

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

Frank R. Addy, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JAMES SCOTT CROSS,

APPELLANT

APPELLATE CASE NO. 2013-002596

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO.
Solicitor, Eighth Judicial Circuit
Post Office Box 516
Greenwood, SC 29648
(864) 942-8800

Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
)
-VS-)
)
JAMES SCOTT CROSS,)
)
DEFENDANT.)
_____)

2006-GS-01-227

2013-GS-01-255

TRANSCRIPT OF RECORD

OCTOBER 21-22-23, 2013
ABBEVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., JUDGE; AND A JURY

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

C. YATES BROWN, ASSISTANT SOLICITOR
SHANNON ODOM, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JOSH NASROLLAHI, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

1 The 06-01-226, just for the court's edification.

2 THE COURT: All right.

3 MR. BROWN: Judge would you want me to correct it or --

4 THE COURT: You go ahead and correct it then, please.

5 The record should also reflect that we met in chambers
6 briefly and discussed some of the motions in limine in this
7 particular case that we're going to have to take up this
8 morning. The way that we're going to proceed is that we'll
9 address, of course, the motions first, and then this
10 afternoon we'll look at selecting a jury with trial
11 beginning in earnest tomorrow morning. Who wants to go
12 first as far as the motions are concerned? I know Mr.
13 Nasrollahi, you have a motion to bifurcate, and there are
14 some motions relating to allegations that the young lady
15 involved, that she made against apparently a brother in
16 Anderson County that you wanted to address and at some point
17 it may be necessary, I think you told me, to proffer her
18 testimony. So at this point I'll turn the record over to
19 you, sir.

20 MR. NASROLLAHI: Thank you, Your Honor. At this time
21 I'd like to deal with the proffer issue, because I think
22 that timewise that's going to be the most substantial.
23 There were allegations in this case, as I mentioned in
24 chambers, that at the time of the disclosure by the
25 complaining witness that statements were made accusing my

K.B.

(IC)-DIRECT EXAMINATION

17

1 IN-CAMERA PROFFER

2 K.B. having been first
3 duly sworn, testified as follows:

4 THE COURT: Solicitor, did you want to go first since
5 she's technically your witness, or Mr. Nasrollahi, did you
6 want to go first since this is your motion?

7 MR. BROWN: Yes, sir.

8 THE COURT: All right. Go ahead, Mr. Brown.

9 IN-CAMERA DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q Good morning.

12 A Good morning.

13 Q K.B. would you tell me your full name.

14 A K.B.

15 Q And what do you go by?

16 A I go by K.B.

17 Q And, K.B. what's your date of birth?

18 A [REDACTED].

19 Q How old are you now?

20 A I'm 21.

21 Q And how old were you back in 2005?

22 A I was 13.

23 Q And, K.B. we're going to just jump for the purpose
24 of why we're in here today. We're going to jump forward to
25 the reason why we're here today. K.B. do you remember

1 what happened on December 29th, 2005?

2 A Yes, sir. Well, that night Kim and Scott had come over
3 just like evening time --

4 Q You're talking about Kim and Scott. What's their last
5 name?

6 A Cross. And they had come over and was down visiting my
7 mama and daddy. And then later on that day we started
8 playing hide and go seek. And me and the kids, you know,
9 and Scott come out there and we was all playing. And, well,
10 he had took -- took me behind -- there's like this bush,
11 like, really big tree, like bush thing out there in the
12 field.

13 Q Now, the bush, tree. How far out in the field is that?
14 Is it close to your house, or where is it?

15 A It's sort of close. It's like --

16 Q Not far?

17 A Yeah, not that far. But --

18 Q Would you consider it almost like in your yard, or is
19 it -- do you consider your whole yard like a field?

20 A Yeah. My whole yard like a field. And he proceeded to
21 start rubbing my breasts and touching my vagina and putting
22 his -- you know, self on me. And I was trying to get to
23 where I could call for my mama and daddy. And, well, my
24 daddy was gone and -- I was going -- and he put his hand
25 over my mouth, and he was kissing on me and stuff. And he

K.B.

(IC)-DIRECT EXAMINATION

19

1 told me if I ever told anybody or said anything that he
2 would come and hurt us. And he had, you know, just --

3 Q What did -- did he do anything else besides rub on your
4 breast and your vagina?

5 A Yes. After that he had stuck his penis in my vagina
6 and --

7 Q How did he do that? Did you have pants on?

8 A He pulled my pants about halfway down, and then --

9 Q And just to be -- where did this happen?

10 A It happened at my house. It's [REDACTED] 81 North in
11 Abbeville County.

12 Q What state is that in?

13 A South Carolina.

14 Q Now, when you were there under the tree or the bush,
15 how long -- and he was doing these acts to you, how long did
16 that take?

17 A Probably about -- probably about three, five -- I don't
18 know. About five, 10 minutes. Ten minutes, something like
19 that maybe. Like not in that time period.

20 Q So it could have been -- you really don't remember, but
21 it didn't --

22 A Yeah.

23 Q -- last a long time?

24 A Yeah. Huh-uh. (Negative)

25 Q Again, this happened eight years -- almost eight years

1 ago. After all this happened, what -- what did it look like
2 outside?

3 A It was almost dark. It was almost completely dark. It
4 was -- yeah, it was dark. Because by then, like, the
5 youngins had, I guess, run up on the porch and stuff because
6 it's -- it was dark.

7 MR. NASROLLAHI: Judge, I have a quick objection. This
8 is an in camera review. I noticed that law enforcement and
9 the victim's advocate are in here for this.

10 MR. BROWN: Judge --

11 MR. NASROLLAHI: I believe that that's -- this is in
12 camera.

13 MR. BROWN: Law enforcement, this is our investigator
14 on the case. And the victim's advocate works in our office.
15 That's her role.

16 THE COURT: The reason for your objection, Mr.
17 Nasrollahi is exactly --

18 MR. NASROLLAHI: The victim's advocate, I don't know
19 what her role is going to be. I mean, I like Maryann, but I
20 don't know whether her role is to comfort the victim or to
21 talk with the family to discuss the case, to go over
22 testimony.

23 I know that prior to all this, prior to our October
24 4th, 2013 interview there was a meeting with the Solicitor
25 and Ms. Stroup prior to my investigator speaking to them

K.B.

(IC)-DIRECT EXAMINATION

21

1 where they discussed their testimony. I just believe that
2 this is -- this is an in camera review and it would be
3 inappropriate to have non-essential individuals present for
4 it.

5 THE COURT: Well, technically he is correct. The
6 purpose of an in camera review is for the court to make an
7 assessment and often these are -- these things are done in
8 chambers. Obviously that's not possible because of the
9 setup and the logistics here in Abbeville County. So his
10 point is well -- The Defense point is well taken. Under the
11 rules, that would be an accurate and way to state it. So if
12 you all don't mind just to step outside. Okay?

13 I apologize for the interruption, Mr. Brown. You can
14 continue.

15 MR. BROWN: That's fine.

16 Q Now, K.B. you said it was dark, or dusk and moved
17 to dark. And you said the youngins were there. Who were
18 the youngins?

19 A S.B. and Brandon Mc

20 Q And who is Sam?

21 A Sam is my brother and Brandon is my cousin.

22 Q How old are they -- or were they that time?

23 A About 10.

24 Q Both of them?

25 A Yeah, because they're just a couple of months apart.

1 Q And where were they when this took place?

2 A They was --

3 Q Do you even know?

4 A I don't know. All I know is they were supposedly
5 hiding because Scott was it.

6 Q Okay. And K.B. after this happened where -- what
7 did you do?

8 A What did I do after this?

9 Q Uh-huh (affirmative.) Right after it was done under
10 the tree.

11 A I had got myself clothed back up and I ran -- or went
12 in my house and I went into my bedroom, and I stayed in my
13 bedroom for a while. And then after they had left I had
14 went and got in the bathtub. And then I sat down and I
15 wrote down what happened in my diary thinking that it would
16 help give me a little bit of peace, but it still -- it
17 ain't, you know.

18 Q What did you do with your clothes that night?

19 A I threw them in the washing machine.

20 Q Now, K.B. with regard to kind of the dynamics of
21 your house out there where you all lived in Iva at [REDACTED] can
22 you -- can you tell me where you had lights, or where you
23 all had lights in the house?

24 A It was on the front porch. It was a -- what is them
25 lights? They -- motion light. It was on the front porch.

1 in at 2:00. Do you think this would be an appropriate place
2 to stop for lunch?

3 THE COURT: Perhaps so. I know that we need to address
4 some other motions, but I'm trying to figure out how best
5 to, because I know that we need to proffer some additional
6 testimony from this witness and the State needs to go on
7 redirect with her. Let's go ahead and break. And my plan
8 will be to go ahead and qualify and pick a jury at 2:00 and
9 then we'll resume with the motions and the testimony in
10 limine and see where we are.

11 MR. BROWN: Thank you, Judge.

12 THE COURT: All right. Ma'am, you can step down. And
13 just again, don't talk about your testimony. Talk about
14 something else over lunch. Okay?

15 THE WITNESS: Okay.

16 THE COURT: Just don't discuss your testimony, please.
17 We'll be at ease.

18 (Whereupon, a lunch break was taken from 1:05 p.m. to
19 2:00 p.m.)

20 (Roll call of jury)

21 THE COURT: Solicitor, if you will, call your first
22 case, please, sir.

23 MR. BROWN: Thank you, Your Honor. The State calls the
24 *State vs James Scott Cross* on indictment 13-GS-01-255,
25 criminal sexual conduct with a minor in the first degree.

1 And also the State calls 06-GS-01-227 with is committing or
2 attempting a lewd act upon a child under the age of 16 years
3 of age. The State is ready to proceed at this time.

4 THE COURT: All right. Is the Defense ready?

5 MR. NASROLLAHI: The Defense is ready, Your Honor.

6 THE COURT: All right. If you'll hand up the
7 indictments, please, Mr. Brown.

8 Ladies and gentlemen, we're about to begin the trial of
9 the case of *South Carolina vs James Scott Cross*. I've been
10 presented with two indictments. They charge Mr. Cross with
11 the offenses of committing or attempting to commit a lewd
12 act upon a child under the age of 16 and criminal sexual
13 conduct with a minor in the first degree. I'll remind you
14 all that the fact that an individual is charged, arrested or
15 indicted, of course, is not evidence in this case. An
16 indictment is nothing more than a piece of paper, ladies and
17 gentlemen, that contains the allegations made against the
18 Defendant. In this case, Mr. Cross has pled not guilty and
19 that plea will put the burden of proof on the State of South
20 Carolina to prove each element of the indictment beyond a
21 reasonable doubt.

22 Now, in this case, ladies and gentlemen, the State is
23 being represented by Mr. Yates Brown and Ms. Odom. Mr.
24 Brown, Ms. Odom, if you all would care to introduce
25 yourselves to the jury panel.

1 know how she talked about all that and how she was curious.

2 And if it was happening, it wasn't happening at my house.

3 Q So you also kind of thought the same thing about Andy
4 though, right?

5 A Yes. I mean, he's married.

6 Q And he went in the back bedroom with a 13-year-old
7 girl?

8 A They were -

9 MR. BROWN: No further questions, Your Honor.

10 MR. NASROLLAHI: No further questions.

11 THE COURT: All right. Thank you, ma'am. You can step
12 down. Anything else, gentlemen?

13 MR. NASROLLAHI: That's all. That's all the witnesses
14 and testimony that we have.

15 THE COURT: All right. As I'm looking at this, and
16 I've had the chance to review the cases that you have cited,
17 Mr. Brown, you had indicated that there -- the unpublished
18 opinion that you referenced in chambers, is that on this
19 issue or the other issue?

20 MR. BROWN: Judge, that's on the issue of the
21 bifurcation that Mr. Nasrollahi --

22 THE COURT: Right.

23 MR. BROWN: -- is going to keep out the prior. That's
24 the State versus William Ricky Welch, number 2011 UP 503.
25 It was submitted November 1st, 2011. And that's right on

1 point with this case in the elements of a CSC with a minor
2 first degree.

3 THE COURT: All right. Here's my initial take on this.
4 And I'm not married to this position, but this is just how
5 I've been thinking about this considering the evidence
6 that's been presented so far. The purpose of the Rape-
7 Shield Act is to prevent a witness -- an accusing witness to
8 prevent the Defense from going into a litany or a
9 chronological diatribe of her sexual experiences. And
10 before the Rape-Shield statute was enacted this was a common
11 tactic, especially in cases -- or most particularly in cases
12 where consent was the defense. What would often happen is
13 the defense would try to paint the accusing witness as a
14 harlot by explaining the number -- or going into detail --
15 in detail about the number of various sexual experiences she
16 may have had. And they would do that in an effort to
17 demonstrate that on this particular occasion the alleged
18 victim must have consented because she's so loose, or, shall
19 we say, free with herself, for lack of a better piece of
20 nomenclature. That's what the Rape-Shield statute was
21 designed to prevent. Now, the Supreme Court in a number of
22 cases cited by the Defense has carved out exceptions to the
23 three -- additional exceptions to the three exceptions that
24 are named -- that are spelled out in the second part of that
25 statute. If the purpose of the Rape-Shield statute is to

1 prohibit or prevent -- and this is my first point, prevent
2 the defense from being able to go into those prior instances
3 in order to prove or show that it's more likely true that
4 the victim consented in this incidence, where consent is not
5 an issue I'm having a difficult time seeing what the public
6 policy exception would be to apply the Rape-Shield statute.
7 In this case it's CSC with a minor. Consent is irrelevant.
8 Either the instances with the Defendant's brother took place
9 or they didn't take place.

10 Clearly we're dealing with inconsistent testimony, and
11 this kind of segues into my second point. I'm not even sure
12 that the Rape-Shield statute applies because there's -- from
13 the Defense standpoint the other instances -- there's so
14 much -- there are so many differences in the way that the
15 complaining witness described those instances that it raises
16 doubt as to whether they ever took place in the first place.
17 Okay? If the instances did not take place, then clearly
18 Rape-Shield does not apply, because it only applies to
19 sexual acts. By the expressed terms of the statute it only
20 applies to sexual actions. It's silent on questions of
21 accusation. It would be similar to a situation where a
22 minor victim alleged a particular act against an adult and
23 based upon the investigation of law enforcement it became
24 apparent that either the supposed act or Defendant was
25 either incapable of engaging in that act for some perhaps

1 physical problem that he had or maybe he had an airtight
2 alibi. He was on the other side of the planet. If a
3 similar accusation were to be made against another adult
4 clearly you could go into that prior accusation, because
5 there's no sexual act involved in that. It was found to be
6 unfounded, to borrow language from DSS. So I have a
7 question as to whether or not Rape-Shield actually applies
8 in this kind of situation.

9 And secondly, the Supreme Court has been pretty clear.
10 In Finley it stated the Rape-Shield -- Rape-Shield does not
11 bar evidence of a victim's sexual conduct if the evidence
12 was offered for a purpose other than to attack the victim's
13 morality. That's the holding in Finley. They backed off a
14 little bit on that in the next paragraph saying that we
15 still affirm the other decisions dealing with Rape-Shield.
16 But in this case I don't see where the Defense is attacking
17 the victim's morality. Her morality is immaterial. It's
18 not an issue in this case. It cannot even be put in issue
19 in this case because she was a minor at the time. She's
20 unable to consent. The reason they're seeking to introduce
21 this evidence is to demonstrate the inconsistent statements
22 and the inconsistencies between the stories that the victim
23 had given. That seems to fall under the Grovenstein -- or,
24 wait. Sorry. Maybe not that case. Let me pull up what I've
25 prepared here. That falls more under the Younger case which

1 is cited with approval and Lang. Younger is the North
2 Carolina case, 306 North Carolina 692, which is cited with
3 approval in State v. Lang.

4 MR. NASROLLAHI: I'm sorry, Judge. What was that cite
5 again?

6 THE COURT: 306 North Carolina 692, State v. Younger.
7 And Younger seemed to form -- it was cited with approval in
8 Lang and it really seemed to form the basis for that holding
9 in Lang, L-a-n-g. And again, Lang is reported at 304 South
10 Carolina 300. Here, Lang proposed to offer evidence
11 concerning the victim's sexuality simply for the purpose of
12 impeaching the victim's credibility, thus the Rape-Shield
13 statute had no application. Again, Lang was the one where
14 the homosexuality was an issue.

15 Now, with that said, Mr. Nasrollahi, here's my concern.
16 I want to try this case, and I want to try this case only.
17 And under a 403 analysis, which I have to perform in this
18 case or on this issue, my biggest concern is the question of
19 how you deal with confusing issues, basically wasting time
20 and trying collateral matters that don't directly impact
21 this case. I think even the State would agree that you are
22 free to go into inconsistencies that relate to your client's
23 -- or to the accusations made against your client. You can
24 go into those as much as possible. We're starting to get a
25 little far afield -- or we start to get a little far afield

1 when we involve discussions of your client's brother and the
2 accusations made against him. I'm leaning towards allowing
3 Mr. Nasrollahi to go into these incidences involving -- or
4 these allegations involving the Defendant's brother. You
5 know, again, we're dealing with the accusations being made
6 at the same time. They're discovered at the same time.
7 They're investigated at the same time. They were hand and
8 hand with the allegations involving this Defendant. Both
9 individuals are related. They're both brothers. I'm seeing
10 a strong level of similarity. But, Mr. Nasrollahi, where
11 does it end? I mean, at what point do we say, okay -- you
12 know, it's one thing to question her on the inconsistencies
13 between her testimony today and her testimony years ago.
14 What I do not want to see happen is we go down this path --
15 if I allow this evidence in, we go down this path where it
16 becomes a trial of the case in Anderson, or the case that
17 could have been brought in Anderson. I think that the way
18 that we avoid doing that is you would point out
19 inconsistencies, the State would point out consistencies and
20 we roll along, but extrinsic evidence of those facts or
21 corroborating evidence of those facts don't come in.
22 Because the only purpose in allowing you -- if I do, in
23 fact, allow you to go down this route, the only -- or down
24 this road, the only purpose in doing so would relate to the
25 credibility of the Defendant. Not whether or not the act

1 actually happened. Not whether or not your client's brother
2 actually committed these acts. That's irrelevant. It only
3 goes to the question of credibility in the sense that she
4 gave this statement here in a similar type of molestation
5 situation, now she's testifying as to a different statement
6 or to a different -- in a different way. You see what I'm
7 saying?

8 MR. NASROLLAHI: If I could get clarification on what
9 you mean by extrinsic evidence.

10 THE COURT: I don't know that I'm going to be inclined
11 to permit a whole bunch of people to come in and start
12 saying, well, yeah, she did testify this way. I mean,
13 you're stuck with statements. You're stuck with the written
14 statements and the state is stuck with the written
15 statements that she gave to law enforcement. Extrinsic
16 evidence would be somebody coming in -- some third party
17 coming in and saying, yes, I interviewed her and, you know,
18 this is the statement that she gave. We're only -- you've
19 got what she wrote down. You've got what law enforcement
20 took. If there's some question about her denying that
21 statement? I don't know. Maybe I'll have to cross that
22 bridge when I come to it. But most of my recollection of
23 her testimony was that she didn't really deny the
24 statements. She just didn't really recall them. Okay?
25 Like the one you handed her. She admits that she signed the

1 statement. The second page of the statement. She initialed
2 in two places making corrections to the statement. So she
3 didn't seem to dispute that that was, in fact, given.

4 MR. BROWN: Judge, how would that -- with regard to the
5 forensic interview, since -- you know, that's -- that's
6 going to be a -- that's a Kromah issue and I can't bring in
7 the forensic interviewer and ask her, you know. That's --
8 that's not her statement where she signed off on it either.

