1 accused beyond a reasonable doubt. If these circumstances
2 merely portray the Defendant's behavior as suspicious, the
3 proof has failed. Once again, the State has the burden of
4 proving the Defendant guilty beyond a reasonable doubt.
5 This burden rests with the State regardless of whether the
6 State relies on direct evidence, circumstantial evidence, or
7 some combination of the two.

8 Necessarily, you must determine the credibility of
9 witnesses who have testified in this case. Credibility
10 simply means believability. It becomes your duties as
11 jurors to analyze and to evaluate the evidence and determine
12 which evidence convinces you of its truth. In determining
13 believability of witnesses who have testified in this case
14 you may believe one witness over several witnesses or
15 several witnesses over one witness. You may believe a part
16 of the testimony of a witness and reject the remaining part
17 of the testimony of that same witness. You may believe the
18 testimony of a witness in its entirety or reject the
19 testimony of a witness in its entirety. You may consider
20 whether any witness has exhibited to you any interest, bias,
21 prejudice or other motive in this case. You may also
22 consider the appearance and manner of a witness while on the
23 witness stand.

24 Now, generally, Madam Forelady and ladies and gentlemen
25 of the jury, the rules of evidence do not permit witnesses

1 to testify to opinions or to conclusions. In exception to
2 this rule exists for witnesses we call expert witnesses. I
3 believe we had two in this case who were deemed expert by
4 the court. A witness who by education and experience has
5 become an expert in some art, science, profession or calling
6 may state an opinion as to the relevant and material matters
7 in which the witness claims to be an expert, and may also
8 state the reasons for that opinion. You should consider any
9 expert opinion received in evidence in this case like any
10 other evidence. Give it the weight you think it deserves.
11 If you decide that the opinion of an expert witness is not
12 based on sufficient education and experience, or if you
13 conclude that the reasons given in support of the opinion
14 are not sound, or that the opinion is outweighed by other
15 evidence you may disregard the opinion entirely. An expert
16 witness's testimony is to be given no greater weight than
17 that of other witnesses simply because the witness is an
18 expert. Further, you're not required to accept an expert's
19 opinion even though it is not contradicted.

20 Now, there's been evidence presented that witnesses may
21 have made prior statements which are not consistent with the
22 witness's present testimony. You may use this evidence to
23 decide whether to believe the witness. You may also use
24 evidence of the earlier contradictory statements to
25 determine the truth of those statements. It is solely up to

1 you to decide whether to believe the earlier statements or
2 the testimony given at trial. If a witness is shown to have
3 not knowingly testified untruthfully concerning any material
4 matter, you may consider this in determining whether to
5 trust the witness's testimony as to other matters. You may
6 reject all testimony of that witness or give all or part of
7 the testimony the weight you think it deserves.

8 Now, Madam Forelady and ladies and gentlemen of the
9 jury, I instruct you and emphasize the fact that the
10 Defendant did not testify is not a factor to be considered
11 by you in any way in your deliberations and in your
12 consideration on the question of the guilt or the innocence
13 of the Defendant as to each of the nine indictments. It must
14 not be considered by you in any manner whatsoever. A
15 Defendant has the constitutional right to remain silent, and
16 the assertion of this right must not be considered by you in
17 your deliberations. I'll repeat, under your oath, you are
18 to draw no conclusion whatsoever from the fact that the
19 Defendant in this case did not testify. The fact that this
20 Defendant did not testify should not even be discussed in
21 the jury room. The burden of proof, as I have stated to
22 you, is on the State. The Defendant is not required to
23 prove his innocence. The burden of proof remains on the
24 State to prove guilt beyond a reasonable doubt.

25 Now, as I stated earlier, the Defendant is charged with

1 second degree criminal sexual conduct with a minor. The
2 State must prove beyond a reasonable doubt that the
3 Defendant engaged in a sexual battery with the victim.

4 Now, a sexual battery is defined in this state as
5 sexual intercourse, cunnilingus, fellatio, anal intercourse
6 or any intrusion however slight of any part of a person's
7 body or of any object into the genital or anal openings of
8 another person's body, except when the intrusion is
9 accomplished for medically recognized treatment or
10 diagnostic purposes. The State must prove beyond a
11 reasonable doubt all of the elements of this offense that is
12 stated in each of the nine indictments and also must prove
13 beyond a reasonable doubt that the victim was at least 11-
14 years-old but not more than 14-years-old at the time of the
15 sexual battery.

16 Now, Madam Forelady and ladies and gentlemen of the
17 jury, your verdict must be unanimous as to each of the nine
18 indictments. And I'm going to come down to the front and
19 show you the verdict form. Kind of give a little bit better
20 explanation. This is a three page verdict form. The top
21 part is listed the name of the case and lists the indictment
22 numbers and you will consider each indictment. For example,
23 number one, as to indictment -- and I'm just going to refer
24 to it as 45, charged with criminal sexual conduct with a
25 minor in the second degree, we, the jury, find the Defendant

1 not guilty or guilty. The order of listing not guilty and
2 guilty is of no significance. One has to go before the
3 other. Okay? And so, each question is the same as to each
4 indictment. So you will consider each indictment as a
5 separate case and make your determination as to not guilty
6 or guilty. And these will be marked. And once you go
7 through all indictments, Madam Forelady, you will sign, and
8 it's already been dated on the third page. Now, the
9 indictments will also have to be signed, but that can be
10 done at the conclusion of the case. You don't need to do
11 that in the jury room.

12 Now, I'm going to send you back to your jury room. You
13 still cannot start your deliberations. When you start the
14 deliberations is when one thing will happen. The bailiff
15 will come back to the jury room with the verdict form with
16 the nine indictments and with the exhibits that have been
17 placed into evidence. Once that is done then, Madam
18 Forelady, then you will start the deliberations. Also at
19 that time the two alternates will leave the jury room and
20 you can come back here and I'll give you further
21 instructions on what you need to do as the two alternates.

22 So I'm going to ask at this time all 14 of you go back
23 to your jury room. Do not start your deliberations until
24 those documents are brought to you by the bailiffs.

25 (Whereupon, the jury exited the courtroom at 2:43 p.m.)

1 THE COURT: Other than what has previously been noted on
2 the record concerning the court's charge, does the State
3 have any objections or exceptions?

4 MR. SHEEK: No new exceptions or requests, Your Honor.

5 THE COURT: Okay. Other than what's been noted on the
6 record, does the Defense have any objections or exceptions
7 to the corresponding charge?

8 MS. NELSON: No, sir, Your Honor.

9 THE COURT: Okay. Thank you very much. Let's go off
10 the record and the lawyers will make sure that all the
11 exhibits are in place.

12 MS. NELSON: Your Honor, at some point I do have a
13 brief matter about -- to put on the record that has to do
14 with my motion about order of closing.

15 THE COURT: Okay.

16 MS. NELSON: Whenever you want.

17 THE COURT: Can we do that once we get the jury started?

18 MS. NELSON: Oh, of course. Yes, sir.

19 (Whereupon, a brief recess was held.)

20 THE COURT: Which bailiff is going to deliver the
21 documents, tell them start deliberating. Make sure the two
22 alternates come out.

23 (Whereupon, the jury began deliberations at 2:45 p.m.)

24 THE COURT: Okay. Ms. Nelson, I understand you want to
25 put something on the record.

1 MS. NELSON: Yes, Your Honor. I just wanted to make a
2 brief record of -- since Your Honor denied our motion to
3 have the State open in full and then use last argument for
4 rebuttal, since that was denied there were a few things in
5 Mr. Sheek's closing that I would not -- that I don't get to
6 respond to, and I just wanted to put those things on the
7 record.

8 THE COURT: Sure.

9 MS. NELSON: One of the comments he made was about how
10 Defense counsel wasn't there and can't tell you what
11 happened. The prosecutor wasn't there and can't tell you
12 what happened. He made references about I can't remember
13 what I wore. None of this case is about clothing. It's
14 about statements, things that were said, things that
15 happened. The only thing about clothing was a hole in the
16 shorts and how clothes were positioned. She was never asked
17 for any details about those clothes. The details she was
18 asked for were on things that had all been provided at the
19 time. Not things that were provide four years later as was
20 implied in Mr. Sheek's closing. But details about
21 statements that were provided at the time the investigation
22 started. He made a -- just an absolute misrepresentation to
23 the jury about the DNA evidence. He said why would State
24 send this to be tested for DNA if it's Keith's cover and
25 it's just going to show it's got his DNA on it. Well, they

1 did send it for DNA testing. And I don't know that I could
2 have told the jury that. I made sure I didn't tell the jury
3 that when I was talking about the lack of blood being on any
4 of those covers. But the fact is, the truth is, they did
5 send it for DNA testing and there was no blood on any of
6 those covers, and he -- what he said was just a total
7 misleading and inaccurate statement. He represented that
8 there was no dispute about Minor telling Terrence a month and
9 a half before, but Minor testimony was that she didn't
10 remember when she told him. And when I asked her about
11 telling the forensic interviewer it had been two weeks
12 before I got yet another I don't remember or I don't know
13 answer. So Minor did not say that she had told Terrence a
14 month and a half before.

15 He also made what -- I don't know if they're
16 disparaging or not, but comparisons between prosecutors and
17 defense attorneys and how glad he was to be on this side and
18 that his ethical obligations were different. And I didn't
19 get the chance to tell the jury that he defended one of
20 these cases just earlier this year while working as a
21 prosecutor in the Eighth Circuit and got his guy off, and in
22 a child sex case in another circuit. And that would have
23 been something I would have said if I had had a chance to
24 respond.

25 That's everything, Your Honor.

1 THE COURT: Thank you very much, Ms. Nelson. So noted
2 for the record.

3 MS. NELSON: Thank you.

4 THE COURT: There will be a recess until the jury comes
5 back, with the exception of any matters -- other matters
6 that the court needs to take up.

7 (Whereupon, court was in recess until 3:17 p.m.)

8 (Whereupon, Court's Exhibit Number 4 was marked for
9 identification.)

10 THE COURT: Okay. We're back on the record, and I've
11 already been with the lawyers in chambers. The jury does
12 have a question, and the question has been marked as Court's
13 Exhibit Number 4, a copy of the school calendar of events.
14 I'm taking that to mean they're wanting a copy of the school
15 calendar of events. And as discussed with the lawyers, my
16 charge to them would be that they can only consider
17 testimony and exhibits that are into evidence and not
18 consider anything else. Is that satisfactory with the
19 State?

20 MR. SHEEK: That is satisfactory, Your Honor.

21 THE COURT: Satisfactory to the Defense?

22 MS. NELSON: Yes, Your Honor.

23 THE COURT: Bring the jury out, please.

24 (Whereupon, the jury entered the courtroom at 3:17
25 p.m.)

1 THE COURT: Let the record reflect that the jury is back
2 in. Madam Forelady, I have before me, I guess, a request or
3 a question, a copy of the school calendar of events. I take
4 that to mean you are wanting a copy of that. I'm
5 instructing you that the only matters that you consider in
6 your deliberation is the testimony that was offered on the
7 witness stand and reading exhibits that were placed into
8 evidence. That's all you can consider in your
9 deliberations. So with that instruction, I ask that you go
10 back to your jury room and continue with your deliberations.
11 Thank you very much.

12 (Whereupon, the jury exited the courtroom at 3:18 p.m.)

13 THE COURT: Okay. We'll be at recess.

14 (Whereupon, a recess was held until 5:14 p.m.)

15 THE COURT: We're back on the record, and you've seen
16 the note that the jury has presented. It reads "Hung jury
17 at present time." So I'm going to go head and give them the
18 Allen charge.

19 MR. SHEEK: Yes, sir.

20 MS. NELSON: Your Honor, I understand you're going to
21 do that. I'm just going to object on the record to giving
22 them an Allen charge and ask that the court declare a
23 mistrial at this point. I understand that that's the
24 practice, and the reason I'm making the motion is when I was
25 talking to you earlier about the apparent pressure that

1 juries feel sometimes to come to a verdict and that causes
2 them to compromise their true beliefs about a case and just
3 decide to come to some agreement, and I think the Allen
4 charge reinforces that belief that they really, really need
5 to work to come to a verdict even if it means compromising
6 what they believe.

7 THE COURT: Thank you very much. Okay. Will you bring
8 the jury out, please.

9 (Whereupon, Court's Exhibit Number 5, Jury Note, was
10 marked for identification purposes.)

11 (Whereupon, the jury entered the courtroom at 5:14
12 p.m.)