9 THE COURT: I understand.

10 MR. BROWN: So that's -- that's my biggest thing is
11 we're going to be trying Anderson and missing the whole
12 point of the Defendant sitting here, and that -- that goes
13 into 403 analysis of whether there's going to be -- the
14 probative value is going to be greatly outweighed by the
15 prejudicial impact and it's going to confuse the jury on the
16 issues here.

17 THE COURT: And I would agree --

18 MR. BROWN: It's also going to come back to -- the
19 question that's going to come back that's going to be
20 planted in the jury's mind, well, what did Anderson do on
21 this.

22 THE COURT: The question -- in any case like this
23 though, and this is what I'm struggling with, gentlemen. I
24 probably should have said this first. The question of
25 credibility of the accusing witness is the heart of this.

1 It is the most central question that we have to address or
2 that that jury has to make a decision on. I think both of
3 you agree with that. You're nodding your heads. If
4 credibility is the key question for the jury to decide, then
5 I believe that under these very peculiar facts this line of
6 inquiry is relevant. How far afield we go, I don't know. I
7 don't want to go very far afield. And I hear what you're
8 saying about Kromah. I think you're probably correct on
9 that, but we may have to figure out some way to address
10 that. With her credibility being so key in such a
11 substantial issue in this case, and with these incidents all
12 occurring roughly -- generally around the same time
13 involving a relative of the Defendant, investigated at the
14 same time, the statements that she gave in that case have
15 relevancy in my mind to -- the statements that she gave in
16 the Anderson case have relevancy to this case because it's
17 all occurring at the same time. It's all being investigated
18 at the same time. It's being discussed at the same time.
19 That's my initial reaction.

20 MR. NASROLLAHI: And, Judge, I don't think that we're
21 going to go that far afield. This proffer this morning was
22 -- and I'm sure Mr. Brown will agree with this, was based
23 largely on the Anderson account. We've not even --

24 THE COURT: Touched.

25 MR. NASROLLAHI: -- scratched the surface on what

1 happened on December 29th, 2013. We've got a very long road
2 to hoe on that. And I apologize in advance to the -- to
3 court personnel in here for that, but --

4 THE COURT: No. I understand.

5 MR. NASROLLAHI: I just think that -- my biggest thing
6 is, like you said, this is a he said, she said case. I
7 believe that the case law supports that, you know, her false
8 allegations against other people, especially given how close
9 the disclosure was, considering that the disclosure of both
10 suspects occurred at the same time, I think that the case
11 law warrants that that is material to a credibility
12 determination by the jury. But, I mean, that being said, I
13 don't plan on diving too far into the Anderson case, only so
14 far as to elicit from her the -- you know, she never made
15 those statements or -- or the statements that she made
16 wasn't true.

17 THE COURT: All right. Mr. Brown, I would -- if this
18 was a case where the allegation was made years or months and
19 it was completely separate and distinct I'd probably be all
20 in your -- in your camp on the Rape-Shield and the
21 applicability of the Rape-Shield. I just don't feel like
22 that's the situation here. But go ahead and --

23 MR. BROWN: Judge, I think on this --

24 MR. COURT: -- speak to -

25 MR. BROWN: On this actually I think it shifts more

1 towards -- more towards if you're not there on the Rape-
2 Shield, but on the 403 analysis. It's just -- if it was the
3 other way around and Anderson had gone forward and actually
4 pressed these charges I wouldn't be able to use the Anderson
5 trial or the Anderson and all that in this trial against
6 him, because it's totally separate.

7 THE COURT: You were saying that if the -- if the
8 Anderson charges had --

9 MR. BROWN: Judge, I was saying if it was the other way
10 around and Anderson had gone forward with their case before
11 us we would not be able to bring in what Anderson found
12 against the Defendant in this case. It would be totally
13 separate. Two separate counties, two separate
14 jurisdictions. And the guilt of his brother has no bearing
15 on the guilt of Mr. Cross who sits here today. I could see
16 if he wanted -- if they could get into prior -- you know,
17 the changing testimony or the inconsistencies with prior
18 times with Mr. Cross in Anderson, prior. And that's
19 actually the notice we got was prior allegations. Anderson
20 is actually a subsequent allegation. It happened
21 afterwards. It just was all found out at the same time. So
22 with the notice it's actually a -- he stated a prior
23 allegation. Well, it's not prior. It happened afterwards.

24 THE COURT: I thought it happened in October or
25 November is what she was saying?

1 MR. BROWN: The CSC happened -- well, that happened
2 with Mr. Scott Cross. What happened with Andy Cross was
3 subsequent in January.

4 THE COURT: Is that right? Was that --

5 MR. NASROLLAHI: That's correct. It was in January.
6 But scrivener's errors and the notice aside, we've been
7 battling this back and forth for a long time. To say that he
8 wasn't -- the State wasn't on notice that we were going to
9 start talking about what happened in January is -- I mean,
10 that's not substantiated. And then the issue with whether
11 or not -- okay. If Andy Cross was convicted of these
12 charges is a completely different animal than what the court
13 is looking at today. We are looking at this issue
14 specifically because Andy Cross was never convicted of these
15 charges. We're looking at this issue specifically because
16 the charges -- the allegations against him are false. So he
17 is correct we'd be talking about something completely
18 different if it turned out to be true and he was convicted.
19 But we're not talking about that.

20 MR. BROWN: Judge, she actually -- she does say there
21 was a CSC. There was actually penetration at the house. We
22 have corroborating evidence with the wife that said he was
23 there -- she was there several times. And so, to bring in
24 confusing -- we're trying Anderson. And what we have here
25 is Abbeville and the Eighth Circuit Solicitor's Office has

1 no control over what Anderson does. I don't know why they
2 did not go forward with this case.

3 THE COURT: I know exactly why they didn't go forward
4 with the case. It's because the agent -- or the person who
5 investigated it wanted the diary so that the diary would
6 corroborate being a -- you know, very close in time to when
7 the incident took place, it would be incredible --
8 incredibly valuable corroborating evidence --

9 MR. BROWN: That's right.

10 THE COURT: -- and I suspect that the nice people in
11 Anderson thought that their case would be amazingly stronger
12 if they had the diary, which apparently we do not have,
13 which is a point --

14 MR. BROWN: It's -- somewhere it's been misplaced. But
15 the fact of the matter is that going into Anderson -- and
16 this is the State's position, is it's going to be more
17 prejudicial on the issues in probative. And I could see a
18 limited -- you know, I could see going into James Scott
19 Cross. This is the Defendant we're trying here today. But
20 going into something that happened after these allegations.
21 She wrote down that she -- she wrote in her diary, I know we
22 don't have the diary here, but right after this happened on
23 December 29th would just go to the fact that these are two
24 different -- two different instances. Two different
25 defendants, even though they're brothers. Scott was not

1 there at the time that Andy took her into the back bedroom.

2 THE COURT: Right.

3 MR. BROWN: It's just misleading the jury and
4 confusing.

5 THE COURT: And that is -- I mean, that is something
6 that I have generally concern -- concerned myself with under
7 the 403 analysis. Like I said, gentlemen, I'm not married
8 to this position. I'm telling you which way I'm leaning so
9 that you all can prepare for tomorrow. Okay? I'll give you
10 a firm ruling, but I'm leaning pretty strongly in that
11 direction just for the reasons that I'm -- that I'm saying.

12 MR. BROWN: Judge, how -- when you said this is going
13 to be. How much is he going to be allowed to go into all
14 that? Does that -- I mean, because all day today was
15 nothing but Anderson.

16 THE COURT: I know.

17 MR. BROWN: And that's -- I mean, that again --

18 MR. NASROLLAHI: That was the purpose of the hearing.

19 MR. BROWN: I understand that. But I'm just saying, if
20 it's that long just Anderson, that's completely -- that's
21 trying Anderson instead of Abbeville. And I think if it is
22 allowed he can -- on actually just her statement that she
23 wrote would be sufficient and then -- then a forensic
24 interview where she didn't sign off on anything.

25 THE COURT: All right. For purposes of reliability and

1 -- I feel like the statement that would be most probative on
2 the question of credibility would likely be the one that she
3 acknowledged and authored as opposed to the one that the
4 forensic interviewer did, because -- you know, I don't think
5 we're going to get into that type of testimony from the
6 State's perspective. So I'm going to, of course, afford the
7 Defense some leeway to explore the statement that she gave
8 to the deputy up in Anderson. I think it could perhaps be
9 done a bit little more efficiently than perhaps it was done
10 today, but we'll see. What I do want to do before I make a
11 definitive ruling on this, I want to see -- because we have
12 not discussed the issue of the inconsistencies between this
13 incident involving this Defendant. I haven't heard that
14 testimony yet. Before I make a definitive ruling on
15 relevancy and 403 I really need to get a feel for how
16 different those issues are. So I'm going to delay any
17 affirmative ruling until I hear her testimony tomorrow as it
18 relates tot his incident or this allegation.

19 MR. NASROLLAHI: I mean, my only thing is that kind of
20 hamstrings me in opening arguments about what we're going to
21 present in this case.

22 THE COURT: I understand. I don't know that I can help
23 you on that.

24 MR. BROWN: Judge, the argument -- we've heard her talk
25 about -- I know we're beating -- seems like we're beating a

1 dead horse. But heard her talk about the testimony today
2 and on the audio statement about the incident with Mr. James
3 Scott Cross. The thing that happened, what we're here today
4 on the CSC and the lewd act that took place on the 29th,
5 that has hardly changed at all. It is substantially the
6 same. The only things that have changed are the prior
7 incident in Anderson --

8 THE COURT: I understand.

9 MR. BROWN: -- and in Andy's incident in Anderson. So
10 there's really not been much change in the CSC and lewd act
11 given it's been eight years.

12 THE COURT: And I understand that. Let me hear where
13 we go with that. Because I think even you would agree that
14 with regard to this Defendant and the prior allegation that
15 -- and you are correct. I don't know where I was -- I was
16 just misspoken when I said the October, November thing
17 involved the other person. It's been a long day. But I
18 think that the State would agree that they can go into that
19 and the similarities between the current account and the
20 earlier account.

21 MR. NASROLLAHI: So I'm allowed to talk about the prior
22 October allegations concerning Scott Cross?

23 THE COURT: Definitely, yes, because that involved your
24 client. That's pretty black letter law. Now, what we are
25 not going to be able to get into and what the Defense will

1 have to shy away from is anything that discusses that, okay,
2 well, charges weren't brought up there. There are many
3 reasons why charges might not be brought. That's totally
4 irrelevant to the question of credibility, believability,
5 prior inconsistent statements, et cetera.

6 MR. NASROLLAHI: I'm not going into what law
7 enforcement did. Yates and I, we've talked about their
8 practice up there and how it's different from the way we do
9 things here in the Eighth Circuit, and frankly I just don't
10 have enough to go on to explain why they didn't -- in front
11 of a jury why they didn't do anything with those charges.
12 The only thing that I was planning on using those statements
13 were just for impeachment.

14 THE COURT: Okay. Let's briefly address the
15 bifurcation issue. I think that's what we need to deal with
16 tonight going into tomorrow. Mr. Brown, you said -- and
17 just so the record is clear. In chambers it was explained
18 to me that the Defendant has a prior conviction for criminal
19 sexual conduct with a minor. That prior conviction forms
20 the basis for the State bring charges of CSC with a minor
21 first degree against the Defendant in this case, and the --
22 one of the elements of the indictment, which of course I
23 have not read to the jury yet and I may -- may simply let
24 that go. But one of the elements in the indictment is that
25 the Defendant is -- or has been convicted of CSC. In this

1 case second, I think is what you told me it was?

2 MR. BROWN: No. He was actually -- he pled guilty to
3 criminal sexual conduct with a minor first degree in 1992.

4 THE COURT: Okay, sorry.

5 MR. BROWN: And, Judge, it is a certified copy. It's
6 been sealed. It's got the seal of Anderson on there. And I
7 intend to introduce this. It's a self-authenticating
8 document with that, and just in between witnesses introduce
9 that as evidence.

10 THE COURT: All right. The Defense has objected to
11 that, and in chambers I was told that the reason for that
12 objection is that it's due to the prejudicial affect of
13 this. And, Mr. Nasrollahi, you want to explain to me the --
14 or at least put on the record what you explained to me in
15 chambers. The distinction between the line of cases that
16 hold, for example, burglary or other property crimes could
17 be admissible and the situation here where you have a number
18 of crimes that are -- or that would warrant sex offender
19 registry as well as -- or that warrant sex offender
20 registry, therefore there's a distinction between the two,
21 go ahead if you're ready, or we could do it in the morning.

22 MR. NASROLLAHI: I'd rather get it -- so that I can
23 prepare for --

24 THE COURT: Sure.

25 MR. NASROLLAHI: -- my opening tomorrow I'd rather do

1 that now.

2 My first motion is to bifurcate the charge such that
3 the predicate offense of CSC second, essentially, is tried
4 first before the jury and the jury would be -- CSC second
5 and then the lewd act would be tried before the jury first.
6 And then if he is convicted on the CSC second, the predicate
7 offense, the issue of the prior conviction would go back
8 before the jury. The Old Chief case is -- that's my next
9 argument. But what we have here is you've seen a portend of
10 the testimony that is going to come in from the State's
11 witnesses. There are significant credibility issues, and
12 we're up to our eyeballs here in credibility issues. I
13 think that the minute that the jury hears the -- you know,
14 hears that the Defendant has been previously convicted of
15 the exact same crime, given that we're talking about a crime
16 against a child on two occasions, I think they're going to
17 latch on to that and they're going to feel that it -- that
18 it shows his predilection to this type of offense. It's
19 going to be propensity evidence as received by them. *Texas*
20 *vs Spencer or Spencer vs Texas*, I can't recall, that case
21 was a due process challenge to single trials on what they
22 refer to as recidivist crimes, which is what this statutes
23 he's indicted on are.

24 The United States Supreme Court did not find that it
25 was a violation of due process to do a single trial for, you

1 know, these types of recidivist statutes, but they did say
2 that that was best practices. Additionally, and this may be
3 an outfield argument, I would argue that it is actually the
4 law of this state to bifurcate recidivist cases. There's a
5 statute on the South Carolina books saying that without an
6 inconsistent statute or case law, the law of England -- the
7 Common Law of England is the law of the land, and there are
8 some cases actually cited the dissenting opinion by the
9 Chief Justice in *Texas vs Spencer* saying that up until the
10 founding of the United States that was the practice of the
11 English courts was to bifurcate recidivist charges. And I
12 would say that there are no cases dispositive on this issue
13 -- other than whether it was a due process issue, there are
14 no cases dispositive and there are no statutes dispositive
15 on this issue.

16 Nevertheless, if the court feels inclined to deny our
17 motion to bifurcate the charge, I would ask that the court
18 perform a 403 analysis on this element. The State is
19 naturally going to cite cases like the unpublished opinion,
20 which I would point out offhand it is unpublished. It would
21 also point out the burglary first line of cases like Benton,
22 Alexander and Hamilton that all deal with the burglary first
23 statute and distinguish the law in South Carolina as opposed
24 to that applied by Old Chief. As I pointed out in chambers
25 the burglary first statute, the recidivist portion

1 specifically names two or more prior convictions for
2 burglary or house breaking.

3 And again, as I pointed out in chambers, the CSC first
4 statute that we're looking at, the recidivist portion, does
5 not specifically name any prior convictions. It references
6 another section under the title dealing with SLED and the
7 SLED sex offender registry. Now, the State's probably going
8 to argue something along the lines of, well, they
9 incorporated by reference of the statutes, but I would argue
10 that Old Chief specifically addresses that issue in that --
11 you know, the one year prior convictions enumerate so many
12 generic crimes under federal law that there's no way that
13 they could have incorporated by reference those statutes
14 into the language of that particular provision.

15 That being said, an admission by the Defendant as to
16 the prior conviction does not hamper the State in presenting
17 its case. It does not, you know, cut them off at the knees
18 in any way, shape or form, in proving the predicate offense,
19 which is what occurred on October 29th, 2005 -- I mean, I'm
20 sorry, December 29th, 2005. It does not hamper them in any
21 way, shape or form. And my client's admission that he has
22 been previously convicted under that section and for a crime
23 classified in that section, is just as good of evidence as
24 anything that the State can present by a true bill. I
25 understand and I do not deny that they have to prove that

1 particular element of the case beyond a reasonable doubt.
2 But again, there's no better proof beyond a reasonable doubt
3 than the Defendant's admission.

4 So we would ask that, you know, in that regard the
5 court accept the stipulation and sanitize the indictment and
6 the charge such that he is stipulated to a prior conviction
7 under that particular code section.

8 THE COURT: All right. Mr. Brown.

9 MR. BROWN: I'll be brief on this. Just citing again,
10 the State statute which we have indicted Mr. Cross on is 16-
11 3-655(a)2, which is sexual battery with a victim less than
12 16-years-old and a previous conviction or adjudication for a
13 sex offender offense which is in 23-3-430. In this case Mr.
14 Cross does have a prior conviction from March 9th, 1992 for
15 the offense of criminal sexual conduct with a minor first
16 degree, which is 16-3-652, which is listed as one of the
17 offenses in 23-3-430.

18 Your Honor, this statute came into effect, was signed
19 by the Governor 6/1/2005, which predates this incident date,
20 which our state legislature clearly intended on allowing a
21 prior CSC -- or prior sexual conduct charge, which is listed
22 in 23-3-430, as a prior conviction. Or as we've stated
23 earlier, if somebody came from out of state that was not
24 listed in one of these -- and these that are listed in 23-3-
25 430 was placed on the sex offender registry. He can use

1 that as also an enhancement for -- as an element actually in
2 this charge.

3 Your Honor, we've charged -- we've already read out the
4 charges to the jury gallery when we were choosing the jury
5 today that we were presenting a case with a criminal sexual
6 conduct -- criminal sexual conduct of the first degree. And,
7 Your Honor, I'll cite State versus William Ricky Welch,
8 which is in a published opinion, 2011 UP 503. And this is
9 directly on point. Mr. Welch, in this case appealed his
10 conviction for a first degree criminal sexual conduct with a
11 minor and lewd act upon a minor, which is exactly the same
12 two charges we're here today of beginning this trial on. He
13 argues that the Circuit Court erred in allowing the state to
14 proceed under 16-3-655(a)2, which we're going forward on
15 today -- or tomorrow, the South Carolina Code, because doing
16 so violated South Carolina Rules of Evidence in his right to
17 a fair trial guaranteed by due process laws. South Carolina
18 Rules of Evidence, which I assume would be the same rules as
19 Mr. Nasrollahi is citing here today under 403 saying it's
20 more prejudicial than probative. The Court of Appeals
21 affirmed this pursuant to Rule 2-20(b)1, and also cited
22 State vs Pagan holding that the abuse of discretion,
23 standard reviewed reversal conclusions of the Circuit Court
24 either lack evidentiaries support or controlled by an error
25 of law. It also cited *Spencer vs Texas*, 385, which is a

1 Supreme Court case holding that the state statutes requiring
2 juries to make the findings of prior convictions in single
3 trials did not violate due process. Further State vs
4 Benton, which has already been referred to recognizing
5 Spencer. *State vs Benton* is a South Carolina case
6 recognizing Spencer noting that evidence of other crimes is
7 admissible to establish a material fact or element of the
8 crime. State legislature back in 2005 clearly intended that
9 this be an element -- a material fact or an element of the
10 crime and by not allowing me to go forward as already
11 indicated and already established or read to the jury as a
12 charge would handcuff the State in this case. It would not
13 allow us to prove our case. And in that Spencer -- in South
14 Carolina Code providing that a prior conviction first degree
15 CSC with a minor is an element of first degree CSC with a
16 minor, and that was affirmed by the Court of Appeals here in
17 South Carolina. And I will state that the same type of case
18 went in our circuit last March and the prior conviction was
19 allowed to be entered into court or into -- or be heard by
20 the jury as part of element in the case. And as of right
21 now it seems as -- I mean, nothing that would say that that
22 should not be the case in this case.