13 THE COURT: Let the record reflect the jury is back in.
14 And, Madam Forelady, ladies and gentlemen of the jury, I've
15 been presented a note which reads that "Hung jury at the
16 present time," which indicates that you are deadlocked at
17 the present time and unable to reach a verdict in this case.
18 As I instructed you earlier, as you know and realize the
19 verdict must be a unanimous verdict as to each indictment.
20 Madam Forelady and ladies and gentlemen of the jury, when a
21 matter is in dispute it isn't always easy for even two
22 people to agree, much less 12. It comes even more difficult
23 when you have 12 people. The court realizes that in most
24 cases absolute certainty cannot be reached or expected.
25 However, you do have a duty to make every reasonable effort

1 to reach a unanimous verdict. And I'm not suggesting you
2 have not been very diligent and conscientious in your
3 deliberations. In doing this to reach a unanimous verdict
4 you should consult with one another, express your own views,
5 listen to the opinions of your fellow jurors, tell each
6 other how you feel and why you feel that way and discuss
7 your differences with open minds. Although the verdict of
8 the jury must be unanimous, every one of you has the right
9 to your own opinion. The verdict you agree to must be your
10 own verdict. The result of your own convictions. And you
11 should not give up your firm held beliefs merely to be in
12 agreement with your fellow jurors. The majority should be
13 consider the minority's position, and the minority should
14 consider the majority's position. And I don't know how the
15 split is at this time. You should carefully consider and
16 respect the opinions of each other and reevaluate your
17 position for reasonableness, correctness and impartiality.
18 You must lay aside all outside matters and reexamine the
19 questions before you based upon the law and the evidence in
20 this case. If you do not agree on a unanimous verdict in
21 the case then I will be in the position to declare a
22 mistrial. In that case it does not mean anybody wins. It
23 just means at some future time either I or another circuit
24 court case will try this case with another jury, sitting
25 where you not sit. The same participants will come and the

1 same lawyers will ask basically the same questions and get
2 basically the same answers more than likely and kind of go
3 through the whole process again. You were selected in the
4 same manner and from the same source as any future jury will
5 be and there's no reason for me to suppose that the case
6 will ever be submitted to 12 more intelligent, impartial,
7 conscientious and competent jurors than you, or that more or
8 clearer evidence will be produced from one side or the
9 other. Madam Forelady and ladies and gentlemen of the jury,
10 I would respectfully request that you are to return to your
11 jury room and continue with your deliberations. Thank you
12 very much. If you will go back to your jury room.

13 (Whereupon, the jury exited at 5:17 p.m.)

14 THE COURT: Okay. We'll be at recess.

15 (Whereupon, a recess was held until 5:50 p.m.)

16 THE COURT: I have another note from the jury and it
17 reads as follows. "Court reporter to read back transcript
18 of Minor mother's testimony regarding busted lip." Now,
19 it's going to take a little while for our court reporter to
20 find that portion of the testimony. I don't know if it's
21 isolated as to what kind of -- a little area of her
22 testimony or if it was discussed more than one time. I
23 don't know. I don't recall. Maybe the lawyer's can recall
24 that a little bit better. I mean, I just don't have
25 independent recollection. It's probably in my notes, but I

1 don't have recollection of the testimony. 7

2 MR. SHEEK: I think it was just one short little
3 snippet of testimony regarding her seeing a busted lip and
4 Minor had given an explanation, or somebody had given an
5 explanation. I don't recall.

6 MS. NELSON: It was on cross for sure. But I don't
7 know if it was quick and then came back to hit. I think it
8 was pretty quick.

9 THE COURT: Solicitor, would you agree that it would be
10 in cross and not in direct or --

11 MR. SHEEK: I believe it was in cross.

12 MR. BROWN: I believe it was in cross. But I think it
13 was a short --

14 MS. NELSON: I'm pretty sure.

15 MR. BROWN: It was a short amount saying that she did
16 observe this busted lip, but she really didn't --

17 MR. SHEEK: But I think there was some other explanation
18 given or --

19 MS. NELSON: Something about got it playing --

20 MR. SHEEK: Right.

21 MS. NELSON: -- playing around.

22 THE COURT: All right. We'll be at ease and give our
23 court reporter a chance and see if she can put her hands on
24 it.

25 (Whereupon, a recess was held.)

1 (Whereupon, the jury entered the courtroom at 5:50 for
2 readback by the court reporter.)

3 THE COURT: All right. Madam Forelady and ladies and
4 gentlemen of the jury, if you will go back to your jury room
5 and resume your deliberations.

6 (Whereupon, the jury exited the courtroom at 5:54 p.m.)

7 THE COURT: Let the record reflect that the court
8 reporter was able to locate the testimony from Minor mother
9 concerning a busted lip. A portion of that testimony was
10 agreed upon by both sides and the court reporter did, in
11 fact, read that testimony to the jury. We'll be in recess.

12 (Whereupon, a recess was held.)

13 THE COURT: I'm going to bring the jury out. I don't
14 anticipate there being any showing of emotion, but just be
15 sure to caution everybody concerning that. Bring the jury
16 out, please.

17 (Whereupon, the jury entered the courtroom at 6:04
18 p.m.)

19 THE COURT: Let the record reflect the jury is back in.
20 Madam Forelady, I've been handed your verdict form. Have
21 you been able to reach a unanimous decision among the 12 of
22 you on each and every indictment?

23 MADAM FORELADY: Yes, sir.

24 THE COURT: Okay. Madam Clerk, would you publish the
25 verdict as to each indictment, please, ma'am.

1 MADAM CLERK: State of South Carolina, County of
2 Abbeville, State of South Carolina vs. Keith Denver Tate,
3 case numbers 2011-GS-01-45, 2011-GS-01-46, 2011-GS-01-47,
4 2011-GS-01-49, 2011-GS-01-50, 2011-GS-01-51, 2011-GS-01-52,
5 2011-GS-01-53, 2011-GS-01-54. As to indictment 2011-GS-01-
6 45, the charge of criminal sexual conduct with a minor in
7 the second degree, we the jury find the Defendant not
8 guilty. As to indictment 2011-GS-01-46, the charge of
9 criminal sexual conduct with a minor in the second degree,
10 we the jury find the Defendant guilty. As to indictment
11 2011-GS-01-47, the charge of criminal sexual conduct with a
12 minor in the second degree, we the jury find the Defendant
13 not guilty. As to indictment 2011-GS-01-49, the charge of
14 criminal sexual conduct with a minor in the second degree,
15 we the jury find the Defendant not guilty. As to indictment
16 2011-GS-01-50, the charge of criminal sexual conduct with a
17 minor in the second degree, we the jury find the Defendant
18 not guilty. As to indictment 2011-GS-01-51, the charge of
19 criminal sexual conduct with a minor in the second degree,
20 we the jury find the Defendant not guilty. As to indictment
21 2011-GS-01-52, the charge of criminal sexual conduct with a
22 minor in the second degree, we the jury find the Defendant
23 not guilty. As to indictment 2011-GS-01-53, the charge of
24 criminal sexual conduct with a minor in the second degree,
25 we the jury find the Defendant not guilty. As to indictment

1 2011-GS-01-54, the charge of criminal sexual conduct with a
2 minor in the second degree, we the jury find the Defendant
3 not guilty. I certify this decision was the unanimous
4 decision of the jury, Beth H. Newton, Foreperson. Madam
5 Forelady, ladies and gentlemen of the jury, is this your
6 verdict so say you all? Please signify by raising your
7 right hand.

8 THE COURT: Thank you, Madam Clerk.

9 MS. NELSON: Your Honor, I asked the jury to be polled.

10 THE COURT: Individually polled?

11 MS. NELSON: And would ask that they give the type of
12 sexual battery that was committed on the date for the charge
13 they convicted on.