23 THE COURT: All right. I have had a chance to review
24 the unpublished opinion that you cited, and, of course, it
25 is unpublished, therefore it really has no precedential

1 value. But I am familiar with the line of cases that it
2 discusses, particularly Spencer, and I think -- I can't
3 remember -- my clerk's taking it down now. But it's the
4 2000 case that discusses Spencer.

5 With regard to their request for a 403 analysis do you
6 feel that 403 even applies in this particular situation, Mr.
7 Brown?

8 MR. BROWN: I do not actually.

9 THE COURT: All right. The legislature has basically -
10 - here's my ruling on this. I don't know that I would need
11 to perform a 403 analysis concerning the prejudicial effect
12 versus the probative value. Did you want to speak to this?

13 MR. NASROLLAHI: Judge, under *State vs Scribbener* you
14 have to perform the 403 analysis.

15 THE COURT: Right. Right. Well, regarding that, I'm
16 basically finding I don't know what could be more probative
17 -- when we're dealing with an element of the crime nothing
18 could be more probative than the fact that there's an
19 indictment indicating that he was convicted of or pled
20 guilty of a crime. I don't know that you get better
21 evidence of that in terms of proving an element that the
22 legislature has decided to include within the CSC first, or
23 CSC with a minor first. So clearly the probative value for
24 the State is extreme. The prejudicial effect, in my
25 opinion, can be addressed by simply explaining to the jury

1 that they're to draw no inference from the fact that he was
2 previously convicted of this. I have every reason to
3 believe that this is an intelligent jury. They certainly
4 seem very intelligent. And I'm more than happy to even
5 consider Mr. Nasrollahi any sort of limiting charge or
6 instructions that he would want me to give to give to them
7 both at the time the indictment is introduced into evidence
8 and at the conclusion of trial. So I'd be more than happy
9 to entertain anything that you may want to present to the
10 Court in the way of a limiting instruction so that they're -
11 - so that any risk of prejudice is minimized to the highest
12 degree possible.

13 So that would be my ruling on that. I don't see the
14 need to bifurcate and I appreciate your position, however
15 your objection is noted for the record.

16 Does that have it for us this afternoon or was there
17 something else? I felt like there was something else.

18 MR. NASROLLAHI: If there was, I can't remember.

19 THE COURT: Okay. I felt like there was something
20 else, too, gentlemen.

21 MR. NASROLLAHI: I do have -- I did say that there was
22 a motion to strike the sex offender language from the
23 indictment. It's surplusage and it's not at all probative.
24 Regardless of what the statute says, it's not at all
25 probative in this case and it's more prejudicial than it is.

1 THE COURT: And truthfully, Solicitor, I don't know
2 that you need to distract the jury any more. I would think
3 that it would be sufficient to demonstrate -- I mean, how
4 are you going to go about proving registry in this case?
5 How did the State intend to do that?

6 MR. BROWN: Judge, my initial plan is just to introduce
7 the self-authenticating document that he's been convicted of
8 that. I did bounce around the idea of calling Jeff Sorrow,
9 a probation agent who regularly deals with monitoring sex
10 offender registry folks who are placed on the sex offender
11 registry. He is actually -- the Abbeville Probation
12 Department and Parol is under the care of Anderson, and it's
13 not Greenwood or anything like that. So being a -- the
14 employee in monitoring those records could attest to was Mr.
15 Cross on the sex offender registry at this time. And that
16 would be another way to get in the sex offender registry.
17 And I have bounced around that idea, and that's -- that
18 would be my case in proving my elements to make sure I prove
19 my elements. And that's part of it is being a sex offender.
20 Is either convicted or on the sex offender registry, and I
21 think that would be -- it would be handcuffing my case to
22 not be able to prove all my elements.

23 MR. NASROLLAHI: And at this point I don't know how
24 Jeff Sorrow would be able to testify to his being on the sex
25 offender registry without there being any hearsay. And

1 there's no documents -- considering that we are trying this
2 case tomorrow, there's been no documents provided in
3 discovery, self-authenticating or otherwise, dealing with
4 the sex offender registry.

5 THE COURT: All right. Well, we may be -- or you may
6 be encountering, Mr. Brown, a Rule 5 issue if nothing has
7 been provided to the Defense indicating that he's on the sex
8 offender registry.

9 MR. BROWN: Judge, I think notice that he is given a
10 certified conviction of criminal sexual conduct with a minor
11 first degree is sufficient notice that he's on the sex
12 offender registry.

13 MR. NASROLLAHI: And again, there are two parts in that
14 last part of CSC with a minor first. One is a prior
15 conviction, and the other is his being on the sex offender
16 registry, and when you hand me a self-authenticated -- self-
17 authenticating indictment and sentencing sheet and you don't
18 say anything about the sex offender registry, that's not
19 really notice.

20 MR. BROWN: Judge, I would argue the same thing about
21 the notice of bring prior sexual allegations when he used
22 prior and not subsequent. It would be the same argument as
23 he used that I would not know that he was going to bring
24 subsequent. So it kind of is twofold here.

25 THE COURT: All right. Well, the way the indictment is

1 phrased it says that he's either been adjudicated delinquent
2 in this case for a CSC with a minor first, or has been
3 ordered to be included in the sex offender registry pursuant
4 to 23-3-43(d). Not that he was required to register as a
5 offender, but he was ordered to be included in the sex
6 offender registry. Does the indictment for CSC first degree
7 address that? The one that is certified? Does the
8 sentencing sheet reference an order?

9 MR. BROWN: It says -- it does not state the sex
10 offender registry. It just says the term of years and when
11 he's due -- arrived at -- the indictment says -- the
12 indictment just says that James Scott Cross did in Anderson
13 County on or between October 31st, 1991 and November 28th,
14 1991 engaged in sexual battery with a 10-year-old female
15 child. But it says criminal sexual conduct with a minor
16 first degree.

17 THE COURT: And it's entirely plausible that the reason
18 that the court in that case did not order it is because, of
19 course, it's automatic.

20 MR. BROWN: Yes.

21 THE COURT: All right. I'll think about it. I'll let
22 you know first thing in the morning, or I might even email
23 you all later tonight. Very good.

24 I plan on being here around 9:00, so if there are any
25 additional issues that we need to take up briefly we can do

1 it in chambers while the jury is filtering in, or if you
2 guys, you know, can be here. If something else we need --
3 if there's something else we need to address then we can
4 certainly do it tomorrow.

5 MR. BROWN: Just a house cleaning. We will take care
6 of this in case -- I don't know if he's going to use it or
7 not, but we'll have it ready just in case.

8 THE COURT: Very good.

9 MR. BROWN: And you've already noted. I don't see
10 anything else for today.

11 THE COURT: All right. Thank you all. We'll be at
12 ease.

13 (Whereupon, court was dismissed at 6:30 p.m.)

14 TRIAL Day 2 - 10/22/2013

15 THE COURT: If we may, we're going to go ahead and go
16 back on the record on cases 06-GS-01-227 and 13-GS-01-255,
17 *State vs James Scott Cross*. The Defendant is present with
18 counsel. The State is present. I believe that all the
19 jurors are here. Are we ready to proceed, gentlemen?

20 MR. BROWN: Yes, sir. One other thing. The State
21 would ask to sequester Defense attorneys -- or the Defense
22 witnesses in this case.

23 THE COURT: All right.

24 MR. NASROLLAHI: Judge, we would agree to sequestration
25 of Kim Cross, however, our expert witness is here and as

1 part of her testimony she would like to observe the
2 testimony of the victim in this case and we'd ask --

3 MR. BROWN: Judge, that is -- that is the reason why we
4 want to sequester. She's never met the victim and that's
5 going to go to her credibility as a witness as well, so we'd
6 ask for her to be sequestered.

7 THE COURT: All right. Explain to me or expand a
8 little bit, Mr. Nasrollahi, on the reason that you feel her
9 presence is necessary?

10 MR. NASROLLAHI: As part of what she would testify to
11 are basically the demeanor and conduct and the testimony,
12 the statements given by the victim in this case, as it's
13 vital to her testimony. She needs to observe what the
14 victim says on the stand today. This isn't a case where
15 we're talking about lay witnesses testifying to their
16 observations of the facts and getting their stories
17 straight. We're talking about someone who is going to voice
18 an expert opinion with regard to certain cues and symptoms
19 of child sexual trauma and perhaps even coaching. As far as
20 my recollection is clear, expert witnesses are usually
21 permitted to observe laywitnesses testify as to the facts of
22 the case and we don't believe that any of the objections
23 normally lodged with sequestration would be applicable in
24 this case.

25 MR. BROWN: Judge, I would have a problem with her

1 staying here since I've not seen a summary of what her
2 testimony is going to be nor have we had a proffer, and this
3 is just a way for her to do her research during trial
4 instead of doing it before trial which she could have
5 interviewed the victim at that time. This would just be the
6 same thing if we -- if we brought in the -- I mean, it's
7 just -- it's -- she's doing her work in the courtroom where
8 we've not heard a summary of what she's going to testify to.
9 So it's going to be completely blind of us and just feel it
10 would be improper for her to stay in here where other
11 witnesses couldn't.

12 THE COURT: All right. My understanding, if we were --
13 and we discussed this in chambers a short while ago. But my
14 understanding was that the testimony that the expert was
15 going to give related primarily to general symptoms of rape
16 trauma, things of that nature. The way that one would
17 typically respond to a sexual assault. My understanding is
18 that usually -- and it may very well be the court's ruling
19 that she can testify in such -- on such general topics. But
20 typically when you have evidence of rape trauma or that kind
21 of evidence is presented it's usually from someone who has
22 met with the complaining witness over an extended period of
23 time. I'm -- if it's the Defense's intention to allow this
24 witness to opine as to whether or not the complaining
25 witness in this case, in fact, was assaulted, I don't -- I

1 have some concerns about whether or not a sufficient
2 foundation would be laid for her to be able to express that
3 opinion if the only testimony that she -- or the only
4 evidence that she's observed, or the only meeting she's had
5 with the victim has taken place in this courtroom, and
6 there's not even a given and take between the two. I'm
7 trying to figure out exactly --

8 MR. NASROLLAHI: Well, based on my conversations with
9 Ms. Allen-Cook, it is not uncommon for these kind of experts
10 such as herself to be called in to court to testify about
11 these issues without having first met with the victim. It's
12 her common practice in a lot of circumstances to review the
13 documents provided to her by both defense attorneys and by
14 state prosecutors to give an opinion with regard to the
15 evidence that you would have her introduce in this case.
16 And as far as her conducting her work in the courtroom, I
17 mean, her work in this case is ongoing. She's reviewed
18 every shred of documentation the state has provided to us.
19 She's reviewed the forensic interview. Unfortunately
20 because of the date when the forensic interview was
21 conducted there was no audio recording. Her typical method
22 of gathering information in this case is to observe the
23 actual DVD recording, but she's only had the forensic
24 interview to go off of, which, you know, we believe is still
25 sufficient. And like I said, for her to continuously

1 monitor the developments in this case, she would need to
2 observe the testimony of the victim today.

3 MR. BROWN: Judge, I don't know how -- what she's going
4 to actually get to without coming to some type of conclusion
5 of whether this person -- whether this young lady is a -- I
6 guess, I mean, I just don't know what she's going to say.
7 If she's going along with what normal rape victims act like
8 or if she's not, which would be going to the credibility and
9 going to some conclusion which in Kromah states, like a
10 forensic interviewer or a doctor, you can't go to the
11 credibility or whether or not it's they believe she's
12 telling the truth or whether or not she's -- you know, they
13 feel like there's a good probability that this actually
14 happened or not. It goes to the same thing as a forensic
15 interviewer or a doctor. You can't ask whether or not they
16 believe her or if there was a result or if their
17 recommendation was to -- the wording has kind of slightly
18 slipped my mind about whether or not they can say exactly --
19 beg the court's indulgence.

20 THE COURT: You can't bring your expert in to testify
21 that, yes, this person -- based upon what I've observed
22 that, yes, this person is telling the truth.

23 MR. BROWN: Or a compelling finding.

24 MR. NASROLLAHI: Under the Kromah decision we are not
25 doing any of that. That would be improper testimony by our

1 expert to give her opinion on the voracity of the alleged
2 victim in this case. That is improper testimony and that is
3 not the type of testimony that she will be presenting.
4 However, she will be -- she will be discussing, for example,
5 symptoms of Post Traumatic Stress Disorder evident in
6 children who have been sexually abused. She will also be
7 testifying to cues and indications of coaching. And a lot
8 of evidence that she will need to bear on those issues also
9 come from live testimony in court. The reason we are
10 putting this witness up is because a lot of the arguments
11 made in this -- I forgot-- this is a traumatic experience,
12 but I forgot the important details of this traumatic
13 experience. I've repressed them. I believe that that goes
14 into an area where the jury would need to be assisted by an
15 expert. And if he has -- I mean, the issues with regard to
16 her never having met with the victim, those go to the
17 credibility of her testimony, and that's something that he
18 can address on cross examination.

19 THE COURT: All right. Part of the problem, Mr. Brown,
20 is that typically -- typically you do have, at least in
21 other areas, a video being taken at the time the forensic
22 interview is conducted. We do not have that obviously in
23 this case. That places the defense at somewhat of a
24 disadvantage in being able to review the video. Under the
25 rules, testimony of PTSD and things of that nature is

1 certainly admissible. Had there been a video recording
2 closer to the time of the incident I would be much more
3 inclined to grant your motion.

4 Mr. Nasrollahi, what I'm concerned with is the
5 possibility that Ms. Cook is going to take the stand and
6 say, "Well, yeah, I was sitting right here and I saw her
7 demeanor and the way she behaved today was indicative of
8 coaching, or these visual cues made me think that she was
9 coached." I know that there's a DVD that your investigator
10 -- a DVD of the interview that your investigator conducted
11 of the complaining witness. I'm assuming that she's had an
12 opportunity to review that. Again, what is it that you
13 anticipate her testifying to if she's allowed to stay in
14 here? What is it that she needs to observe?

15 MR. NASROLLAHI: Well, Judge, I mean, why don't we just
16 proffer her right now?

17 MR. BROWN: Judge, I don't see -- I mean, with that
18 she's still not going to be able to tell me what she's going
19 to say. I mean, if you're saying what she -- she's going to
20 be observing here, the jury is going to be observing the
21 same thing with what the victim's doing. So it's -- if we
22 want to talk about piling on the sex -- sex registry and all
23 that, that's going to be piling onto the victim. It's going
24 to be more prejudicial than probative, which would 403
25 argument there.

GAYE ALLEN-COOK DIRECT EXAMINATION (IC)

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1 THE COURT: I was hoping to go ahead and go into the
2 testimony since we've got the jury waiting, but I think it
3 would be best to go ahead and have a brief proffer of her
4 testimony so I can figure out exactly how to rule on the
5 sequestration issue. So, Ms. Cook, if you'll come on up,
6 please.

7 GAYE ALLEN-COOK, having been first
8 duly sworn, testified as follows:

9 THE COURT: All right. Mr. Nasrollahi.

10 DIRECT EXAMINATION

11 BY MR. NASROLLAHI:

12 Q Ms. Cook, please state your name for the record.

13 A Gaye Allen-Cook.

14 Q Okay. And how is your last name spelled?

15 A A-l-l-e-n, hyphen, C-o-o-k.

16 Q Okay. And what is your current profession?

17 A I'm a clinical child and family therapist in Florence,
18 South Carolina in a private practice specializing in trauma
19 and abuse.

20 Q Okay. And how long have you been employed as such?

21 A Thirteen years.

22 Q Thirteen years. And have you always been employed as
23 such?

24 A Yes.

25 Q Have you always been in private practice?

1 FOREPERSON: That's fine.

2 THE COURT: All right. When we return you'll have a --
3 you'll sit in the chair that the gentleman in the Clemson
4 tee shirt is sitting in. You're the alternate I believe,
5 correct, ma'am?

6 JUROR: Yes.

7 THE COURT: All right. You stay in that seat
8 throughout the trial. The rest of you, if you need to, feel
9 free to move about as necessary. Usually the acoustics are
10 pretty good in here. If you have any difficulty hearing any
11 testimony simply raise your hand and that'll be my cue to
12 ask the attorneys or the witness to speak up. So if you
13 have any problem hearing what's being said in the courtroom
14 by anyone, just raise your hand and I'll tell them to speak
15 up a little bit louder.

16 Now, ladies and gentlemen, if you would, the clerk is
17 going to administer your oath to you as jurors, so please,
18 if you could stand where you are and raise your right hand.

19 (Whereupon, the jury was duly sworn at 10:44 a.m.)

20 THE COURT: All right. Now, ladies and gentlemen,
21 we're about to try the case of the State of South Carolina
22 versus James Scott Cross, and before we begin the trial I
23 want to let you know that this trial is probably going to be
24 a little bit different from what you may have come to expect
25 from reading about trials in books or seeing them depicted

1 on TV or in the movies. From what you see on TV and what
2 you read about in books you might think that trials are
3 filled with riveting circumstances and intense drama.
4 Sometimes certainly that's the case. More often than not
5 though trials take a little bit longer than the two hours
6 that a movie runs or the hour that the TV show runs. And
7 the reason for that, ladies and gentlemen, is that receiving
8 evidence and taking testimony and trying to make sure that
9 justice is done for all concerned takes a great deal of time
10 and can be a very time consuming process. So this is
11 obviously going to be very different from what you've come
12 to expect from seeing trials depicted on TV or in the
13 movies. I want to thank you for your patience throughout
14 this trial. There will be times when I'm -- when perhaps
15 things are not moving along as quickly as you might
16 otherwise want them to. But I do want to thank you for
17 serving as jurors, for your patience -- I'll thank you for
18 your patience in advance, and for your attention throughout
19 the course of this trial.

20 Now, ladies and gentlemen, what I now say to you is
21 intended to serve as a general introduction or overview of
22 the case and these remarks should not be interpreted as a
23 charge on the law that applies. I'll instruct you on the
24 law that applies before you retire to deliberate your
25 verdict. Again, this is only an explanation of the process

1 that we will use as the trial goes forward so that you can
2 better understand what's going on.

3 Now, ladies and gentlemen, the Defendant in this case,
4 Mr. Cross, is charged by indictments filed with this -- in
5 this court with the offenses of attempting to commit a lewd
6 act upon a child and criminal sexual conduct with a minor.
7 I'll explain the elements of those offenses to you at a
8 later time. Ladies and gentlemen, the indictments in these
9 cases are simply the charges by which cases are brought into
10 this court. The indictments are not in any sense of the
11 word proof or evidence of any of the allegations contained
12 in the indictments. Again, the indictments are nothing more
13 than pieces of paper that bring the charges into this court.
14 In this case, ladies and gentlemen, Mr. Cross has pled not
15 guilty to these charges. That plea puts the burden of proof
16 on the State to prove each and every element of the
17 indictments beyond a reasonable doubt. It'll be your duty,
18 ladies and gentlemen, to determine whether the State has met
19 this burden. Your purpose as jurors is to find and
20 determine the facts in this case. You are the sole judges
21 of the facts. So if at any time I make any comment
22 regarding the facts you must disregard it because I'm not
23 permitted to have any opinion about what the ultimate facts
24 are in this case. You're to determine the facts from the
25 testimony that you hear and the other evidence in exhibits

1 which are introduced during the course of the trial. It
2 will be up to you to determine the inferences which you feel
3 may be properly drawn from the evidence presented.