14 MR. SHEEK: I think we've already had that discussion,
15 Your Honor.

16 THE COURT: I will grant the request as to individual
17 polling, but will deny the balance of that request. Madam
18 Clerk, if you would individually poll the jury, please.

19 MADAM CLERK: Beth H. Newton, is this your verdict, and
20 is it still your verdict?

21 THE JUROR: Yes, ma'am.

22 MADAM CLERK: Joseph Sherard, is this your verdict and
23 is it still your verdict?

24 THE JUROR: Yes, ma'am.

25 MADAM CLERK: Marjorie Hudson, is this your verdict and

1 have to look at the nature of the offense, and the offense
2 being you committed a sexual battery with a young child that
3 you had the care and control of. I realize she was not your
4 natural daughter, but you served as a parent for this child.
5 And that's pretty serious. Very serious. I have taken into
6 account the fact that you do have an extensive prior record;
7 however, the last seven or eight years there's been no
8 involvement with any criminal activity, so I have considered
9 that. I have certainly considered the arguments made by
10 both sides. I've certainly considered your girlfriend and
11 your other relative who spoke. So I'm taking everything
12 into consideration. But I am primarily mindful of the
13 jury's finding that you committed a sexual battery with a
14 child who you had the care of. That's the primary
15 consideration that I have made. I realize that whatever
16 sentence I give you it does involve the mandatory 85 percent
17 service. I understand that. I understand your age as well.
18 So I have carefully considered everything that's been
19 presented to me.

20 The sentence of the court is, Mr. Tate, that you be
21 committed to the State Department of Corrections for a
22 period of 16 years. Good luck to you, sir. This hearing is
23 adjourned.

24 (Whereupon, the proceeding was concluded.)

25

- - - END OF TRANSCRIPT OF RECORD - - -

1 State of South Carolina
2 County of Abbeville Court of General Sessions
3
4 State of South Carolina,) Transcript of Record
5 vs.) 2011-GS-01-0046
6 Keith Denver Tate,)
7 Defendant.)

8
9 July 15, 2014
10 Greenwood, South Carolina

11 B E F O R E:

12 The Honorable Donald B. Hocker, Judge

13
14 A P P E A R A N C E S:

15 Lance Sheek, Deputy Solicitor
16 Attorney for the State

17 Janna Nelson, Public Defender
18 Attorney for Defendant

19

20

21

22 Stacy S. Johnson, RPR
23 Circuit Court Reporter

24

25

I N D E X

PAGE

CERTIFICATE OF REPORTER

12

E X H I B I T SNO.DESCRIPTIONID.EVD.

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held on July 15,
2 2014.)

3 **THE COURT:** Okay. We're on the record this
4 afternoon and this is in the State of South Carolina
5 versus Keith Denver Tate. It's an Abbeville County
6 case. The indictment number, for record purposes, is
7 11-GS-0053. The Defendant timely filed a motion for
8 new trial and I've, of course, carefully reviewed all
9 of the grounds for the new trial. I had some -- your
10 Item Number 4 kind of peaked my interest a little bit,
11 and I just wanted to give you folks an opportunity to
12 -- well, you know, at least give defense maybe an
13 opportunity to elaborate and certainly give the State
14 the opportunity to oppose it, and then I'll give some
15 more thought and make a final ruling on this.

16 Typically, as y'all know, more times than not you
17 generally don't have a motion for reconsideration and
18 motion for new trial, but in reviewing Point Number 4,
19 that's what I'd like to focus on during this hearing
20 today.

21 So with that said, Ms. Nelson, I'll be glad to
22 hear from you and certainly give Solicitor Sheek an
23 opportunity to offer any opposing argument. So I'll
24 be glad to hear from you.

25 **MS. NELSON:** Thank you, Your Honor. Of course,

1 Your Honor, as you know, the jury acquitted Mr. Tate on
2 eight counts and convicted on this one count that's
3 before you on this motion that was alleged to have
4 occurred on October 31st of 2009, Halloween of that
5 year, and I don't have the transcript, but what I wrote
6 in the motion and my recollection is that of the nine
7 dates that were presented that was -- that seemed to me
8 to be the one date that we had the most actual testimony
9 about.

10 There was a lot from Ms. Minor that she said she
11 couldn't remember when I questioned her about the things
12 that she had said in her forensic interview about other
13 times, but there seemed to be some connection with this
14 specific date based on the football game that was listed
15 on the school calendar and testimony from some of the --
16 the school officials involved who had said that the way
17 they were able to arrive at some of these dates for law
18 enforcement was by using the school calendar.

19 And my recollection is that one of the things that
20 Ms. Minor was able -- or one of the dates that Ms. Minor
21 was able to agree with me on when she testified was that
22 she had gone to a game on October 30th, that Friday, and
23 that these -- and that the incident occurred after she
24 got home from the game either late on the night of the
25 30th or, more probably, in the early morning hours of

1 the 31st.

2 The band director, Ms. Holland, is that her name?
3 Ms. Holland, I think the band director, was the one who
4 testified about taking Minor back and forth a lot and
5 she testified that there was a game that night that she
6 had taken her to and I believe there was testimony about
7 her coming home late, like, you know, after midnight or
8 something like that.

9 THE COURT: I think it was more like about 1:30,
10 2:00 in the morning, if I remember correctly.

11 MS. NELSON: I believe Ms. Holland said about two.
12 I think you're right, Your Honor. In essence, if that
13 happened in the wee hours of a Saturday morning, the
14 problem comes in when Minor then testifies or agrees
15 with her prior statements that she woke up on the couch
16 the next morning, that everybody was gone, that the only
17 way in and out of the house would have been to walk --
18 for everyone to walk past the couch that she was on or
19 at least have it in view, that she was there with her
20 clothes in disarray, but what she -- one of the things
21 she specifically said was that she had missed her ride
22 to school -- or at least that she agreed with, that she
23 had missed her ride to school, that her brothers had
24 already left for school on the bus. I don't know if she
25 remembered where her mother was, but the upshot of it

1 all is that it wouldn't have been a school day and so
2 what she described happening on October 31st is not --
3 is not consistent with her whole story. And for the one
4 date that the jurors picked to convict Mr. Tate on, it
5 is just an implausible verdict given what her testimony
6 was about everybody being gone to school and her missing
7 her ride when it was clearly a Saturday.

8 So that -- I don't know if the Court has anything
9 else you want me to address about that, but that was my
10 -- and I think it -- I think it dovetails in with what
11 we talk about in Item Number 6 which is where we'd asked
12 the Court to give a special verdict form listing the
13 types of assault that had occurred. You know, I think
14 if we had -- if we had that on the verdict form, I
15 wonder if it would have been harder for the jury to
16 decide what had actually happened on that particular
17 day --

18 **THE COURT:** Yeah.

19 **MS. NELSON:** -- and since that was missing, I
20 think it lends even more of a problem with -- with
21 that verdict being so -- you know, everything she
22 said happened or agree with happening couldn't have
23 happened that way because Saturday just wasn't a school
24 day.

25 **THE COURT:** Right. Well, you know, what I found,

1 I guess, somewhat interesting is you use the argument
2 that her testimony was not credible. Now that in and
3 of itself would not be a basis for me to grant a new
4 trial because certainly credibility of witnesses is --
5 is solely for the jury to make that determination, but
6 this kind of goes one step further, it seems like maybe,
7 that, you know, was there any evidence supporting a
8 finding of an act having taken place on the 31st in
9 light of the -- the girl's testimony. And let me --
10 let me hear from -- Solicitor, throw your two cents
11 worth in.

12 **MR. SHEEK:** Thank you, Your Honor. First of all,
13 I want the record to be clear that obviously the State
14 was not required to prove that anything did or did not
15 happen on October 31st. The indictment says on or
16 about and as our status of the law is, you know, we
17 requested a charge that time is not of the essence and
18 the law is clear on that, and when the indictment says
19 on or about we're not required to prove that it happened
20 on Friday the 31st or the Saturday morning hours of
21 whenever, but the indictment said that and that allowed
22 the defense to have some ground to argue a credibility
23 or a memory issue, and I understood that.

24 The child when she testified in her previous
25 statement prior to court said it happened after a

1 football game on the 31st and they had gone back
2 months later and tried to recreate these dates using a
3 calendar. In testimony she said that initially, but
4 actually when pressed on cross-examination, I don't know
5 if the Court recalls, she said well, I know the game was
6 in Calhoun Falls; it may have been the JV game, which
7 would have been on Thursday night and not Friday night
8 because they'll play in one town on the Thursday night
9 and the next town on the Friday night, they switch. So
10 actually her testimony was that it may have been after
11 the JV game, I don't really remember, and that was in
12 reference to defense counsel's pressing her on this
13 date. And, of course, if it did happen on that Thursday
14 night, then she would have been going to school Friday,
15 so while the testimony the defense could certainly say
16 was contradictory or lacked credibility, I think that
17 is solely within the hands of the jury, but all they
18 had to find was that on or about this date this man had
19 committed a sexual assault on this child, which the jury
20 obviously did beyond a reasonable doubt.

21 I declined to be drawn into an argument over the
22 Friday, Thursday, Saturday thing in front of the jury
23 because I maintained that it simply wasn't important
24 that we prove a date, and I think I mentioned that to
25 the jury in my closing argument. So essentially the

1 jury wasn't required to find that it happened on a
2 Friday or a Saturday and even the child's testimony
3 that it could have been after the JV game as opposed to
4 the varsity game supports the finding that it happened
5 basically as the child said, then I think it's up to the
6 jury then to resolve what they would say would be any
7 issues of credibility or disputes in prior statements or
8 anything of that nature, and I think the jury did that.

9 I talked to some of the jurors. I don't think
10 that is proper for the record for me to talk about what
11 they've said to me. I mean, I know kind of what their
12 thought processes were on it:

13 **THE COURT:** Yeah. I think everybody had an
14 opportunity to talk with the jurors, and even some of
15 them, if I remember correctly, some of them hung around
16 for sentencing; did they not?

17 **MR. SHEEK:** Yeah, there were about four or five of
18 them that stayed for sentencing and then the forelady
19 and several others stayed and talked with us extensively
20 afterwards and gave us kind of an insight in their
21 thought processes, but that's our position, Judge.
22 We're not required to prove the date, the testimony
23 supports that it could have been Thursday night or
24 Friday morning as opposed to Friday night and Saturday
25 morning. The jury made their finding.

1 **THE COURT:** All right. Thank you very much.
2 Anything in response to that, Ms. Nelson?

3 **MS. NELSON:** The only -- the only other thing I
4 would add is that nobody -- nobody pointed to a calendar
5 with a football game on the 29th as opposed to the 30th.
6 That date was arrived at close in time to Ms. Minor
7 disclosure and my understanding is that it was arrived
8 at with the use of school calendars and I was provided
9 -- Mr. Grose was provided a copy of presumably the
10 calendar that was used and their -- the only football
11 game that week was the one on the 30th. And I don't
12 remember exactly what Ms. Minor testimony -- I don't
13 remember if I showed her that calendar honestly. I
14 think I did because I think I asked her to agree with me
15 that it was an out of town game because I thought that
16 would explain why, you know, her statement had been in
17 one of the -- I believe in one of the handwritten things
18 that she had gotten home at about 1:00 in the morning
19 and I actually had a discussion with my client about
20 that, you know, did she ever come home from football --
21 did y'all ever stay out that late, and when I learned
22 it was an away game it made more sense to me because it
23 was almost in -- it was in middle Georgia somewhere, if
24 I recall correctly, somewhere close to Warner Robins
25 maybe, and then it made sense why she would be coming

1 home so late. Getting home at 1:00 after a JV game
2 on a Thursday night at home doesn't make any sense.
3 Getting home at 1:00 from a middle Georgia game on
4 Friday night is what makes sense with the rest of what
5 she said. So that was the date that was pursued in the
6 indictment and was consistent with the discovery we were
7 provided, and so that's all I'd have to add, Your Honor.

8 **THE COURT:** All right. Well, thank you very much
9 and I'm gonna take a look at this one more time. I
10 appreciate the hard work from both sides and I'll let
11 you know my decision promptly. Thank you very much.

12 **MR. SHEEK:** Thank you, Judge.

13 **MS. NELSON:** Thank you, Your Honor.

14 (Proceedings were concluded at 2:04 PM.)
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR ABBEVILLE COUNTY
v.	)	
	)	INDICTMENT NOS. 11GS0100045; -46; -47; -48
KEITH DENVER TATE,	)	-49; -50; -51; -52; -53; -54
Defendant.	)	

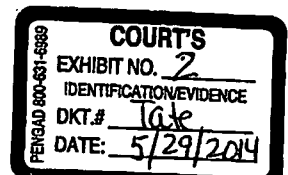
**MOTION TO REQUIRE THE STATE TO OPEN FULLY ON THE LAW AND THE FACTS
AND THEN REPLY TO THE ARGUMENT OF DEFENDANT**

Defendant, KEITH DENVER TATE, moves the Court to require the state to open in full on both the law and facts, then use their final closing argument only for reply to the argument of defendant.