4 Now, ladies and gentlemen, it's especially important
5 that you perform your duty of determining the facts
6 diligently and conscientiously, because ordinarily there is
7 no way to correct an erroneous determination of the facts by
8 a trial jury. On the other hand and with equal emphasis,
9 the same law that makes you the judge of the facts of this
10 case makes me the judge of the law. The law is given by the
11 court as the only law that you may consider. You have to
12 accept it and follow it even though you may disagree with
13 it. The law does not permit me to have an opinion about
14 what the facts are, ladies and gentlemen, and similarly you
15 cannot disagree with me about what the law is or what the
16 law ought to be. Your job will be to take the law as I give
17 it to you, apply it to the facts as you find them to be from
18 the testimony and the evidence presented. And after doing
19 that you'll render your verdict, a true and just verdict
20 under the oath that you have just taken.

21 Now, ladies and gentlemen, until I advise you to begin
22 your deliberations you cannot discuss this case with anyone.
23 Not friends, family members, not even your fellow jurors.
24 After the case is submitted to you you can discuss it only
25 in the jury room in the presence of all 12 of your fellow

1 jurors. Now, the lawyers and the parties in this case have
2 been instructed to have no contact with you while the trial
3 is going on. Okay? So if you happen to see one of the
4 lawyers or one of the parties coming or going from the
5 courthouse and they don't say hello to you or they don't
6 waive to you, please understand. It's not that they're
7 being rude. They're simply following my instructions to
8 have no contact with you while the trial is going on. The
9 reason for this is very simple, ladies and gentlemen. An
10 innocent hello or an innocent how are you doing, if it's
11 seen by the other side it could be interpreted as an effort
12 at jury tampering. And so, the easiest way to prevent that
13 perception is to simply have a blanket rule that no one has
14 any contact with the jury while the case is going on.

15 Now, ladies and gentlemen, again, during this trial
16 please don't read, listen to, watch or do any independent
17 research or watch any news reports or any reporting or do
18 any independent research about this case. This, of course,
19 includes anything that may be in the newspapers or on the
20 Internet. You must not consider anything that you may have
21 read or heard about this case outside the courtroom, whether
22 it's before or during the trial.

23 Ladies and gentlemen, it's important that you keep an
24 open mind and not decide any issue in this case until all
25 the evidence has been presented, the parties have made their

1 closing arguments to you and I have instructed you on the
2 law that applies. It'll be your solemn responsibility to
3 determine the guilt or the innocence of the Defendant and
4 your verdict must be based solely on the evidence as
5 presented to you in this courtroom and the laws I instruct
6 you at the close of the case.

7 Now, in just a moment, ladies and gentlemen, the
8 Solicitor will make what's known as his opening statement or
9 opening argument in which the Solicitor will explain to you
10 what the issues are in this case, or at least what she
11 believes the issues are in this case. The attorney for the
12 Defendant may also make an opening statement, although he's
13 not required to do so. I'll instruct you that what the
14 lawyers say during their opening statements is not evidence.
15 It's merely their contention as to what will be proven and
16 what will not be proven. Again, the evidence will be
17 presented to you by the testimony of sworn witnesses from
18 the witness stand, as well as any exhibits which may be
19 introduced into the record.

20 Now, from time to time during the trial, ladies and
21 gentlemen, you may hear one of the lawyers say something
22 like, Your Honor, we have a matter of law for the court or,
23 Your Honor, we need to take up an issue with the court and
24 it may become necessary for me to ask you to leave the
25 courtroom while I take up that issue of the law. The reason

1 I'm asking you to leave the courtroom, ladies and gentlemen,
2 is that sometimes in ruling on an issue of law it's
3 necessary for me to make a comment about what evidence has
4 been presented or what hadn't been presented, and I don't
5 want any comment that I make about the facts to have any
6 effect or any impact upon what you ultimately determine
7 those facts to be. So I'll ask that you leave the courtroom
8 during those discussions or during those times that I have
9 to rule on issues of law so that I can be sure that whatever
10 I say doesn't ultimately affect your findings of fact. When
11 you do leave the courtroom please don't speculate on what I
12 think or what I might be saying out here when you're not
13 present in the courtroom.

14 Now, ladies and gentlemen, in determining what the true
15 facts are in this case you must decide whether or not the
16 testimony of witnesses is believable. It will be my
17 responsibility to rule as a matter of law as to whether
18 certain testimony is admissible at all or not. But once the
19 testimony is admitted, whether or not you believe it is
20 solely for you to determine. In deciding whether to believe
21 a witness you have the right to consider the interest of any
22 witness, the bias of any witness, the prejudice of any
23 witness, the opportunity for the witness to have seen the
24 matters and things about which the witness testifies and the
25 way the witness acts on the witness stand. You have the

1 right to consider anything that's in the record in this case
2 that'll help you determine and evaluate the testimony of the
3 witnesses. That means it's your duty to pay close attention
4 to them, listen to the witnesses, and witness to the -- and
5 pay close attention to the lawyers in the court. Try to
6 keep your thoughts from wondering but give strict attention
7 to the testimony in this case so at the conclusion of the
8 trial you'll be in as best a position possible to render a
9 true and just verdict under the oath that you have taken.

10 Now, in order to preserve everyone's rights I'll give
11 the attorneys an opportunity to object to anything that I've
12 said to you during these opening comments and then we'll
13 proceed with the trial of the case.

14 Any objections from the State?

15 MR. BROWN: Not from the State, Your Honor.

16 THE COURT: From the Defense?

17 MR. NASROLLAHI: None, Your Honor.

18 THE COURT: All right. Very good. Ms. Odom, you are
19 recognized for your opening, ma'am.

20 MS. ODOM: Thank you, Your Honor.

21 OPENING STATEMENT BY MS. ODOM

22 MS. ODOM: Good morning everyone. We're here today to
23 right a wrong. To seek justice in a sexual assault that the
24 Defendant committed on the victim, K.B.
25 back in December of 2005. Now, back in December of 2005

1 K.B. even though her name is K.B. K.B. she goes by
2 K.B. she was living with her parents at a place in Iva,
3 which her home was in Abbeville County. It has an Iva
4 address. And it's kind of out in the country. Kind of out
5 in a field. The home didn't have a whole lot around it. It
6 did have a few trees back behind the house. One tree in
7 particular about 40 feet or so behind the house was large.
8 It was a big bushy tree right behind the house. Now, on
9 December 29th K.B. was at her home with her mom and dad,
10 with her little brother and her little cousin. They were
11 just there together just hanging out. At some point a
12 friend of the family named Jeremy stopped by and stayed for
13 a little bit. And also that day Kim and Scott Cross came
14 over. Scott Cross is the Defendant in this case. He was 35
15 years old at the time. K.B. dad went to the store and
16 it got to be about dusk. It was getting dark but it was
17 still light. And K.B. and her little brother and her
18 little cousin decided to play hide and seek and the
19 Defendant joined them. At some point in the game K.B.
20 and the Defendant ended up behind that tree at the back of
21 the house, and at that point the Defendant started to talk
22 to her. Started to kiss on her. Started to rub her, and
23 moved his hand down and stuck his fingers into her vagina.
24 Told her to pull her pants down. When she didn't, he did.
25 He had sex with her. Stuck his penis inside her vagina and

1 had sex. Now, that's the case in a nutshell, but you're
2 going to hear a lot more through testimony through the
3 witnesses.

4 Now, to prove our case, the State, Mr. Brown and I, we
5 have to convince you beyond a reasonable doubt that these
6 crimes occurred. And what that means, it's not, you know,
7 beyond any doubt you have, beyond every single doubt you
8 have, it's just -- it's what it says. It's beyond a
9 reasonable doubt. It's when you are firmly convinced that
10 these things happened then you will be convinced beyond a
11 reasonable doubt that they happened.

12 Now, you heard the judge read the indictments a few
13 minutes ago. The Defendant has two charges, lewd act and
14 criminal sexual conduct. Lewd act -- and he'll instruct you
15 later on. But basically what a lewd act is is when a
16 Defendant touches the victim in a way that he's -- he's
17 meaning to satisfy or gratify her sexual desires or passions
18 or his sexual desires. In other words, he's touching her on
19 her private areas with the intention of turning her on or
20 turning him on. That's another way of putting it. Now,
21 criminal sexual conduct first degree, that's a little more
22 than lewd act. That's when an actual sexual battery occurs.
23 And sexual battery is when sex occurs. It could be vaginal,
24 anal or oral, but it can also mean when the Defendant puts
25 any part of his body into the genital opening of the victim.

1 No matter how slight, no matter how small the intrusion is,
2 it's when the Defendant puts any part of his body into the
3 victim. And this case, criminal sexual conduct, an element
4 also includes when the Defendant has -- already has a prior
5 conviction for criminal sexual conduct.

6 What it comes down to is that that night, December
7 29th, 2005 when they were in that field, when they were
8 behind that tree at the victim's house, the Defendant was
9 like just a predator seeking his prey, and when he saw his
10 opportunity he took it. Took advantage of her.

11 Now, after you hear everybody you will be convinced
12 beyond a reasonable doubt that this crime occurred. And
13 when Mr. Brown gets up there in his closing argument he's
14 going to ask you to go back there and deliberate, to look at
15 the evidence, to discuss it, and then to come back and find
16 a verdict of guilty.

17 THE COURT: Thank you, Ms. Odom. Mr. Nasrollahi,
18 you're recognized, sir.

19 OPENING STATEMENT BY MR. NASROLLAHI

20 MR. NASROLLAHI: James Scott Cross, my client and the
21 Defendant in this case, has waited seven years for today for
22 this trial. He's waited seven years to prove his innocence
23 in this trial. Now, the State of South Carolina, as the
24 Judge is going to instruct you at the close of this case,
25 carries the burden of proof. Like Ms. Odom said, you have

1 to be firmly convinced that James Scott Cross did the things
2 that the State says he did. And he's been waiting seven
3 years to show that none of what they say happened happened.
4 Okay? You're going to hear a lot about this seven year gap
5 between December 29th, 2005 and the present. You're going
6 to hear a lot about it because you're going to hear a lot of
7 testimony and a lot of answers from the victim and her
8 family where she's going to respond with I don't remember.
9 This is a traumatic experience but I don't remember what
10 happened.

11 Now, there's a cliché that a lot of attorneys like to
12 use in their opening statements to juries. They like to
13 come in and they like to say you the jury, you guys have the
14 hardest job in this entire courtroom. You guys have the
15 hardest job because you guys have to listen to all this and
16 you have to decide what's going on. In this case the person
17 with the hardest is K.B. The reason she has the
18 hardest job in the trial of this case is because she's got
19 to keep her story straight. She's told so many different
20 stories and she's got to get on that stand today and she's
21 got to keep all of them straight. Now, the evidence in this
22 case, you're going to hear testimony that on January 31st of
23 2006 K.B. parents made a call to Abbeville Sheriff's
24 Department. And you're going to hear testimony that K.B.
25 told a deputy from the sheriff's department that my client,

1 James Scott Cross, took her behind a tree right next to her
2 house with light out, started touching her breasts, put his
3 finger in her vagina, asked her you want it, don't you. She
4 said kind of do, kind of don't. And then she told the
5 investigator that he had sex with her. She also told that
6 same investigator that nearly a month later my client's
7 brother sexually battered her on two occasions. Okay?

8 You're also going to hear testimony about how on
9 December 9th, 2006, pursuant to protocol in cases where
10 there's alleged child rape, the alleged victim, K.B.

11 , spoke with an interviewer at the Child's Place to
12 tell her what she said happened. You're going to hear
13 testimony that she told that interviewer that during a game
14 of hide and go seek James Scott Cross took her down into a
15 field behind her house and that's where all this happened.
16 In a field. The tree is gone. The tree that all this
17 happened behind is gone. She's going to say that the sex --
18 that she told -- you're going to hear testimony where she
19 told the exact same allegations against the brother. That
20 two sexual batteries had occurred at the brother's house.
21 Actually, my client's house but with the brother. She told
22 a forensic interviewer in this case that this was the truth.
23 You're also going to hear about how a few weeks later
24 K.B. Bryant -- I mean, K.B. excuse me, told
25 Anderson County Sheriff's Department that on two occasions

1 my client's brother performed oral sex on her, and then on
2 one occasion they had sex for 15 to 30 minutes.

3 You're also going to hear a recording of an interview
4 with K.B. which was conducted on October 4th of
5 this year and you're going to hear the entire story change.
6 You're going to hear everything change. You're going to
7 hear that on the evening of December 29th, 2005 my client
8 took her behind a tree and forcibly raped her. You're also
9 going to hear about how other allegations of sexual abuse
10 that she made against my client prior to December 29th,
11 2005, and she made three. She told the interviewer that
12 there had been three prior incidents of molestation. You're
13 going to hear how all that just vanished. That never
14 happened. Okay? You're going to hear that -- and she's
15 admitted to it, that all the stories that she's told about
16 his brother back in January of 2006 were false. That that
17 never happened. You are going to see several different
18 stories in this case. You're going to see several different
19 inconsistent stories in this case based on what she has said
20 alone. And at the end of this case you're going to be asked
21 to look at all this evidence, and there's going to be a lot
22 of it, that James Scott Cross is guilty -- you're going to
23 be asked to find him guilty of criminal sexual conduct and
24 lewd act on a minor based on a pack of lies. That's what's
25 going to happen.

K.B.

DIRECT EXAMINATION

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- 1 A Good morning.
- 2 Q Tell me your full name.
- 3 A K.B.
- 4 Q And what do you go by?
- 5 A I go by K.B.
- 6 Q And K.B. I'm going to stand back here so we can
7 make sure everybody hears you. You can talk up, so we need
8 everybody to hear and all the jury needs to hear you.
9 Especially this lady right here. She's taking everything
10 down. If you'd speak up to me. I might ask you again a
11 little later, but -- so you go by K.B.
- 12 A Yes, sir.
- 13 Q K.B. what's your birth date?
- 14 A [REDACTED]
- 15 Q And how old are you now?
- 16 A I'm 21.
- 17 Q Okay. And, K.B. did you go to school?
- 18 A Yes, sir.
- 19 Q What grade did you go to?
- 20 A I made it to the ninth grade.
- 21 Q Ninth grade?
- 22 A Yes, sir.
- 23 Q And, K.B. what type of classes did you take?
- 24 A I was in self-contained.
- 25 Q Okay. And, K.B. do you have any type of

K.B.

DIRECT EXAMINATION

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1 disabilities, learning disabilities or anything?

2 A I do. I'm dyslexic.

3 Q Okay. Did you go to any other schooling after the
4 ninth grade?

5 A No, sir.

6 Q Where do you live now?

7 A I live in Iva.

8 Q In Iva, okay. And who do you live with?

9 A I still live with my mother and father.

10 Q Okay. And who is -- what's your mother and father's
11 name?

12 A Angela Byrum and Tony Byrum.

13 Q Do you have any siblings?

14 A I have a little brother.

15 Q What's his name?

16 A His name is S.B.

17 Q Do you have any grandparents or cousins?

18 A I have two grandparents; Elizabeth and Tony Byrum and I
19 got cousins. I got a cousin named [REDACTED] Trey Byrum.

20 Q Is Brandon's last name Byrum?

21 A I mean, Brandon Mc . Sorry.

22 Q And, K.B. do you remember where you live in 2005
23 and 2006?

24 A It was 6 -- [REDACTED] 81 North, Abbeville, Iva, South
25 Carolina, I guess.

K.B.

DIRECT EXAMINATION

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1 Q What county is that in?

2 A Abbeville.

3 Q And what State is that in?

4 A South Carolina.

5 Q And so, you were living in that house in 2005? The end
6 of 2005 and 2006?

7 A Yes, sir.

8 Q Okay. Specifically, do you remember December 29th,
9 2005?

10 A Yes, sir.

11 Q What do you remember on that date?

12 A I remember that day -- earlier that day my little
13 cousin had come over, **Brandon Mc** and then later on
14 that day Kim and Scott Cross had come over, and it was my
15 momma and my daddy was there. And my daddy had left that
16 day to go get us something to eat later on that evening.
17 And us kids went out to go play and Scott when with us to
18 play hide and seek. And --

19 Q Okay. Do you -- so you said -- who was there again?

20 A It was my cousin **Brandon Mc** my little brother

21 S.B. my momma, Angela Byrum, my daddy, Tony Byrum, and
22 one of their friends Jeremy Hanks, and Kim and Scott Cross.

23 Q Okay. And do you remember, what was the weather like
24 that day? Do you remember?

25 A It felt -- it was like an off day. It felt pretty good

K.B.

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1 to be like a -- on a December day. It was like summer.

2 Q Okay. And, K.B. do you remember what time the
3 Crosses got to your house?

4 A It was about 3:00 that day.

5 Q Is that -- is that what you --

6 A Yes.

7 Q -- just remember or is that --

8 A Yeah. It was roughly around 3:00 or so.

9 Q In the afternoon?

10 A Yeah.

11 Q Okay. And how did you -- how did you know the Crosses?

12 A From my mom and daddy. My momma had been friends with
13 Kim for a long time, and then her and Scott had met each
14 other and then they all hung out together, and that's how I
15 knew the Crosses.

16 Q What do you mean they all hung out together? What do
17 you mean by that? Did they come over to your house or --

18 A Yeah. My -- like my -- they would come over to our
19 house and my mom and daddy would go over to their house.

20 Q Would you ever go over to their house?

21 A Yes, sir.

22 Q Would your brother ever go over to their house?

23 A Yes, sir.

24 Q So your all were just friends?

25 A Yes, sir.

K.B.

DIRECT EXAMINATION

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1 Q Tell me what you remember. Do you remember Kim being at
2 your house that day?

3 A Yes, sir.

4 Q What do you remember about Kim?

5 A She was pregnant.

6 Q And pregnant, how -- how far along do you think she
7 was?

8 A She was -- she was big. I don't really know exactly
9 how far along she was but she was pretty big by then.

10 Q You'd say she was pretty far along --

11 A Yeah.

12 Q -- in her pregnancy? And, K.B. how old were you
13 then?

14 A I was 13.

15 Q And, K.B. do you see James Scott Cross today in the
16 courtroom?

17 A I do. He's sitting over there in the purple button up
18 shirt.

19 THE COURT: Let the record --

20 MR. BROWN: Take notice that she recognized the
21 Defendant.

22 THE COURT: The record shall reflect that the witness
23 has identified the Defendant.

24 Q Now, K.B. you initially talked about playing hide
25 and seek. What type of -- what time of day do you remember

1 that you and your brother and your cousin and Scott played
2 hide and seek?

3 A It was dusky dark. Starting to get dusky.

4 Q And dusky what do you mean? The sun was going down?

5 A It was starting to.

6 Q And you said dusky dark. How -- how many games of hide
7 and seek did you all play?

8 A Maybe about two or three.

9 Q And you all started playing dusky dark kind of time of
10 day?

11 A Yes, sir.

12 Q What do you remember about the last game of hide and
13 seek?

14 A The last game of hide and seek Scott was it, and so my
15 brother and cousin, Brandon and Sam, they was hiding. And
16 Scott proceeded to follow me behind the tree and took -- and
17 started to pursue me -- you know, put -- sorry.