Argument

In South Carolina, no rule of Criminal Procedure addresses the question of the order of argument to the jury. The long practice of allowing the State to open only on the law and then closing fully on the facts after the defendant has given his closing argument is long on tradition but short on law to support that position. The early practice in South Carolina was for the state to open fully on the law and the facts. In *State v. Atterberry*, 129 S.C. 464, 124 S.C. 648 (1924), the Supreme Court of South Carolina held that failure to require the state to open fully on the law and facts was reversible error. At that time, Circuit Court Rule 59 provided: "The party having the opening in argument shall disclose his entire case and on his closing shall be confined strictly to a reply to the points made, and authorities cited by the opposite party."¹ In reversing the conviction, the Court said, "[t]he defendant moved the court to require the solicitor to make the opening speech to the jury before the defendant's attorneys were required to make their arguments. This was refused. This was error." *Atterberry, supra*, 129 S.C. ___, 124 S.E. at 651. In his concurring opinion, Acting Associate Justice Aycock stated the principle best

¹ In 1924, Rule 59 was part of the Code of Civil Procedure. The concurring opinion by Acting Associate Justice Aycock makes reference to the fact that nothing in the Code of Civil Procedure limits the application to civil cases. Today, the South Carolina Rules of Civil Procedure do limit their application to civil cases.



when he said, "It is but fair that the party who has the advantage of the last address to a jury should be required to open and apprise the opposing party of his views as to his entire case." *Id.*

The more recent tradition of allowing the prosecution to open on the law and save their factual argument for the final closing developed when the Circuit Court Rules were changed. This change was noted in *State v. Lee*, 255 S.C. 309, 179 S.E.2d 652 (1971). In that case, the trial judge denied defense counsel's request that the state be required to open fully on the law and the facts, noting that since the decision in *Atterberry*, Rule 59 of the Circuit Court Rules had been changed to Rule 58, which read: "The party having the opening in an argument shall disclose fully the law upon which he relies if demanded by the opposite party." The Court in *Lee* concluded that, "It follows that the trial judge, under the changed rule, was correct in holding that a solicitor is no longer required to make an opening argument to the jury on issues of fact."² Thus began the more recent tradition of requiring the state to open only on the law.

Today, Rule 43(j) of the South Carolina Rules of Civil Procedure controls the order of argument in civil cases. This rule now provides that the plaintiff shall have the right to open and close at the trial of the case. The rule concludes, "The party having the right to open shall be required to open in full, and in reply may respond in full but may not introduce any new matter." With the inception of Rule 43(j), the long practice in civil cases of plaintiff's lawyers "sandbagging" by saving their real argument for last came to an end. But in General Sessions Court, the practice of allowing the prosecution to open only on the law continues based only on tradition, but not upon the law.

The practice of "sandbagging" in a closing argument was a basis for reversal of a criminal conviction in Delaware. In *Bailey v. State*, 440 A.2d 997 (Del. 1982), the court noted that "[c]losing argument is 'an aspect of a fair trial which is implicit in the Due Process Clause of the Fourteenth Amendment.'" *Id.* at 1004. The court further held that "[a]pplication of these authorities to the facts at

² Again, this was a change in the Code of Civil Procedure which the court elected to apply to a criminal case.

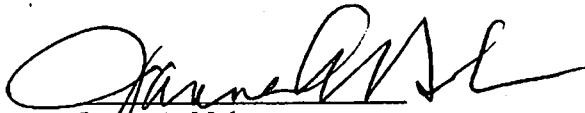
hand compels us to reverse and remand the case for a new trial on the ground that the Trial Court abused its discretion in permitting the State to utilize the inherently prejudicial 'sandbagging' trial strategy." *Id.*

The majority of states and the federal court require the prosecutor to open fully on the law and the facts. *See, e.g.,* Fed.R.Crim.P. 29.1, Ark. Code Ann. 16-89-123, Ga. Code Ann. Sec. 17-8-71, Nev. Rev. State Ann. 175.141, Tenn. Rules of Crim. P. 29.1, *In re Amendments to the Florida Rules of Criminal Procedure – Final Arguments*, 957 So.2d 1164 (Fla. 2007), *but see, Degadillo v. State*, 262 S.W.3d 371 (Tex.Ct.App. (2008)). Secondary sources also support the requirement that the state open fully on the law and evidence. *See* Jacob Stein, Closing Arguments 2d, Sec. 1:6 (2010), 75A Am.Jur.2d Trial Sec. 448 (2010). In revising its rules as to closing argument, the Florida Supreme Court noted, "The statute provides that in accord with the common law, the prosecuting attorney shall open the closing arguments, defendant or his or her attorney may reply, and the prosecuting attorney may reply in rebuttal." *In re Amendments to the Florida Rules of Criminal Procedure – Final Arguments, supra*, 957 So.2d at 1166.³

South Carolina should break with a tradition that has no support in logic or the law and require that the State be required to open fully on the law and the facts. The current procedure in South Carolina simply permits the State to "sandbag" its argument and not afford the defense the opportunity to reply to new arguments that the State used in its closing.

IT IS SO MOVED.

Respectfully Submitted,


Jayna A. Nelson
Circuit Defender
Suite 208, Park Plaza

³ The Florida Supreme Court also noted that 47 states follow the common law

600 Monument Street, Box P-133
Greenwood, South Carolina 29646
(864) 229-9505

May 29, 2014
Greenwood, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that she has served this Motion to Require the State to Open Fully on the Law and the Facts and then Reply to the Argument of Defendant by hand on opposing counsel on May 29, 2014.


Janna A. Nelson
Attorney for Defendant Keith Denver Tate

STATE OF SOUTH CAROLINA

v.

KEITH DENVER TATE,
Defendant.IN THE COURT OF GENERAL SESSIONS
FOR ABBEVILLE COUNTY

INDICTMENT NO. 11GS01-0053

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2019 JUN 5 PM 3 14
EMILY Y MCMAHAN
CLERK OF COURT**MOTION FOR NEW TRIAL**

Pursuant to Rule 29, SCRCrimP the Defendant, KEITH DENVER TATE, moves for a new trial. A trial judge has the discretion to grant or deny a motion for a new trial, and his decision will not be reversed absent a clear abuse of discretion." State v. Johnson, 376 S.C. 8, 654 S.E.2d 835 (2007) (trial judge properly granted new trial when witness improperly testified about polygraph, thereby improperly bolstering his credibility to the jury). The new trial motion is based on the following errors of law:

1. The alleged victim in the case had several extreme emotional reactions throughout the course of the trial, beginning during defense counsel's opening statement. She cried several times while testifying, and broke down sobbing during cross-examination. The judge called a recess at that point, and while the jury was leaving the jury box and going into the jury room, the victim ran from the courtroom yelling for her mother. The Court denied Defendant's motion for a mistrial. Defendant argued that the victim's emotional reactions could prejudice or wrongly influence the jury. See State v. Gens, 107 S.C. 448, 93 S.E. 139 (1917) (finding mistrial appropriate where, throughout entire trial, spectators exerted improper influence on jurors). There was no curative instruction given to the jury to disregard the emotional display and decide the case only on the facts presented.