18 Q That's fine. Take your time.

19 A He started to kiss on me and touch on me. Touch on my
20 breast and vagina. And then I was up -- sort of up against
21 the tree like and he proceeded to lay me down and was asking
22 me did I want it and --

23 Q Do you remember answering him?

24 A Yes. I told him no. And I told him I wanted up. And
25 he told me to be quiet and -- and he proceeded to pull my

K.B.

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1 pants down and I started -- I was calling -- to start
2 calling for my momma and he put his hand over my mouth and
3 told me to be quiet. That if I made any noise that he --
4 that he would hurt me. And after he had pulled my pants
5 about midways down to about my knees and then proceeded to
6 have sex with me as putting his penis in my vagina. And he
7 told me if I said anything that he would hurt me or my
8 family. And he wasn't on me long and I had got up and --

9 Q You said he wasn't on you long?

10 A No, sir.

11 Q How long do you think, if you can remember?

12 A Probably about -- about three to five minutes.

13 Q Okay. What happened --

14 MR. NASROLLAHI: Could you repeat that answer? I
15 didn't --

16 THE COURT: Three to five minutes I believe is what she
17 said. Go ahead, please.

18 Q After that took place what did you do -- or what -- I
19 know this is getting detailed, but how did he have you on
20 the ground?

21 A He had me on my back. I was laying on my back.

22 Q You said he had pulled your pants down?

23 A Yes. With my legs was in the air. Like, in the air.

24 Q So you were behind the tree and he pulled your pants
25 down and he had sex with you?

1 A Yes, sir.

2 Q After this took place, after he got done, what did you
3 do?

4 A I pulled my pants up and I run in -- I ran into my
5 house and I went to my bedroom and I shut my bedroom door.
6 And then that's -- I guess when the kids and stuff was, you
7 know, coming up and --

8 Q Do you remember seeing Brandon or Sam after you got
9 done, or after you ran in the house?

10 A I had bypassed them. They was on the porch as I was
11 going into the house.

12 Q And who was at the house when this took place? When
13 this incident took place who was at the house?

14 A It was Brandon Mc S.B. Angela Byrum, Kim
15 Cross.

16 Q And you --

17 A And me.

18 Q And was Scott -- and Scott was there?

19 A And Scott.

20 Q You had said earlier that your dad was there and Jeremy
21 Hanks was there. Were they there?

22 A They was not there at the time. Jeremy had left.

23 Daddy -- my daddy had left right when we had started

24 playing. He had left and went to go get us drinks and, you

25 know, food. And right after he left Jeremy Hanks had showed

K.B.

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1 up. And then I guess he talked to momma and them for a
2 minute and then he left. And so --

3 Q Can you remember if Jeremy was there when you ran in
4 the house or not?

5 A I don't remember. I don't --

6 Q Continue on. When you ran inside the house what did
7 you do?

8 A I went to my bedroom and then I sat in my bedroom and
9 cried for a while. And then I come back out and I went to
10 my bathroom and I took -- my momma was about to do a load of
11 clothes, so I took the clothes that I had on off and I threw
12 them into the washing machine and I took a bath. And I come
13 back out of the bathroom and then I went to my bedroom and I
14 proceeded to write in my diary to try to find comfort to get
15 what had happened to me off my mind.

16 Q So you wrote in a diary?

17 A Yes, sir.

18 Q What did the diary look like?

19 A It was a little bitty like lock diary. It was a little
20 cheap lock diary.

21 Q Do you remember what you wrote?

22 A I had wrote what had happened to me.

23 Q What you testified here today --

24 A Yes.

25 Q -- you wrote in the diary?

K.B.

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1 A Yes, sir.

2 Q K.B. let's go back to -- K.B. I want to show
3 you what's been previously marked for identification
4 purposes as State's Exhibit 1 through 5. Take a look at
5 these and tell me what they are.

6 A This is my front porch of my house.

7 Q The house you lived in December 29th, 2005?

8 A Yes, sir.

9 Q Is that the [REDACTED] --

10 A Yes, sir.

11 Q -- address? Okay.

12 A And then the second one is my back porch and the bushy
13 tree. And then the third one is the side of the house and
14 part of the bush. And then the next one is a picture of the
15 side and then just the bush.

16 Q What is that last picture there?

17 A This is a picture of the power pole, a skinny tree and
18 then that bush.

19 MR. BROWN: Judge, at this time I'd like to move what's
20 been previously marked for ID purposes as State's Exhibit 1
21 through 5 and enter as State's evidence 1 through 5.

22 THE COURT: No objection?

23 MR. NASROLLAHI: No.

24 THE COURT: Without objection State's 1 through 5 are
25 in evidence.

K.B.

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1 (Whereupon, State's Exhibits 1 through 5 were admitted
2 into evidence.)

3 MR. BROWN: I move to publish this to the jury.

4 THE COURT: By all means.

5 Q K.B. I'm going to put on our overhead projector
6 here what's been entered in as State's Evidence 1. I know
7 that it's going to be kind of hard to see with --

8 MR. NASROLLAHI: Do you need me to close these blinds?

9 THE COURT: Yes. If you all could shut those blinds it
10 might reduce the glare a little bit.

11 (Whereupon, the blinds in the courtroom were shut.)

12 Q K.B. again, this is State's Evidence Number 1.
13 What is this picture?

14 A That's my house and my front porch.

15 Q So that's the front porch of your house?

16 A Yes, sir.

17 Q When we were talking about when this happened you said
18 it was dusky dark December 29th. Getting dark and all. Was
19 it getting dark when this incident took place or -- what was
20 the lighting like outside?

21 A It was getting dark.

22 Q Could you see very well?

23 A It was starting to get to where you couldn't see,
24 because we didn't have much lighting.

25 Q Okay. Looking at your front porch do you remember

1 where you did have lighting at that house?

2 A We had it on the front porch sort of -- we had one in
3 the middle and then on the side we had a motion sensor light
4 that would come on.

5 Q Was there any lighting in the backyard?

6 A No, sir.

7 Q I show you what's been marked as State's Evidence
8 Number 2. Can you tell me what that picture is?

9 A That's at my back porch and that's the busy tree.

10 Q And how far away is that tree from your back porch?

11 A I guess about approximately --

12 Q You don't really know?

13 A I really don't know.

14 Q Okay. But it's not far from the back of your house?

15 A No, sir.

16 Q Is that -- what -- is that the tree that this took
17 place behind, or the bushy tree?

18 A Yes, sir.

19 Q And when you were talking about your house, where did
20 you consider that tree located?

21 A In the field, because it ain't nothing but field.

22 Q So --

23 A The only part that I considered was a yard would be the
24 front.

25 Q The front of the house?

K.B.

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- 1 A Front of the house.
- 2 Q But everything else you consider a field?
- 3 A Yeah. Because it was just a house and field.
- 4 Q K.B. I'm going to show you what's been entered into
5 evidence as State's Evidence 3. Do you know what that is?
- 6 A That's the edge of the front porch and that's the bushy
7 tree.
- 8 Q Can you tell me where you were -- or where you and
9 James Scott Cross were when this took place looking at it
10 from this vantage point?
- 11 A On the other side of the tree.
- 12 Q What do you mean by the other side of the tree?
- 13 A Like -- okay. You see that part? It was on the right
14 part just right behind on the right side.
- 15 Q You mean on the side -- if I were looking at this
16 picture and you're on the other side of the tree could we
17 see?
- 18 A No, sir.
- 19 Q And you're saying -- you said earlier -- where was the
20 lighting at your house?
- 21 A It was just -- you see where the corner is of the
22 porch. It was right up above that, right past through
23 there. I mean, the light would just glare through the
24 driveway. You couldn't see nothing. From that side on you
25 could not see nothing.

1 Q When it got dark outside?

2 A When it got dark.

3 Q Again, this is State's Evidence Number 4. Do you
4 recognize that?

5 A Yeah, that's the busy tree.

6 Q And you were saying you were on that side of that?

7 A Yes, sir.

8 Q And State's Evidence Number 5. I'm going to show you
9 State's Evidence Number 5. Do you recognize that picture?

10 A Yes, sir. That's our old tree and then this busy tree
11 in the field.

12 Q That's all field, but the bushy tree is in that
13 picture, too?

14 A Yes, sir. On the other side of the skinny tree.

15 Q What do you notice about that pole? That power line
16 pole? Is there a light on that power line pole?

17 A No, sir.

18 Q K.B. after this took place at your house did you
19 tell your parents what happened that night?

20 A No, sir.

21 Q Did you tell anybody what happened that night?

22 A No, sir.

23 Q After you ran back inside do you know when Scott Cross
24 and his wife, Kim, left?

25 A They left not so long after that, because he was

K.B.

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1 supposedly having -- I don't know. He was just sweating
2 really bad, breathing hard.

3 MR. NASROLLAHI: I'm going to object on foundation
4 grounds.

5 THE COURT: Overruled.

6 Q K.B. you said you noted down what all happened in
7 your diary that night?

8 A Yes, sir.

9 Q K.B. do you remember any other times -- or did any
10 other sexual assaults ever happen with Scott Cross?

11 A There was a time in October -- it was between October -
12 - the end of October, November. But he didn't -- he was
13 just trying to like come on to me. Rubbing me and stuff and
14 had got me high.

15 Q Gotten you high? What do you mean by that?

16 A Weed.

17 MR. NASROLLAHI: Object to this right here. This is
18 absolutely irrelevant.

19 THE COURT: Ladies and gentlemen of the jury, if you
20 would adjourn to the jury room for just a few moments.
21 Don't talk about the case. I want to take up an issue of
22 law with the attorneys, please.

23 (Whereupon, the jury exited the courtroom at 11:30
24 a.m.)

25 THE COURT: The jury is out. Your objection is

1 relevancy?

2 MR. NASROLLAHI: The talking about how he got her high
3 is absolutely irrelevant to the facts in this case,
4 especially considering it happened back in October and is
5 nothing but prejudicial. Absolutely irrelevant.

6 THE COURT: Solicitor?

7 MR. BROWN: Judge, I find it very relevant as he's
8 setting a tone of -- she said that he was back at the house.
9 That he came on to her then, rubbed on her and he had gotten
10 her high. I think it's very relevant. And it's not as
11 prejudicial as what we're going to get into when he's going
12 to try to discredit her, so I think it's quite relevant.

13 MR. NASROLLAHI: A probative -- what's it probative of?
14 Of any of the elements of this case, what is it probative
15 of?

16 MR. BROWN: Judge, we -- it's probative in the matter
17 that we have -- part of our thing here is that he was
18 preying on her as a predator, and part of being a predator
19 is you try to warm up your victim and that is what happened
20 in Anderson that day with what she's testifying here to is
21 that they got high and he rubbed on her.

22 THE COURT: In all honesty, Mr. Nasrollahi, I feel like
23 if -- I mean, it's the Defense's desire to go into the
24 incidents that took place in October and November and
25 address the inconsistencies that we discussed or heard

K.B.

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1 testified to yesterday, with that incident as well as the
2 incident that took place subsequent with the brother --

3 MR. NASROLLAHI: I mean, I think this is --

4 THE COURT: You all wanted to bring it up and this is
5 it is kind of my point. I understand your position. I
6 realize that you've got a good number of documents. If she
7 never mentioned that in some of the other documents you can
8 impeach her with that just like you were going to with the
9 other -- the other testimony.

10 MR. NASROLLAHI: I think that under cases like *State v.*
11 *Lyles* this is being -- this is prior misconduct giving her
12 an illegal substance. I mean, it's far prejudicial. It has
13 no bearing on the veracity of any of the elements. With
14 regard to what we're bringing in, we're bringing it in for
15 impeachment. They're bringing this in for no purpose other
16 than to show misconduct on his part on another event at
17 another time where he hasn't been indicated. This is a prior
18 bad act.

19 THE COURT: I understand. Correct me if I'm wrong
20 though, you were wanting to discuss the October, November
21 incident, correct?

22 MR. NASROLLAHI: Yes. But I wasn't going to get into
23 the marijuana issue.

24 THE COURT: I don't know that you can necessarily have
25 it both ways, Mr. Nasrollahi. If the marijuana is part of

1 the -- I mean, if it's bad act, it's part of the allegations
2 involving the October, November incident that you want to
3 get into then it's almost like it's part of the crime as the
4 Solicitor intimated.

5 MR. BROWN: Judge, if he wants to not get into prior in
6 Anderson on any of these, we'll retract the question and go
7 on from there. You can make a curative instruction to the
8 jury.

9 MR. NASROLLAHI: I mean, I'm getting into Anderson.
10 I'm going to get into that. But I just don't understand how
11 the -- it's far prejudicial. I mean, its prejudicial value
12 outweighs anything probative in this case.

13 THE COURT: All right. The statement that she gave
14 concerning the Anderson incident in October, November, did
15 it reference marijuana? Because I'm not familiar with --

16 MR. NASROLLAHI: She says --

17 THE COURT: -- that statement.

18 MR. NASROLLAHI: She says -- K.B. said that she and
19 Scott had been friends. "We talk and cut up with each
20 other." When asked if Scott had done something sexual to
21 her before that night K.B. said, "Yeah. We didn't have
22 sex. He just fingered me, played with my boobs and said he
23 wanted to have sex." She said that happened last October
24 around Halloween while she and Scott were alone in Scott's
25 house. She said her momma and his wife had gone to the

K.B.

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1 store. His wife, Kim, had gone to the store. K.B. told
2 me about other times that Scott had touched her at his
3 house. She said before or after Halloween there was another
4 time where her mom and Kim went to the store and she was
5 alone with Scott. He did the same things as before. He
6 fingered her and played with her boobs. K.B. told about
7 another incident that occurred on Halloween. She said that
8 they were spending the night at Scott's house. Her mom was
9 asleep on the couch. She said that -- she said that night
10 all he did was finger me pretending to be asleep.

11 MR. BROWN: Judge, she testified to it yesterday. But
12 the fact of the matter is he's wanting to impeach her on
13 stuff she said and what she, you know, is not saying now.
14 But this is -- once again, Anderson. You can have a full
15 picture. I mean, it'd be prejudicial to the victim in this
16 case if she's not able to tell what happened and all the
17 cards are stacked against her in this. It's more like now
18 we've got the victim on trial, not the Defendant.

19 MR. NASROLLAHI: I mean, if we were to have said that
20 she made this prior false allegation after my client had
21 finished robbing the bank we wouldn't be having this
22 discussion. We'd be talking about how the bank robbery
23 would be more prejudicial than it is probative. I don't
24 understand how just because this is an event that happened
25 at that time that all of a sudden he gets to get, you know,

1 shoe stringed into all this.

2 MR. BROWN: Judge, actually it does say in the forensic
3 interview on one of the last pages when asked if Andy or
4 Scott gave her alcohol or drugs K.B. said that she and
5 Scott smoked marijuana in the bathroom at Scott's house last
6 October. So it's in the forensic.

7 MR. NASROLLAHI: It doesn't say that -- in that
8 paragraph -- it is two paragraphs after everything she
9 talked about with prior incidents. It has nothing -- it
10 says nothing in reference to whether any of the alleged --
11 the false allegations happened on the same night that she
12 smoked marijuana.

13 THE COURT: All right. I appreciate the position of
14 the Defense. I hear what you're saying. First, Mr.
15 Nasrollahi, it's the Defense's intention or desire, it was
16 your intention to get into the other incidents. As I
17 indicated yesterday, I'm going to allow you to do that.
18 It's only fair that the State be able to portray the
19 totality of the incidents from their perspective. Marijuana
20 use, drug use, alcohol use, that would be relevant to the
21 ultimate question of whether the October incident -- to what
22 her extent of her version of the October incident comports
23 with the earlier version, and that's exactly what you were
24 wanting to get into. Under Lyle the marijuana use is going
25 part and parcel with this particular incident in October.

K.B.

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1 Under a 403 relevancy type of analysis I can't see where the
2 probative value -- or, sorry, where the prejudicial affect
3 is outweighed by the probative value. I know that it's, at
4 least in this court's experience, it's not uncommon for
5 people who are victimized perhaps to be given illicit
6 narcotics or alcohol. Again, I don't see where the Defense
7 can have its cake and eat it too. You all wanted to go down
8 this line. You all wanted to go down this road. This is
9 where it's leading. It all -- I mean, it gets to come in.
10 If you're going to impeach her with inconsistencies in the
11 incident involving the Defendant's brother and the incident
12 involving the Defendant then it's fair for the State to be
13 able to point to consistencies. This would be a consistency
14 between the earlier testimony. That makes it very probative
15 as to whether or not she's being truthful and the ultimate
16 issue of credibility. I appreciate your position. That
17 would be my ruling.

18 MR. BROWN: Thank you, Your Honor.

19 THE COURT: Why don't we go ahead and take a few
20 moments for ourselves since I'm sure that the jury is going
21 to be doing that and then we'll resume. You can step down
22 and just move about if you need to. Just don't talk about
23 your testimony, please ma'am.

24 THE WITNESS: Okay.

25 (Whereupon, a recess was taken from 11:45 a.m. to 11:56

1 a.m.)

2 THE COURT: All right. If we may, we're going to go
3 ahead and go back on the record. Let's go ahead and have
4 the jury out, please.

5 (Whereupon, the jury entered the courtroom at 11:57
6 a.m.)

7 THE COURT: Mr. Brown, you may continue, sir.

8 Q K.B. before we took a break I asked you was there
9 any other time that Mr. Cross did anything sexual to you.
10 Do you remember that question?

11 A Yes, sir.

12 Q Did he ever do anything sexual to you at another time
13 besides December 29th, 2005?

14 A Between October and November. I can't remember exactly
15 when. But he had -- was -- he was coming on -- like he was
16 trying to come on to me. Just, you know, rubbing me and
17 stuff and --

18 Q Where was he rubbing you?

19 A Just like -- he wasn't rubbing my breast or anything.
20 He was just like rubbing like my back, like flirting rubbing
21 like. And we was sitting there talking and smoking weed and
22 --

23 Q Who gave you weed?

24 A Scott.

25 Q And was there any other times that you can remember or

K.B.

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1 you can recall that Scott came on to you or did anything
2 else sexual to you?

3 A No, sir.

4 Q Okay. And you say that took place -- where did that
5 take place in between October and November?

6 A In Anderson at his house.

7 Q Who was at -- who was there at the house? Do you
8 remember?

9 A It was just me and him.

10 Q You and him. And whose his wife?

11 A Kim Cross.

12 Q Kim Cross. Now I'm going to get you to jump back to
13 December 29th, 2005 when you said you all went behind -- you
14 were all behind the tree and the sexual battery took place.
15 How old were you?

16 A I was 13.

17 Q Do you know how old he was?

18 A He was about 35.

19 Q He was about 35?

20 A I guess. (??).

21 Q And, K.B. how did -- how did your parents find out
22 about this?

23 A I had went to go spend the night with my grandpappa one
24 weekend and --

25 Q Which grandpop was that?

1 A Tony and Elizabeth Byrum.

2 Q Are they here today?

3 A Yes, sir. They're sitting right behind you.

4 Q So you went to go spend the night with your
5 grandparents?

6 A Yes, sir.

7 Q Do you remember when that was?

8 A I don't remember exactly when that was. I think maybe
9 a couple of weeks maybe after.

10 Q But it was -- was it in January 2006?

11 A Yes, sir.

12 Q Okay. And how did your parents find out about this?

13 A Well, I have a nosey daddy, and my daddy went in my
14 room and he got my diary and popped the lock and read it.

15 Q And did you say before -- what had you written in that
16 diary?

17 A What had happened to me that night. What I had told.

18 Q What happened that night with you and Scott Cross?

19 A Uh-huh. (Affirmative)

20 Q After they read -- or after your dad read that diary --
21 were you at the house when he read that diary?

22 A No, sir.

23 Q You were where?

24 A At my grandpappa's.

25 Q Did they ever -- did your mom or your dad ever talk to

K.B.