2. The Court denied Defendant's motion for a jury view of the incident location pursuant to S.C. Code Ann. Sec. 14-7-1320. While the incident location was described by witnesses, there were no photographs or diagrams of the location introduced into evidence. It would have been highly instructive in this case for the jury to view the small size of the incident location and the close proximity of the rooms to one another given the alleged victim's testimony that both she and the defendant

screamed on more than one occasion when the alleged assaults took place, and given that the victim's testimony was that the assaults occurred in the living room, which was open to the rest of the apartment, and that all assaults occurred while three other family members were in the apartment. In City of Columbia v. Jennings, 288 S.C. 79, 339 S.E. 2d 534 (1986), the court held that a jury view was not necessary to a just decision when exhibits such as photographs, a videotape, a plat, and a topographical map were introduced as evidence. Here, there was no such evidence introduced, and a jury view of the incident location would have greatly assisted them in rendering a just decision.

3. The Court denied Defendant's motion to require the State, in its closing argument, to open fully on the law and the facts and use final argument for rebuttal only. The denial of that motion caused the Defendant to be deprived of the right to counter numerous assertions made during the State's closing argument and therefore deprived Defendant of his due process right to defend himself. One statement in particular by the prosecutor regarding the state's lack of desire to have anything tested for DNA evidence was a blatant misstatement of fact to the jury, since the items taken pursuant to search warrant of the incident location had in fact been tested and DNA evidence had been found. Since Defendant's motion was denied, defense counsel was deprived of the opportunity to address that misstatement in particular, as well as other arguments made by the prosecutor.

4. The jury's verdict was inconsistent with the evidence presented, in that the jury convicted Defendant of the second incident, alleged to have occurred on October 31, 2009. The unrefuted testimony was the victim alleged that the second incident occurred after she returned home from an October 30, 2009 football game and that she woke up the following morning to find no one home. Her statement was that her brothers had already left for school and her ride to school had already left, so her mother had to take her to school when her mother returned home later that morning. However, it was substantiated through testimony that October 31, 2009 was a Saturday, which makes the alleged victim's statement about the second incident not credible. Defendant should

be granted a new trial on that count, which was the only count for which he was convicted, due to the verdict of the jury being inconsistent with the evidence presented.

5. Defendant was not permitted to adequately describe photographs sent to the alleged victim by her then-boyfriend approximately ten days before the victim disclosed the alleged assaults. Defense counsel did not attempt to introduce the photographs into evidence since the young man was only 15 years old at the time the photographs were taken, but defense counsel wanted the jury to hear that the photographs depicted the young man naked with an erect penis. The Court permitted defense counsel to refer to the photographs only as "inappropriate." By not being permitted to accurately describe the photographs to the jury, Defendant was denied his due process rights to a fair trial and to fully present a defense.

6. For each of the nine counts charged, Defendant requested that the verdict form list the types of sexual battery so that the jury could find which type(s) of sexual battery occurred for each incident date. The Court denied defendant's request for this addition to the verdict form over defense's objection that it was necessary to assure the unanimity of the verdict. Because there were statements from the alleged victim giving different accounts of which type(s) of sexual battery occurred on particular dates, the only way to ensure that the jury's verdict would be unanimous and based on the evidence presented would have been to have them find what type(s) of battery occurred on each offense date, if they found Defendant guilty of a particular charge. See, e.g., Harp v. Commonwealth, 266 S.W.3d 813, 818 (Ky. 2008) ("[I]n a case involving multiple counts of the same offense, a trial court is obliged to include some sort of identifying characteristic in each instruction that will require the jury to determine whether it is satisfied from the evidence the existence of facts proving that each of the separately charged offenses occurred."); Johnson v. Commonwealth, 405 S.W.3d 439 (Ky. 2013); Kingrey v. Commonwealth, 396 S.W.3d 824 (Ky. 2013).

7. The Court should grant a new trial based on the cumulative error doctrine which requires a new trial when a combination of errors prevents a party from receiving a fair trial. E.g., State v. Blurton, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000) reversed on other grounds 352 S.C. 203, 573 S.E.2d 803 (2002).

For the foregoing reasons, this Court should grant Defendant's motion for new trial on the single charge for which he was convicted.

IT IS SO MOVED.

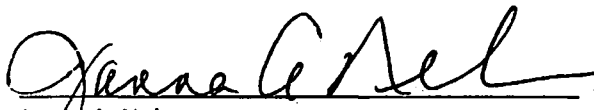


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June 5, 2014
Greenwood, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that she has served this Motion for New Trial by hand on opposing counsel and by mail on The Honorable Donald B. Hocker on June 5, 2014.


Janna A. Nelson
Attorney for Defendant Keith Denver Tate

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ABBEVILLE) CASE NO. 2011-GS-01-053 (0046)

State of South Carolina

ORDER ON DEFENDANT'S MOTION FOR NEW TRIAL

V.

Keith Denver Tate,

Defendant.

THIS MATTER comes before the Court on Defendant's, Keith Denver Tate's, Motion for a New Trial pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. The Court conducted a hearing on July 15, 2014. The Defense was represented by Janna Nelson. Present for the State was Lance Sheek.

After thorough and careful consideration of Defendant's Motion for New Trial the same is respectfully denied.

IT IS SO ORDERED

Donald B. Hocker
Circuit Court Judge

July, 21, 2013

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2019 JUL 23 PM 8 31
EMILY Y MCMAHAN
CLERK OF COURT

cc: J. Nelson, L. Shelle by email 7128114

WITNESSES

Roger Hunicutt
Calhoun Falls Police Department

WARRANT NUMBER

1790879

Foreman of the Grand Jury

Date: FEB - 4 2011

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011

Indictment # 11GS01-0045

THE STATE

VS.

Keith Denver Tate

INDICTMENT FOR

CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

THE STATE OF SOUTH CAROLINA

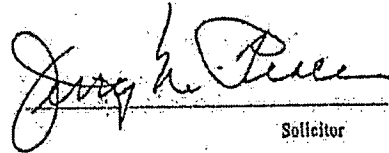
COUNTY OF ABBEVILLE

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Keith Denver Tate, did in Abbeville County, state aforesaid, on or about the 18th day of March, 2010 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree; to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, to wit: Minor date of birth: In violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Roger Hinnicutt
Calhoun Falls Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011
Indictment # 11GS01-0046

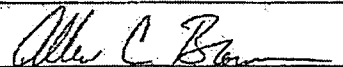
WARRANT NUMBER

1790878

THE STATE

vs.

Keith Deaver Tate



Foreman of the Grand Jury
Date: FEB - 4 2011

TRUE BILL

VERDICT

**INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)**

Foreman

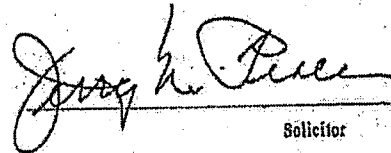
THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Keith Denver Tate, did in Abbeville County, state aforesaid, on or about the 15th day of March, 2010 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years; to wit: one MINOR date of birth: [redacted] in violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Roger Hunnicutt
Calhoun Falls Police Department

WARRANT NUMBER

1790871

Allen C. Be...

Foreman of the Grand Jury

Date: FEB - 4 2011

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011

Indictment # 11GS01-0047

THE STATE

vs.

Keith Denver Tate

INDICTMENT FOR

**CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)**

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

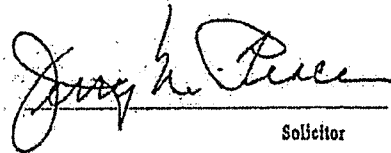
1105 4 - 511

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Keith Denver Tate, did in Abbeville County, state aforesaid, on or about the 14th day of March, 2010 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, in wit: one Minor date of birth: In violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Roger Hummelt
Calhoun Falls Police Department

WARRANT NUMBER

1790876

Allen C. Brown

Foreman of the Grand Jury

Date: **FE - 4 2011**

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011

Indictment # 11GS01- *0049*

THE STATE

vs

Keith Denver Tate

INDICTMENT FOR

**CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0653(B)**

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

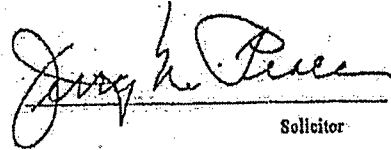
16-03-0655(B)

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Keith Denver Tate, did in Abbeville County, state aforesaid, on or about the 13th day of February, 2010 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, to wit: one Minor date of birth: In violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Roger Hunnicutt
Calhoun Falls Police Department

WARRANT NUMBER

7790877

Allen C. Brown

Foreman of the Grand Jury

Date: FEB - 4 2011

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011

Indictment # 11GS01- 0050

THE STATE

VS.

Keith Denver Tate

INDICTMENT FOR

**CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)**

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

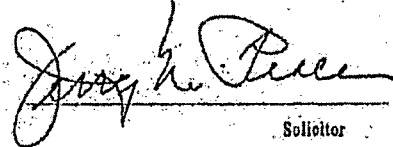
INDICTMENT FOR

CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Keith Denver Tato, did in Abbeville County, state aforesaid, on or about the 6th day of February, 2010 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, to wit: one Minor date of birth: In violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor

WITNESSES

Roger Huggins
Calhoun Falls Police Department

WARRANT NUMBER

1790873

W. C. B.
Foreman of the Grand Jury
Date: **FE - 4 2011**

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011
Indictment # 11GS01 *0051*

THE STATE

VS.

Keith Denver Tate

**INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)**

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

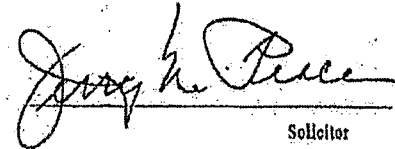
16-03-0655(B)

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Kelth Denver Tate, did in Abbeville County, state aforesaid, on or about the 26th day of December, 2009 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, to wit: one Minor date of birth In violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Roger Hamblent
Calhoun Falls Police Department

WARRANT NUMBER

1790874


Foreman of the Grand Jury
Date: FEB - 4 2011

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011

Indictment #: 11GS01-0052

THE STATE

vs.

Keith Denver Tate

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

THE STATE OF SOUTH CAROLINA

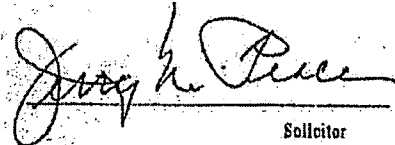
COUNTY OF ABBEVILLE

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Keith Denver Tate, did in Abbeville County, state aforesaid, on or about the 14th day of December, 2009 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, to wit: one Minor date of birth: , in violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Roger Hunnicutt
Calhoun Falls Police Department

WARRANT NUMBER

1790875

Allen C. Blom
Foreman of the Grand Jury

Date: FEB - 4 2011

TRUE BILL

VERDICT

Foreman:

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011

Indictment # 11GS01-0053

THE STATE

-vs-

Keith Denver Tate

INDICTMENT FOR

CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

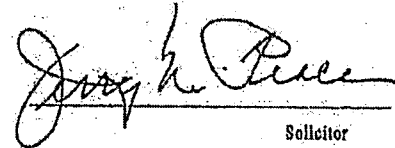
EE - 4 3011

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Keith Denver Tate, did in Abbeville County, state aforesaid, on or about the 31st day of October, 2009 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, to wit: one Minor date of birth: in violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Roger Hunnicutt
Calhoun Falls Police Department

WARRANT NUMBER

1790872

Allen C. Brown
Foreman of the Grand Jury
Date: **Feb - 4 2011**

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2011
Indictment # 11GS01-*0054*

THE STATE

vs.

Keith Denver Tate

**INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
(6-03-0655(B))**

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

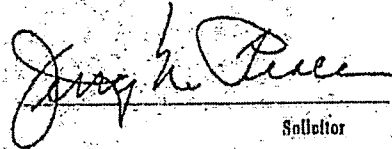
16-03-0655(B)

INDICTMENT FOR
CRIMINAL SEXUAL
CONDUCT WITH A MINOR
16-03-0655(B)

At a Court of General Sessions, convened on the 4th day of February, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Keith Denver Tate, did in Abbeville County, state aforesaid, on or about the 28th day of August, 2009 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, to wit: one Minor date of birth: in violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Abbeville
 STATE VS.
Keith Denver Tate

AKA: _____

Race: _____ Sex: M Age: 53

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Calhoun Falls, SC 29645

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive

in violation of § 16-03-0655 of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sheek, C. Lance65376
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ 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:

☒ 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. 181 Days Credit

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS01-0046A/W#: 1790878Date of Offense: 10/31/2009S.C. Code § : 16-03-0655CDR Code #: 0396

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655 of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sheek, C. Lance65376
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ 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:

☒ 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. 181 Days Credit

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

PTUP _____
 _____ days/hours Public Service Employment

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

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

21675/29/14

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 2, 2016



Susan B. Hackett
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

RECEIVED

FEB 02 2016

393

SC Court of Appeals

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 2, 2016



Susan B. Hackett
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

Appeal from Abbeville County

Donald B. Hocker, Circuit Court Judge

RECEIVED

FEB 02 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

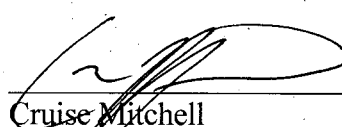
V.

KEITH DENVER TATE,

APPELLANT

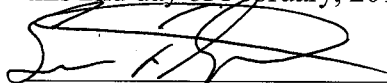
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Henry Gunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of February, 2016.



Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 2nd day of February, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.