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1 you about it?

2 A Yes. My momma had called me that night and told me she
3 had something really important to talk to me. That, you
4 know, to come home in the morning. So I went home and my
5 momma pulled me into her bedroom and it was just me and her
6 and she -- me and her discussed and -- about what happened,
7 because she told me she had found it.

8 Q What did you tell her? Do you remember?

9 A I had told her everything that had happened.

10 Q What happened after that?

11 A And then my daddy called Abbeville County law.

12 Q Was it your dad or your mom? Do you remember which
13 one?

14 A I think it was my daddy.

15 Q Okay. Are you sure about that?

16 A I'm not sure, but I think.

17 Q Okay. But he -- who did he call?

18 A The Abbeville County law.

19 Q And after they called them do you remember meeting with
20 a law enforcement officer?

21 A Yes, sir.

22 Q Do you remember who you met with?

23 A Sort of. I don't remember her name.

24 Q It was a lady though?

25 A Yes.

1 Q Was she white, black, Hispanic?

2 A Black.

3 Q Okay. Did she work with the Abbeville Police
4 Department -- or Sheriff's Department?

5 A Yes, sir.

6 Q Okay. Do you remember meeting with anybody else after
7 you met with Abbeville County Sheriff's Office?

8 A I -- well, we talked to the counselors and -- oh, my
9 goodness. I don't remember the name of the place, but it
10 was --

11 Q Okay. Did you -- did you ever have to go get a medical
12 exam or anything like that?

13 A Yes, sir.

14 Q You did? Do you remember who checked you out then?

15 A No. But I remember it was a lady and she was white.

16 Q Okay. Where was that exam. Where did that exam take
17 place?

18 A At the same place that I'd go talk to the counselors.

19 Q Was it here in Abbeville, or was it in Greenville or
20 Greenwood?

21 A I think it was in Greenwood. I ain't for sure though.

22 Q You can't remember?

23 A I can't remember.

24 Q Again, how long ago did this happen?

25 A It's been eight years.

K.B.

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1 Q Close to eight years?

2 A Yeah, close to eight years.

3 Q Do you have a hard time remembering a lot of details?

4 A Yes, sir. Because I tried to repress these memories
5 because it went by so long and nothing ever did happen. It
6 was like nobody wanted to help me find justice for me.

7 Q I'm going to show you -- K.B. just to make sure
8 we're all on the same page. What date did this happen with
9 Scott at your house in Abbeville County?

10 A December the 29th, 2005.

11 Q And how old were you?

12 A I was 13.

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

14 THE COURT: Yes, sir.

15 Q K.B. I know this is going to be kind of a real
16 intimate question I'm going to ask you. Had you ever --
17 were you sexually active or anything like that before --
18 actually, I'm going to strike that -- well, you can answer
19 the question. Were you sexually active before, or had you
20 ever had sexual intercourse?

21 A No, sir.

22 Q And can you say for certain how long -- it was sometime
23 end of January when you're family found out about this?

24 A Yes, sir.

25 MR. BROWN: No further questions, Your Honor.

K.B.

CROSS-EXAMINATION

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1 THE COURT: Cross.

2 MR. NASROLLAHI: Thank you, Your Honor. May it please
3 the court.

4 THE COURT: Yes, sir.

5 MR. NASROLLAHI: Your Honor, can I have her come off
6 the stand for a second?

7 THE COURT: Sure. Would you mind stepping down for
8 just a moment, please.

9 MR. NASROLLAHI: K.B. I just want to get your help
10 with something before I get into this cross examination.

11 (Whereupon, witness steps down from the witness stand.)

12 MR. NASROLLAHI: I'm going to put this up here.

13 CROSS EXAMINATION

14 BY MR. NASROLLAHI:

15 Q K.B. you were saying that on direct examination --
16 stand over here so the jury can see the picture. On direct
17 examination you were saying that this picture is the view
18 from your front porch?

19 A Yeah. The side -- aside the --

20 Q Okay. But that bannister, that railing right there,
21 that's -- that's your front porch?

22 A Yeah.

23 Q Okay. And looking past the front porch there's some
24 trees there. Okay? And on direct you identified a skinny
25 tree and a bushy tree. Do me a favor. On that picture

K.B.

CROSS-EXAMINATION

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1 point to me what you mean by the bushy tree.

2 A That one.

3 Q Okay. So this one right here?

4 A Yeah.

5 Q Okay. And it's kind of -- the tree that's kind of
6 covered up.

7 A Yeah.

8 Q Okay. And that other tree to the right of that power
9 line, that's the skinny tree?

10 A Yes.

11 Q Okay. You can take your seat.

12 (Whereupon, the witness returns to the witness stand.)

13 THE COURT: Which exhibit was that, Mr. Nasrollahi?

14 MR. NASROLLAHI: This was exhibit -- State's Exhibit 3.

15 THE COURT: All right. Thank you, sir.

16 Q All right, K.B. And -- well, let's talk about a
17 little bit of what happened on December 29th. And as we
18 went over yesterday this occurred on December 29th?

19 A Yes, sir.

20 Q Okay. It did not -- this wasn't December 28th or
21 December 30th or any other date? You distinctly remember it
22 being December 29th?

23 A Yes.

24 Q Okay. And your testimony today is that sometime around
25 3:00 p.m. Scott and Kim came over to your house?

1 A Yes.

2 Q Okay. And some hours later when it was dusky, getting
3 close to dark, you, Brandon and Sam went outside to play
4 hide and seek?

5 A Yes.

6 Q Okay. And your testimony today is that Scott came
7 outside with you? With all three of you?

8 A Yes.

9 Q Okay. And your testimony today is that during -- you
10 were playing a game of hide and seek?

11 A Yes.

12 Q Okay. And your testimony today is that Scott was it?

13 A Yes.

14 Q Okay. He was the one that was supposed to find you,
15 Sam and Brandon?

16 A Yes.

17 Q Okay. So you, Sam and Brandon went and hid?

18 A Yes.

19 Q Okay. And you say that when this happened Scott
20 followed you behind that bushy tree?

21 A Yes.

22 Q Okay. And you say that he put you up against the tree?

23 A I had said myself that I was up against the tree.

24 Q I'm sorry?

25 A I had said myself that I was leaned up against the

K.B.

CROSS-EXAMINATION

250

- 1 tree.
- 2 Q You were leaned up against the tree?
- 3 A Yes.
- 4 Q What does that mean you were leaned up against the
- 5 tree?
- 6 A Lean on something.
- 7 Q Were you on the trunk of the tree or were you in the
- 8 leaves? What does that mean?
- 9 A Like leaned up against the tree sort of.
- 10 Q Okay. There are lots of parts to a tree. I'm just
- 11 trying to make sure --
- 12 A Yeah, just --
- 13 Q -- we're talking about the same thing. Like the trunk
- 14 of the tree?
- 15 A Yeah.
- 16 Q You were leaned up against it?
- 17 A Yes.
- 18 Q Okay. And at that time you say that he started kissing
- 19 on you?
- 20 A Yes.
- 21 Q And that he started touching your breasts?
- 22 A Yes.
- 23 Q And that he put his hand down your pants?
- 24 A Yes.
- 25 Q Okay. And after that he put you on the ground?

1 A Yes.

2 Q Okay. And he pulled your pants halfway down?

3 A Yes.

4 Q And he pulled your pants down around your knees?

5 A Yes.

6 Q Okay. And he then put your legs in the air?

7 A Yes.

8 Q Okay. And when you say your legs were in the air you

9 mean your legs were in the air? They weren't pressed
10 against your chest?

11 A No.

12 Q So they were in the air?

13 A They was in the air.

14 Q Not against your chest?

15 A Not against my chest.

16 Q And you said at that time he had sex with you?

17 A Yes.

18 Q Okay. And you said that that -- this whole incident

19 took between three and five minutes?

20 A Yes.

21 Q Okay. So from the time that he was leaning you up

22 against the tree to when the alleged sexual act was

23 complete, no more than three to five minutes?

24 A Of the three to five minutes was him on me.

25 Q Okay. Now, you're also saying that after this was done

K.B.

CROSS-EXAMINATION

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1 you went straight to your room?

2 A Yes.

3 Q And sometime that night you wrote in your diary about
4 what happened?

5 A Yes.

6 Q Okay. Now, you said that the time that this happened
7 it was dusky, getting close to dark?

8 A Yes. That's about what time we went outside to go
9 play.

10 Q Okay. So when this happened was it dark or was it
11 still light out?

12 A It was about -- it was just about dark.

13 Q It was just about dark?

14 A Yeah, when the incident happened between me and Scott.

15 Q Okay. So there was a little bit of light out?

16 A Just barely.

17 Q Just barely. Now, you said before that you didn't like
18 to go out there in the dark by yourself.

19 A No.

20 Q Okay. You were scared of the dark out there?

21 A Yes.

22 Q Okay. And to your knowledge Brandon and Sam were also
23 scared of the dark?

24 A Yes.

25 Q Okay. And you've stated before that when it was dark

1 out there you wouldn't go out there by yourself?

2 A No.

3 Q No, you wouldn't?

4 A No, I wouldn't.

5 Q Okay. And you've also said that even if you were to go
6 out there with an adult you wouldn't go too far away from
7 that adult.

8 A No.

9 Q Okay. Now, let's talk about who you spoke with after
10 your diary was read by your mother. Now, you said you
11 talked to a lady from Abbeville County Sheriff's Office?

12 A Yes.

13 Q Okay. Her name was Leslie Norman?

14 A I don't know. I don't remember her name.

15 Q And you gave her a full statement of what happened?

16 A Yes.

17 Q Okay. And you told her the same things that you told
18 this jury today?

19 A Yeah. I'm assuming yes, because it's been so long ago
20 I don't really remember what all I said at -- when I was --

21 Q Okay. But you remember on January 31st giving her a
22 statement?

23 A Yes.

24 Q Okay. Do you recall telling her that my client
25 allegedly said to you, you know you want it?

K.B.

CROSS-EXAMINATION

254

- 1 A Yes.
- 2 Q Do you recall saying that?
- 3 A Yeah.
- 4 Q Do you recall telling Investigator Norman that your
5 response to that was I kind of do, I kind of don't?
- 6 A No.
- 7 Q Okay. Did you ever say that?
- 8 A No.
- 9 Q You never said that?
- 10 A No.
- 11 Q Okay. Now, after Investigator Norman took your
12 statement do you remember speaking with somebody at the
13 Child's Place?
- 14 A Yes.
- 15 Q On February 9th?
- 16 A I don't remember exactly what date it was.
- 17 Q But it was roughly --
- 18 A Yeah.
- 19 Q It was roughly in February?
- 20 A Yes.
- 21 Q Almost two weeks after --
- 22 A Yeah.
- 23 Q -- this allegedly happened?
- 24 A Yes.
- 25 Q Okay. Do you recall telling the forensic interviewer

1 what had happened?

2 A Yes.

3 Q Okay. Do you recall telling her the same story that
4 you've told today?

5 A Yes.

6 Q Yes?

7 A Yes.

8 Q If you would have told her something --

9 A From what I have -- from what I remember, yes.

10 Q Okay. Do you recall telling her that you and Scott had
11 gone down into the field?

12 A Yes.

13 Q Okay. Do you recall telling her that he had started
14 kissing on you down in the field?

15 A Yes.

16 Q Okay. Do you recall telling her that the touching and
17 everything like that happened down in the field?

18 A Yes.

19 Q Okay. Do you recall telling her that after this
20 happened, after you were down in the field and you said that
21 he was kissing and touching on you, Sam and Brandon found
22 you?

23 A No.

24 Q You don't recall telling her that?

25 A No. Because the only time they would have seen me was

K.B.

CROSS-EXAMINATION

256

1 when I walked up on the porch.

2 Q Okay. So you don't recall telling her that while you
3 were down in the field Sam and Brandon came and found you?

4 A No.

5 Q Okay. Do you recall telling her that you guys went
6 back up to the house after that?

7 A Repeat that again.

8 Q Do you recall telling Susan Bentley, the lady who
9 interviewed you, that after Brandon and Sam supposedly found
10 you you guys went back up to the house? You and -- you,
11 Sam, Brandon and Scott went back up to the house?

12 A No.

13 Q You don't recall telling her that?

14 A No.

15 Q Okay. Do you recall telling her that after you got out
16 and back up to the house you and Scott then went back down
17 into the field?

18 A No.

19 Q Okay. Do you recall telling Susan Bentley that this
20 was not the first time that you said that Scott Cross had
21 done something sexual to you?

22 A Please repeat it.

23 Q Do you recall telling Susan Bentley that this was not
24 the first time that Scott Cross had done something to you
25 sexually?

1 A No.

2 Q Okay. Do you recall telling Susan Bentley that in
3 October of 2005 on three occasions Scott Cross had touched
4 you sexually? Do you recall telling Susan Bentley that?

5 A No. No.

6 Q Okay. So you don't recall telling Susan Bentley that
7 one night in October around Halloween Scott Cross -- and I'm
8 -- touched your vagina and played with your breasts?

9 A No.

10 Q You don't recall telling her that?

11 A No.

12 Q You don't recall telling Susan Bentley that another
13 time before or after Halloween Scott Cross had touched your
14 breasts and touched your vagina?

15 A No.

16 Q No?

17 A No.

18 Q Okay. Do you recall telling her about a third incident
19 sometime in October where you say that Scott Cross touched
20 your breasts and touched your vagina?

21 A No.

22 Q Okay. Now, you just testified on direct that prior to
23 -- I mean, prior to December 29th, 2005 you said that there
24 had been no inappropriate touching whatsoever between you
25 and the Defendant?

K.B.

CROSS-EXAMINATION

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1 A What, December the 29th?

2 Q Prior to that.

3 A No.

4 Q So if you would have told Susan Bentley that on or
5 about Halloween of 2005 Scott Cross touched your breasts and
6 touched your vagina that would have been a lie?

7 A Yeah.

8 Q Speak up?

9 A Yes.

10 Q Okay. If you were to have told Susan Bentley that on
11 another night sometime before or after Halloween of 2005
12 that Scott Cross had touched your breasts and your vagina
13 that also would have been a lie?

14 A Yes.

15 Q Okay. Now, if you would have told Susan Bentley that
16 on a third occasion sometime in October or early November
17 that Scott Cross touched your vagina and touched your
18 breasts that, too, would have been a lie?

19 A Yes.

20 Q Okay. Do you recall on February 9th when you were
21 talking to Susan Bentley about what you say happened with
22 Scott Cross, do you recall also talking to her about Scott's
23 brother Andy?

24 A Do I recall talking to her about Andy?

25 Q Yes.

K.B.

CROSS-EXAMINATION

259

1 A Yes.

2 Q You recall talking to her about Andy. Do you recall
3 telling Susan Bentley that sometime in January of 2006 Andy
4 Cross performed oral sex on you and then had sex with you
5 for 15 to 30 minutes? Do you recall telling her that?

6 A No.

7 Q Okay. Do you recall telling Susan Bentley that at some
8 other time in January Andy Cross performed oral sex on you
9 and attempted to have sex with you but was interrupted?

10 A No.

11 Q Okay. If you were to have told Susan Bentley that on
12 January 16th or -- that at some point in January of 2006
13 Andy Cross performed oral sex on you and then had sex with
14 you for 15 to 30 minutes, that would have been a lie?

15 A Yes.

16 Q Okay. If you were to have told Susan Bentley, the lady
17 at Child's Place who was interviewing you, that on some
18 other evening in January that Andy Cross had performed oral
19 sex on you and attempted to have sex with you, that also
20 would have been a lie?

21 A Yes.

22 Q Okay. Now, I would move forward a little bit. Do you
23 recall after you met with Susan Bentley you met with the
24 deputy from Anderson Sheriff's Office? Do you recall that?

25 A Yes.

K.B.

CROSS-EXAMINATION

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1 Q Okay. Do you recall giving that deputy a statement?

2 A Yes.

3 Q Okay. Now, I showed you this document yesterday.

4 MR. NASROLLAHI: Permission to approach the witness.

5 THE COURT: Yes, sir.

6 Q I showed you this document yesterday. This has been
7 marked Defendant's Exhibit 1 for proffer purposes. Take
8 that. On the second page there's a signature at the bottom,
9 correct?

10 A Yes.

11 Q Okay. That's your signature?

12 A Yes.

13 Q And on the first page there's some language struck out
14 with initials next to them?

15 A Yes.

16 Q Okay. And on the second page there's some additional
17 language stricken out with some initials next to them?

18 A Yes.

19 Q Okay. Who's signature is that on the second page?

20 A Mine.

21 Q Okay. Whose initials are those on the first page next
22 to the correction?

23 A Mine.

24 Q Whose initials are those on the second page next to the
25 correction?

1 A Mine.

2 Q Whose name is that at the top of that document?

3 A Mine.

4 Q Okay. What is that line over the signature on the
5 second page? What does that line say? There's one line
6 right before your signature on the second page.

7 A "This is a true statement."

8 Q Okay. So that's a statement that you gave to Anderson
9 Law Enforcement, correct?

10 A I'm assuming, yes.

11 Q Okay. And if you would have given a statement to
12 Anderson Law Enforcement you would have tried to have told
13 them the whole truth, right?

14 A Yes.

15 Q Okay. I want you to read that statement out loud to
16 the jury.

17 A "This statement was taken by Investigator Pete
18 Normandin --"

19 Q Hold on one second. I'm going to move the microphone.

20 A "The first time we was kind of flirting and we was
21 sitting on the couch and I asked for a smoke and he asked me
22 was I old enough and I said I am 13 about to be 14-years-
23 old. And then was sitting on the couch. He laid me in his
24 lap and was playing with my head and kissing my neck. And
25 then my brother was --"

K.B.

CROSS-EXAMINATION

262

1 MR. NASROLLAHI: Can the -- can we ask if the jury can
2 hear what she's saying?

3 THE COURT: I haven't seen a hand come up. I'm
4 thinking some of them are having some difficulty.

5 MR. NASROLLAHI: I saw some.

6 THE COURT: Okay. If you could, ma'am, just try and
7 speak a little bit louder, please.

8 A Okay. "-- watching TV and then fell asleep on the
9 floor. And then he said let me eat you and I said no. Then
10 he said please and he pulled my panties down and ate me.
11 Then he stopped and was about to do it but my brother, Sam,
12 woke up a little and went back to sleep, and he went and
13 brushed his teeth and came back and kissed me and gave me a
14 cigarette, then went to -- and told Scott and Kim he was
15 leaving. He could not find his cell phone, then found it
16 and left. Then the other time he called and told Kim and --
17 that he was coming over to fix the satellite, then he came
18 over. We was about to go to the doctor's office and he got
19 there and went with us. We got back from the doctor's
20 office. Kim told him to go -- Kim told me to go try on some
21 little girl panties. They didn't fit, so I came out of the
22 bathroom with just my panties on and then he took my panties
23 and hid them in Madison's room, then I said I had an extra
24 pair of pants. I went to go get them and he got them and
25 hid them. So I gave up and went and sat behind him -- sat

1 beside him and he was kissing on me like my lip, neck, back,
2 belly and said stop -- and I said stop. And Kim said she --
3 not to be acting with me here, and I said I want to. I then
4 told him to get in the middle of the couch and he did. I got
5 on top of him and started kissing him on his -- kissing him
6 and he picked me up and took me to the bedroom. I then
7 smoked -- went into the room and shut the door. I went and
8 got on top of him and started kissing him, and then flipped
9 me over on my back. He pulled me to the end of the bed, ate
10 me. He pushed me on the bed and was -- and then we had sex
11 for about 15 to 30 minutes. It started to hurt and I told
12 him to stop and started to cry and he stopped. I think he
13 ejaculated because I rolled into it when we're finished. I
14 put my underwear on and he showed me where my pants were.
15 He brushed his teeth and check the messages on his cell
16 phone. He then told us bye and left. Kim knows about
17 everything that happened between me and Andy because she
18 told me to get the sheets from her bed. This is a true
19 statement."

20 Q And you testified yesterday during the proffer that
21 this statement was not true.

22 A Correct.

23 Q You testified yesterday that this statement was a lie?

24 A Yes.

25 Q This statement that you made to law enforcement was a

K.B.

CROSS-EXAMINATION

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1 lie?

2 A Yes.

3 Q Okay. Now, let's go back to some of the details that
4 you're recounting today on -- about concerning December
5 29th. Okay? You said that he followed you behind that
6 bushy tree.

7 A Yes.

8 Q You said that you were leaned up against that bushy
9 tree.

10 A Yes.

11 Q You're telling this jury today that seven years ago
12 that bushy tree was small enough for you to be leaned up
13 against it?

14 A It was not that small. It was -- it's -- in the middle
15 of the bushy tree it was sort of thick. It was round. It
16 was -- and it had like little sprouts coming off the side
17 and that's what made it so bushy. And on the backside was a
18 little thinner. Like on the side that we was at, it was
19 thinner than -- as it was around it. It was as bushy around
20 it.

21 Q Well, let me show you State's Exhibit Number 2. That's
22 another view of that same tree. And it's been your
23 testimony that kind of -- that you were approximately down
24 here on the left edge of this picture? That's approximately
25 where it happened?

1 A Yes.

2 Q Seven years ago that tree, this big bushy tree was so
3 small and so thinned out that you could be standing there
4 pressed against the trunk? Seven years ago.

5 A It wasn't as thin as you're making it out to be. It's
6 not -- it was a bushy tree. It wasn't as thin as you're
7 making it out to be.

8 Q Well, how big was it?

9 A It was a bushy tree. It was just a little bit smaller
10 than that.

11 Q Just a little bit smaller than that?

12 A Yes.

13 Q Seven years ago it was just a little bit smaller than
14 that. But he pushed you all the way inside against the
15 tree?

16 A As I was saying, on that one side it was a little bit
17 thinner. It wasn't as bushy.

18 Q Okay. So when you told Leslie Norman that he took you
19 out behind the tree, what you really meant to say was he
20 took you inside of the tree?

21 A How you going to go inside a tree?

22 Q I mean, I'm looking at this bushy tree that you just
23 told me that seven years ago was only a little bit smaller
24 than it is now and I'm trying to figure out how you got to
25 where you were leaning against the trunk of the tree.

K.B.

CROSS-EXAMINATION

266

1 A It's -- like I said, it was on that one side. It was
2 still bushy. But, I mean, you can't fall into it. I mean,
3 it was --

4 Q Now, let's talk about what you told Susan Bentley. You
5 told -- you didn't say anything about a tree to Susan
6 Bentley.

7 A Well, if you look at that tree it is out in a field.

8 Q Out in a field?

9 A Yeah.

10 Q Okay. So you testified on direct that that tree is 40
11 feet away from your house, right?

12 A Yeah, about -- I'd say about 50 feet. I don't know.

13 Q That's down in a field?

14 A Yes. Because everything past that front porch was not
15 nothing but field.

16 Q Right. So when you told Susan Bentley that Scott Cross
17 took you back down into the field, what you really meant was
18 he took you behind the tree right next to your house?

19 A Yes. Because that's considered as the field part. I
20 mean, you walk off my back porch and it ain't nothing but
21 field. I mean, from the side to side it ain't nothing but
22 field. It's a house in the middle of a field.

23 Q Now, you also testified that while you were leaned up
24 against that tree he started kissing on you?

25 A Yes.

1 Q Okay. And he started touching your breasts?

2 A Yes.

3 Q Okay. And he started putting his hands down your
4 pants?

5 A Yes.

6 Q Okay. Now, was this the same way that he was kissing
7 on you back in October when nothing ever happened?

8 A No.

9 Q Okay. Now, you then said he put you down on the ground
10 --

11 A Yes.

12 Q -- and pulled your pants halfway down?

13 A Yes.

14 Q Okay. And he said he put your feet in the air -- or
15 your legs are in the air?

16 A Yes.

17 Q Okay. And you testified also that your knees weren't
18 against your chest?

19 A Yes.

20 Q So you're legs are almost perpendicular to the ground,
21 right? Like this?

22 A Yeah. It's like up. It's like --

23 Q Okay. Let's say my palm is your torso, my fingers are
24 your legs. Show the jury.

25 A Okay. Like this is like leg. You'd be up like that.

K.B.

CROSS-EXAMINATION

268

1 You know, this would be up like that.

2 Q Do you recall meeting with my private investigator back
3 on October 4th of this year and talking to him about this
4 case?

5 A Yes.

6 Q Okay. Do you recall telling him that he got on top of
7 you?

8 A Yes.

9 Q Okay. Yesterday you testified that when you meant he
10 got on top of you he didn't actually -- you didn't actually
11 mean he got on top of you.

12 A Well, he got on top of me. You was making it sound
13 like he was laying on top of me. He was not laying on top
14 of me. He was on top of me.

15 Q But you're saying today he -- when you say he was on
16 top of me, he wasn't laying on top of you?

17 A No, because then -- I mean, if he was like -- laying on
18 top of somebody is different than being on top of somebody.

19 Q Okay. Do you recall telling -- saying that your legs
20 were on the ground?

21 A No.

22 MR. NASROLLAHI: Permission to publish the redacted
23 interview.

24 THE COURT: You can proceed.

25 (Whereupon, redacted audio interview was played.)

1 MR. NASROLLAHI: That part has not been redacted per
2 the court's ruling this morning.

3 THE COURT: Very good. I'm sorry?

4 MR. NASROLLAHI: That part has not been redacted per
5 this morning's ruling regarding the Anderson. I didn't know
6 what --

7 THE COURT: Ladies and gentlemen, let me take up an
8 issue with the attorneys. I'll probably bring you back out
9 here in a few minutes and release you for lunch, but don't
10 talk about the case yet. Okay? Thank you very much.

11 (Whereupon, the jury exits the courtroom at 12:53 p.m.)

12 THE COURT: All right. Refresh my memory. What part of
13 the recording are we talking about? Where are we at?

14 MR. NASROLLAHI: In this recording we're getting into
15 the stuff that happened in Anderson with Andy. And it's my
16 understanding that the only thing we can get into about Andy
17 was show her the statements, have her admit them or deny
18 them. I don't --

19 THE COURT: Right. Well, I mean, that's -- that's
20 pretty much my opinion on it. Do you all have any other
21 input, or where do you all want to go with that?

22 MR. NASROLLAHI: I'm okay with redacting this portion
23 also.

24 MR. BROWN: Judge, I don't -- well, is this going to be
25 all --

1 THE COURT: So that would be it?

2 MR. NASROLLAHI: Any reference to the Andy thing,
3 because I think we're just getting back into it.

4 MR. BROWN: You just want to end right here then?

5 MR. NASROLLAHI: Is there anything else after that?

6 MR. BROWN: Judge, while we're here. On redirect
7 though I can't -- I am going to get into what her version of
8 the Anderson story is though now.

9 THE COURT: I understand that.

10 MR. BROWN: I think that would be appropriate on that.

11 THE COURT: I understand. Similar, these differences,
12 those are fair game --

13 MR. BROWN: Yes, sir.

14 THE COURT: -- per my earlier ruling. About how much
15 longer do you have with this particular witness, Mr.
16 Nasrollahi, would you estimate?

17 MR. NASROLLAHI: I think now would probably be a good
18 time to break for lunch.

19 THE COURT: All right. Why don't we go ahead and do
20 that. I'll have them come back around 2:00 and we'll resume
21 at that time. Let's go ahead and have the jury back out,
22 please. If you want to step down, ma'am, you can feel free
23 to and sit over there. Just don't talk about your testimony
24 while we're on lunch break, please.

25 (Whereupon, witness steps down from the witness stand.)

1 (Whereupon, the jury enters the courtroom at 12:55
2 p.m.)

3 THE COURT: Okay. Ladies and gentlemen, it's a little
4 unusual to take a break in the middle of a witness, but in
5 talking to the attorneys I think it might be advisable to go
6 ahead and take our lunch break at this particular point and
7 time. I'm going to ask, if you could, to be back in your
8 jury room at 2:00 and hopefully that'll afford you all
9 enough time to grab something to eat. So again, be back in
10 the jury room at 2:00. If you happen to go to lunch with
11 one of your fellow jurors, that's fine. It's not a problem.
12 You can go to lunch with friends, family. That's fine, too.
13 Just don't talk about the case. All right? I'll see you
14 back at 2:00. Thank you very much. You are excused.

15 (Whereupon, the jury exits the courtroom at 1:00 p.m.)

16 THE COURT: The jury is out. We'll be at ease.

17 (Whereupon, a lunch recess was held from 1:00 p.m. to
18 2:00 p.m.)

19 THE COURT: Let's go ahead and go back on the record,
20 if we could, in the State versus Mr. Cross. I believe that
21 the jury is back. We have the Defendant present with
22 counsel. Nothing before we bring the jury out, gentlemen?

23 MR. BROWN: Not from the State.

24 THE COURT: All right, very good. Let's have the jury
25 out, please.

K.B.

CROSS-EXAMINATION

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1 (Whereupon, the jury enters the courtroom at 2:17 p.m.)

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, I trust that you all had a pleasant lunch. We're
4 still on the examination of the first witness in this
5 particular case. At this point, Mr. Nasrollahi, you may
6 continue.

7 MR. NASROLLAHI: Thank you, Judge. May it please the
8 court.

9 THE COURT: Yes, sir.

10 Q Just a few more questions, K.B. Is it your
11 testimony today that you don't recall telling Susan Bentley
12 that on the evening of December 29th you and Scott Cross
13 were down in the field? You don't recall telling her that?

14 A I did.

15 Q You did tell her that? Okay. Do you recall telling
16 Susan Bentley that you said that my client said be quiet?

17 A Yes.

18 Q Okay. Do you recall telling Susan Bentley that the
19 reason that he said that is because the dogs and Sam and
20 Brandon were coming?

21 A Repeat your question.

22 Q Okay. Do you recall telling Susan Bentley that the
23 reason he said be quiet as because the dogs and Sam and
24 Brandon were coming?

25 A Yes, but not in -- in that -- not as like that.

1 Q Okay. Do you recall telling Susan Bentley that after
2 he said that Sam and Brandon found you?

3 A No.

4 Q Okay. Do you recall telling Susan Bentley that after
5 Sam and Brandon found you, you went back up to the house?

6 A No.

7 Q Okay. Do you recall telling Susan Bentley that after
8 everyone had gone back up to the house you and Scott went
9 back down to the field?

10 A No.

11 Q Okay. Do you recall telling Susan Bentley that it was
12 completely dark outside?

13 A Yes.

14 Q Okay. Do you recall telling Susan Bentley that you
15 said that you were used to being out in the dark?

16 A No.

17 Q Okay. Do you recall telling Susan Bentley that Brandon
18 was on the porch counting?

19 A No.

20 Q Okay. Do you recall telling Susan Bentley that you,
21 Sam and Scott were back down in the field?

22 A No.

23 Q Do you recall telling Susan Bentley that Scott asked
24 you if you wanted it?

25 A Yes.

K.B.

REDIRECT EXAMINATION

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1 Q You recall telling her that?

2 A Yes.

3 Q Do you recall telling her that you replied kind of?

4 A No.

5 Q Do you recall telling her -- strike that.

6 MR. NASROLLAHI: That's all the questions I have right
7 now.

8 THE COURT: Redirect.

9 MR. BROWN: Yes, Your Honor.

10

REDIRECT EXAMINATION

11 BY MR. BROWN:

12 Q K.B. on December 29th, 2005 you said that James
13 Scott Cross and his wife were at your house, right?

14 A Yes, sir.

15 Q That they were there for a length of time before dark?

16 A Yes, sir.

17 Q From what you remember.

18 A Yes.

19 Q And then you all began -- when did you all play hide
20 and seek?

21 A It was starting to get dusky dark.

22 Q And while you all -- how many games did you all play?

23 A Maybe about three.

24 Q And was the same person it the whole time who was
25 supposed to find the same -- you know, find everybody? Was

1 the same person it?

2 A No, sir.

3 Q And who was playing with you?

4 A My brother, Sam, and my cousin, Brandon, and Scott.

5 Q Scott. Scott -- can you point Scott out for me again.

6 A He's over there in the purple.

7 Q Okay. And how would you describe where's that tree or
8 that bushy tree? Where is that located around your house?

9 A In the field.

10 Q And what would you consider a yard?

11 A The front of the house.

12 Q And do you remember Mr. Nasrollahi asked you if you
13 remember if Scott Cross asked you if you -- if you wanted
14 it? Do you remember that?

15 A Yes, sir.

16 Q What was your answer?

17 A Yes.

18 Q Yes, that he did --

19 A Yes.

20 Q -- say that?

21 A Yes, sir.

22 Q And what -- what was your answer to Mr. Cross though?

23 A No.

24 Q And looking at the --

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

K.B.

REDIRECT EXAMINATION

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1 Q I'm going to show you a picture that's State's Evidence
2 Number 3. Again, tell me what that picture is while we're
3 getting the projector going there?

4 A It's the corner of my house and the bushy tree and then
5 the small tree.

6 Q Okay. And where were you when Scott Cross sexually
7 assaulted you?

8 A I was behind the bushy tree.

9 Q The bushy tree. On the other side -- what do you mean
10 by behind --

11 A On the back -- on the backside. On the right of the
12 backside of the tree. Not --

13 Q Away from the front of the house?

14 A Let's see. If it was the -- let's see. I'm trying to
15 think of where my porch -- let's see. It would have been
16 the left. If we were standing from my back porch at the
17 time it would have been on the far left side.

18 Q If you were looking at the tree?

19 A Yeah.

20 Q Okay. K.B. he also asked you about an incident
21 with Andy Cross. Do you remember -- who was Andy Cross?

22 A Scott's brother.

23 Q How long did you know him?

24 A Not long. I really can't remember. Maybe a couple of
25 months.

1 Q Okay. And he was asking -- Mr. Nasrollahi was asking
2 about different incidents that took place in Anderson
3 County. Do you remember, did Scott Cross -- or did Any
4 Cross ever do anything sexual to you in Anderson?

5 A Yes, sir.

6 Q What happened?

7 A He had -- we was at Kim's one day and I was helping
8 her. One of them days I cleaned. And he had took me to
9 Kim's bedroom and proceeded to kiss on me and finger me and
10 lay me down onto the bed, and took my -- he took his clothes
11 off and took my clothes off, and then he stuck his penis in
12 my vagina and I started screaming and crying. And I guess
13 it freaked him out. He got off of me and I put my clothes
14 on and I went running out of the room.

15 Q Who was at the house that night?

16 A Kim Cross.

17 Q Just Kim?

18 A Yes.

19 Q And who -- tell me again who Kim Cross is?

20 A That's Scott Cross's wife.

21 Q And you had mentioned before that she was pregnant
22 December 29th, 2005. Was she still pregnant when this took
23 place?

24 A Yes, sir.

25 Q Did this -- when did this take place with Andy Cross?

K.B.

REDIRECT EXAMINATION

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1 A With Andy, about a week or two. I think about a week
2 or -- I really can't remember, but it was around about.

3 Q Did it happen before your parents found out?

4 A About Scott?

5 Q Yes.

6 A Yes, sir.

7 Q Okay. And how long -- going back to when he was in the
8 bedroom with you. You said that he stuck his penis inside
9 your vagina. How long did that last?

10 A Maybe about -- it wasn't long. Maybe about three, four
11 -- not even -- not even three minutes. I mean, he stuck it
12 in -- in --

13 Q But he did -- he did sexually assault you in Anderson?

14 A Yes, sir.

15 Q The Defense attorney asked you moments ago if you'd
16 gave a statement that incident took 15 to 30 minutes. Was
17 that a true statement, it took 15 to 30 minutes?

18 A No, sir.

19 Q How long did it take, according to you today testifying
20 here, how long did he have sex with you? Andy Cross in
21 Anderson.

22 A Maybe about three minutes. Because, like I said, he
23 just stuck his penis in and I started screaming and crying
24 and he took it out.

25 Q So you're saying -- when the Defense attorney was

1 asking all these questions about Anderson, you don't
2 remember multiple occasions with Andy Cross. You remember
3 one specific instance?

4 A Yes, sir.

5 Q And that's what you remember here today?

6 A Yes, sir.

7 Q That he did have sexual intercourse with you in
8 Anderson?

9 A Yes, sir.

10 Q So everything that you were saying, when he said you
11 were lying, you weren't lying, right?

12 A Right.

13 Q And how old was Andy at this time?

14 A He was, I think, in his 30s. I think about 32. I
15 ain't for sure.

16 Q A little younger than Scott Cross?

17 A Uh-huh (affirmative.)

18 Q But they're close in age, right?

19 A Yeah.

20 Q But they're brothers?

21 A They were brothers.

22 Q What house did that take place in?

23 A At Kim and Scott's house.

24 Q And where is that located?

25 A In Anderson.

K.B.

REDIRECT EXAMINATION

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1 Q So Scott's brother, Andy, had sex with you at his house
2 and his wife's house?

3 A Yes, sir.

4 Q What room did you go to? What room did he take you to?

5 A He took me to Kim and Scott's room.

6 Q And where did this take place?

7 A In the bed.

8 Q In their bed?

9 A Yes, sir.

10 Q And who was at the house?

11 A Kim was.

12 Q Scott's wife?

13 A Yes, sir.

14 Q Now, I want to bounce back to December 29th. I know
15 this gets confusing with two Cross brothers here. Getting
16 back to Scott Cross, December 29th, 2005. The Defense
17 attorney asked you several questions about going down the
18 field. And I think I already went over this. But what did
19 you mean by going out in the field?

20 A It's the tree. To the tree. That's what I meant. I
21 mean, because it's all field.

22 Q Okay. And again, I think the project is up now. I
23 want to show you what's been marked State's Evidence Number
24 2. Let's see. Tell me again what that is.

25 A That's the tree and field and my back porch.

1 Q So what is your -- if you came down your back porch
2 what would you enter into?

3 A The field.

4 Q Okay. He also asked you several questions about were
5 you afraid of the dark. Were you afraid of the dark when
6 you were 13?

7 A Yes, sir.

8 Q What would make you go out in the dark? If you had --
9 would you go out there by yourself with your brother and
10 cousin or --

11 A Yeah. If I had somebody with me I would, like Sam or
12 Brandon, yeah. Like if it was us together, yeah, I would
13 out in the dark.

14 Q Would you go out with an adult?

15 A Yeah.

16 Q Why would you -- why would you -- would you feel more
17 comfortable going out with an adult?

18 A Yes, sir.

19 Q Why is that?

20 A I guess because they're older, they're bigger. They
21 can protect me as far -- you know, as far as a little kid as
22 me -- like me, you know.

23 Q And how old were you then?

24 A I was 13.

25 Q And how old was he?

K.B.

REDIRECT EXAMINATION

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1 A Thirty-five.

2 Q So he was adult compared to you?

3 A Yes, sir.

4 Q Did you feel comfortable going outside with him at that
5 time?

6 A Yes, sir.

7 Q And what time of day was it?

8 A It was about dusky dark.

9 Q About dark though?

10 A Yes, sir.

11 Q K.B. are you embarrassed to talk about what
12 happened back then?

13 A Yes, sir.

14 Q And why is that?

15 A I don't know. Because I was ashamed from what he had
16 done to me. And for some reason I felt like it was my
17 fault, that I done something to, you know, deserve -- you
18 know, to -- but I've come to learn over the years that it
19 really wasn't my fault. It was nothing I done. I was a
20 young innocent kid. I -- a man should not have wanted, you
21 know, come on to a little -- you know, a little kid. I was
22 a little kid then and they shouldn't -- I mean, that's --
23 that's sick.

24 Q Did you -- after this happened did you feel comfortable
25 to go tell your parents?

K.B.

REXCROSS EXAMINATION

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1 A No, sir.

2 Q You didn't tell -- you didn't go run and tell your
3 parents right after that?

4 A No, sir.

5 MR. BROWN: No further questions.

6 THE COURT: Recross?

7 MR. NASROLLAHI: Brief sidebar, Your Honor.

8 (Whereupon; a side was held.)

9 MR. NASROLLAHI: Beg the court's indulgence.

10 THE COURT: Yes, sir.

11 REXCROSS EXAMINATION

12 BY MR. NASROLLAHI:

13 Q Now, K.B. you testified on my first cross
14 examination that this was your statement. You signed it.

15 A Yes, I signed it, but I --

16 Q You made corrections and initialed next to the
17 corrections? Yes, no.

18 A Yes, but I don't remember -- I don't remember that,
19 because in Anderson they had got me to write down a
20 statement instead of typing one up, because the officer had
21 left the room as I wrote one. And then he had come back and
22 talked to me and then he signed where I had written on
23 paper, because I had wrote a two page paper about what had
24 happened and he had signed it, and then that's all remember.
25 I don't remember -- I don't -- I don't remember signing

K.B.

REXCROSS EXAMINATION

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1 that. You know, it's got my signature. It's got my
2 initials. But I don't remember. I don't remember that.

3 Q Okay. So you don't remember looking over this
4 statement?

5 A No.

6 Q Okay. You only remember giving a handwritten
7 statement?

8 A Yes.

9 Q Do you recall what that handwritten statement said?

10 A About just all I've told you all.

11 Q What you've -- well, you've told us several things.
12 What you've told us today on redirect?

13 A Yeah, on Andy -- on the Andy Cross.

14 Q So you wrote a handwritten statement saying that Andy
15 Cross took you into a bedroom and came in Scott's house?

16 A Yes.

17 Q Yes? And that he put his hands inside of you?

18 A Yes.

19 Q And you screamed?

20 A Yes.

21 Q And you ran off? That's what you wrote in your
22 handwritten -- in your handwritten statement?

23 A Yes.

24 Q So this is -- then what is this?

25 A I guess it's a document. I don't know. I don't

1 remember. I mean, it's got my signature. It's got my
2 initials. But I don't remember.

3 Q But it's not the statement that you handwrote?

4 A No.

5 Q But this statement right here that has your signature
6 on it is not true?

7 A No.

8 Q Okay. Everything you told Susan Bentley about what
9 happened between you and Andy Cross is not true?

10 A On like which parts?

11 Q That on one occasion Andy Cross in Anderson came in
12 Scott's house, performed oral sex on you?

13 A That was false.

14 Q That was false. And on another occasion Andy Cross
15 performed oral sex on you in Kim and Scott's bed and then
16 you guys had sex for 15 to 30 minutes.

17 A That was false.

18 Q That was false. Okay. But the story you're telling
19 today about how he took you into the bedroom and put his
20 penis inside of you and had sex with you for three minutes
21 before you screamed and ran away, that's true?

22 A Yes.

23 Q Okay. And the jury should believe that story instead
24 of the other two lies?

25 A Yes.

K.B.

REXCROSS EXAMINATION

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1 Q Okay. The same way the jury should believe what you
2 said happened behind the bushy tree over the three other
3 lies that you told Susan Bentley about Scott Cross?

4 A Yes.

5 Q They should believe --

6 A They -- yes, they should believe me. I mean, so why --
7 why would I make something up like this. Why would I lie
8 and why would I be going through all this stuff for all
9 these years. And then why would I even attempt to come back
10 up if this story was not true.

11 Q That's what I want to know. Why would you -- why would
12 you lie to law enforcement about this?

13 A Like I said, I don't remember that one. I don't
14 remember that page.

15 Q So you don't remember ever telling anybody anything
16 like this in this statement?

17 A No.

18 Q No? And you don't remember telling Susan Bentley
19 roughly the same thing?

20 A No.

21 Q I mean, because you've got no motive to lie, right?

22 A No.

23 Q But we've got two sources showing that you have lied.

24 So my question to you is, why would you be telling the truth
25 now?

1 A Like I just said, why would I waste my time trying to
2 come up -- you know, why lie about something that happened
3 to me and something I have to go through every year and have
4 to, you know, deal with every year. Why would I want to lie
5 about something like that.

6 Q You wasted your time going up to Anderson to give this
7 fact story. You wasted your time going to the Child's Place
8 to tell them a fact story:

9 MR. BROWN: Judge, can he ask a question?

10 THE COURT: Sustained.

11 MR. NASROLLAHI: Okay. I've got no further questions.

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

13 (Whereupon, witness steps down from the witness stand.)

14 THE COURT: Solicitor, if you'll call your next
15 witness, please.

16 MR. BROWN: Judge, can we have a sidebar real quick?

17 THE COURT: Sure.

18 (Whereupon, a sidebar was held.)

19 THE COURT: Ladies and gentlemen, we're going to need
20 about five minutes to fix something before we proceed.

21 Don't get too comfortable back there. Adjourn to the jury
22 room though, if you would, and we'll have you back real
23 soon. Okay? Don't talk about the case yet, please.

24 (Whereupon, the jury exits the courtroom at 2:40 p.m.)

25 THE COURT: All right. Just so that the record is

1 clear, I've asked the Solicitor -- he had the indictment
2 that forms the basis for the underlying charge that's the
3 element of this particular offense that we're trying today.
4 I've asked him to redact the name of the minor child on that
5 prior conviction from '91, and I've also asked him to redact
6 the age -- in the body of the indictment the age of the
7 child, which the record should reflect that the child was
8 10-years-old in the body of that indictment, and simply
9 insert minor child instead of the age. That will cure any
10 potential prejudice. I do concur with the Defense that
11 that's -- that those details are unnecessary in order to
12 support introduction, or in order to --

13 MR. BROWN: Judge, I think we're all in agreement. My
14 question, do you just want me to use like a permanent
15 marker? Since this is a stamped copy, I don't know if I --

16 THE COURT: Sure.

17 MR. NASROLLAHI: I was recommending perhaps black it
18 out and make a copy. I have no objections for them
19 introducing a copy of that. That way, I mean, because no
20 one can hold it up to the light and see what's -- they're
21 going to be inquisitive about that.

22 THE COURT: Certainly. The Clerk of Court has some
23 White Out tape over here. Try using that and then maybe
24 black over it, and then we'll make a copy of that and see
25 what it looks like. Just let me know when you're ready to

1 proceed, Solicitor.

2 MR. BROWN: Yes, sir.

3 THE COURT: After this the next witness will be Dr.
4 Pritchard?

5 MR. BROWN: Yes, sir. She should be here right at
6 3:00.

7 THE COURT: Right at 3:00. Okay.

8 MR. BROWN: And then Leslie Norman will be here.

9 THE COURT: Do you have another witness that you can
10 take before Dr. Pritchard in case she's running late?

11 MR. BROWN: I can call -- I can call one of the -- the
12 brother or the cousin, but they'd be short.

13 THE COURT: All right. Think about that while -- and
14 maybe have your investigator touch base with Dr. Pritchard
15 and see if she's on the way.

16 (Whereupon, a brief recess was taken.)

17 MR. BROWN: Can we make a motion while we're all here
18 in the courtroom? I just want to --

19 THE COURT: Sure.

20 MR. BROWN: -- have something for her. Since we have a
21 potential expert witness, I'd prefer them not to discuss the
22 case while she's in here listening to it and they're
23 discussing it.

24 THE COURT: I feel like for the same reasons that I
25 expressed earlier that to hamstring the Defense in that way,

1 because a lot of the information is what they're getting --
2 or a lot of the information I'm here is what the expert
3 needs is coming from the stand right now, and to say that
4 Defense counsel can't speak with their expert or can't speak
5 with their witness I think is probably going to hamstring
6 him too much. So I realize that the reciprocal Rule 5
7 wasn't filed until last week, or Thursday of last week, but
8 we are where we are --

9 MR. BROWN: Yes, sir.

10 THE COURT: -- and so, I'm not inclined to limit that.

11 MR. BROWN: Yes, sir.

12 THE COURT: See if your client is outside, Mr.

13 Nasrollahi. Have you all been able to reach Dr. Pritchard
14 or is she here yet?

15 MR. BROWN: We talked to her earlier. She said she was
16 going to be here at 3:00, so...

17 THE COURT: Okay.

18 (Off the Record)

19 THE COURT: Let's go ahead and have the jury back out,
20 please, and we'll proceed with some testimony.

21 (Whereupon, the jury enters the courtroom at ?? p.m.)

22 THE COURT: All right. If we may, we're going to go
23 ahead and go back on the record here. We're still in the
24 State's case in chief. Mr. Brown, if you'll call your next
25 witness, please, sir.

1 MR. BROWN: Your Honor, before I call the next witness,
2 at this time I will move into evidence, which is previously
3 marked as State's Exhibit Number 7, a certified conviction
4 from Anderson County.

5 MR. NASROLLAHI: Judge, I'm going to object to an
6 attorney moving anything into evidence.

7 THE COURT: All right. Self-authenticating?

8 MR. BROWN: That's right, Your Honor. It's been
9 certified by Anderson County.

10 THE COURT: All right. Your objection is noted.

11 (Whereupon, State's Exhibit No. 7 was admitted into
12 evidence.)

13 MR. BROWN: Judge, which is a *State vs. James Scott*
14 *Cross*, indictment for criminal sexual conduct with a minor
15 first degree which was signed March 9th, 1992 by James Scott
16 Cross. Would you -- do you want me to read that or do you
17 want to publish it?

18 THE COURT: No. You can publish it.

19 MR. BROWN: It's State of South Carolina, County of
20 Anderson, indictment for criminal sexual conduct with a
21 minor first degree, indictment number 16-3-652, or statute
22 number. A court of general sessions convened on January 6th,
23 1992. The grand jurors of Anderson County present upon their
24 oath that James Scott Cross did in Anderson County between
25 October 31st, 1992 and November 28th, 1991 engage in sexual

Brandon Mc

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1 battery with a minor year old female child. And also
2 attached, Your Honor, is a sentencing sheet.

3 THE COURT: All right. Now, ladies and gentlemen, I
4 need to explain something to you with regard to this. In
5 this case the State has introduced this previous conviction
6 whereby the Defendant was convicted of criminal sexual
7 conduct with a minor. The only reason that this conviction
8 is being admitted, ladies and gentlemen, the only reason
9 that this previous conviction is being admitted is that it
10 is an element -- it is one of the elements of the underlying
11 charge that we are trying here today. So this conviction
12 can only be considered by you, if at all, or if you conclude
13 that it's true, as an element of the current charge of CSC
14 with a minor first degree, and this indictment, or this
15 conviction, can be considered by you for no other purpose
16 whatsoever. Again, the prior conviction is only evidence of
17 one of the elements that the State has to prove that I'll
18 explain to you later in order to support a conviction in the
19 case that we are currently trying. You cannot consider in
20 any way, shape or form the Defendant's prior record or this
21 prior conviction as evidence of his guilt of the charge that
22 we're trying or the case that we are trying today. All
23 right.

24 You may proceed, Solicitor. Call your next witness.

25 MR. BROWN: Thank you, Your Honor. The State calls

1 Brandon Mc to the stand.

2 Brandon Mc having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Good afternoon. Please -- what's your name?

7 A Brandon Mc

8 Q Brandon, tell me a little bit about yourself. Who's in
9 your family?

10 A K.B. my grandparents Tony and Elizabeth, my
11 cousin Sam, which is K.B. his sister, my father's name
12 is Joseph, I have two uncles, Tony and Emanuel.

13 Q Tony and Emanuel? Who is Tony's wife?

14 A Angela.

15 Q Okay. And tell me again how you're related to K.B.

16 A That's my first cousin.

17 Q First cousin. Brandon, how old are you now?

18 A Seventeen.

19 Q Seventeen. Do you remember in 2000 -- December 29th,
20 2005 how old were you?

21 A Nine.

22 Q Nine-years-old. How old is Sam?

23 A He is going to be 18 in two days.

24 Q You all are close in age. Brandon, growing up were you
25 and your cousins real close?

Brandon Mc

DIRECT EXAMINATION

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- 1 A Very much so. We were like brothers.
- 2 Q What about you and K.B.
- 3 A Same way, like brother and sister.
- 4 Q And how old was K.B. back in 2005? Do you remember?
- 5 A Thirteen.
- 6 Q How old -- and she's -- what's she now?
- 7 A Twenty, 21 maybe. Somewhere in that neighborhood.
- 8 Q Okay. Brandon, would you go -- when you were growing
9 up would you spend time with your cousins?
- 10 A All the time.
- 11 Q Would you go over to their house?
- 12 A Uh-huh (affirmative.)
- 13 Q Where else would you go to be with your cousins?
- 14 A If I was with them -- it was either at their house or
15 at my house. I didn't really go much any place when I was
16 young. I always kind of stayed to my family.
- 17 Q Okay. So you remember a particular night, December
18 29th, 2005?
- 19 A Yeah. I was over at Sam's house, and I went over there
20 probably the middle of the day, you know, just to go spend
21 the night. You know, do whatever we do.
- 22 Q What would you all do?
- 23 A We played video games, play outside, you know. Normal
24 kid like.
- 25 Q Okay. And what time did you go over there that day, do

1 you think?

2 A Somewhere in the neighborhood of probably 1:00 or 2:00.

3 Q Okay. While you were over there do you remember what
4 type of day it was? Do you remember what the temperature
5 was like outside?

6 A I remember it was like abnormally warm for that time of
7 year. You know, probably didn't need nothing but a long
8 sleeved shirt on. It was, you know, like that.

9 Q And do you happen to know the address to your aunt and
10 uncle's house at that time, or can you describe where it is?

11 A Yeah, it's heading towards -- coming out of Iva. It
12 would be on the right-hand side. A big white house on
13 Highway 81.

14 Q Highway 1?

15 A 81.

16 Q 81. I'm going to show you -- it's already State's
17 Evidence Number 1. What was that picture of?

18 A That's the front porch of the house.

19 Q Is that the house that K.B. and her brother and
20 parents lived in?

21 A Yes, sir.

22 Q What county was that in?

23 A Abbeville.

24 Q And state.

25 A South Carolina.

Brandon Mc

DIRECT EXAMINATION

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1 Q Now, Brandon, you said you got over there that
2 afternoon. Do you remember who was at the house later on in
3 the day or during the day?

4 A Yeah, it was -- let's see. When I arrived it was my
5 uncle Tony, Angie, and Sam and K.B. like always. Later
6 on in the day a man by the name of Jeremy showed up. Him
7 and my uncle Tony left to -- I'm not sure what they went to
8 do. They just left. And Scott and his wife Kim, I think,
9 they showed up and were there.

10 Q Do you know roughly what time they showed up or can you
11 remember?

12 A It was later in the afternoon, probably about 5:00
13 maybe. 4:00 or 5:00, somewhere in that neighborhood maybe.

14 Q Was it still light outside when they showed up?

15 A Uh-huh (affirmative.)

16 Q We got to make a record. Either yes or not.

17 A Yes.

18 Q Okay. So it was light outside when they showed up.
19 Tell me what -- what you all did for the rest of the
20 afternoon and into the night?

21 A Well, after we -- we was inside playing video games for
22 a little while, me and Sam, and K.B. came to the bedroom
23 and asked us if we wanted to go play hide and seek. We was
24 like sure, you know. Outdoor activities, why not. We'd
25 been inside all day. Went out, and Scott wanted to play

1 with us, you know, to be it. And me and Sam and K.B.
2 went on to hide. Me and Sam stuck together because, you
3 know, we were close like that. So we figured we'd have the
4 best hiding spot because two minds are better than one. So
5 we hid together like always and K.B. went her separate
6 way and Scott was on the porch, because that was base.

7 Q Do you remember where you and Sam went?

8 A Out to -- the house is facing this way and there's like
9 an oak tree. There was a car parked here in, I guess what
10 you'd call, in front of the oak tree, and we hid like the
11 back left bumper of the backside.

12 (Whereupon, a photograph was marked as State's Exhibit
13 Number 8 for identification.)

14 Q All right. Brandon, I want to show you what's been
15 marked for identification purposes only as State's Exhibit
16 Number 8. I'm going to get you -- what is that a picture
17 of?

18 A The side of the house that we were hiding at. The car
19 --

20 Q Is that the same house?

21 A Yes, sir.

22 Q And that's where you were that night?

23 A Yes, sir.

24 MR. BROWN: Judge, I move State's Exhibit 8 into
25 State's Evidence 8.

Brandon Mc

DIRECT EXAMINATION

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1 THE COURT: Have you seen this, Mr. Nasrollahi?

2 MR. NASROLLAHI: Yes, sir. No objection.

3 THE COURT: All right. Without objection it's in
4 evidence.

5 (Whereupon, State's Exhibit Number 8 was admitted into
6 evidence.)

7 Q I'm going to show you now on the projector State's
8 Evidence Number 8. What is that?

9 A Sir?

10 Q What is that a picture of?

11 A It's a picture of the side of the house that me and my
12 cousin were hiding on. And the car was parked where that
13 rough patch of dirt is.

14 MR. BROWN: Judge, we ask permission for him to step
15 down and he can point to where he was.

16 THE COURT: Please.

17 (Whereupon, witness steps down from the witness stand.)

18 A As you can see right here in this general area, that is
19 normally where cars are parked and that's where the specific
20 car was parked that day. And we were hiding right here
21 behind the bumper.

22 Q And -- you can go back up.

23 (Whereupon, the witness returns to the witness stand.)

24 Q Brandon, what was the lighting like when you all were
25 playing hide and go seek that night?

1 A Well, as the time progressed, you know, it was kind of
2 like dusky when we went outside. And --

3 Q How much light would you describe as being dusky?

4 A Fifty percent. Like the sun is just about like is
5 setting, about to go down.

6 Q Do you remember how many games of hide and seek you all
7 played?

8 A There ain't no telling. Probably somewhere between the
9 neighborhood of five and six.

10 Q Did you all play a number of -- you played more than
11 once?

12 A Right.

13 Q Was it dusky dark -- it was dusky the whole time you
14 all were playing?

15 A No. When we started playing it was probably about 88
16 percent light, I guess. Like right before the sun was
17 setting, you know, we played. And the last game occurred
18 right before dark, and that's when we hid behind the bumper
19 of the car.

20 Q Do you know where K.B. was?

21 A No, I didn't.

22 Q You don't know? In that last game you played that
23 night, what do you recall after the last game?

24 A Well, it -- it had been -- like as we were hiding, you
25 know, it was getting dark. We sat there for about 10 to 15

Brandon Mc

DIRECT EXAMINATION

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1 minutes. It started getting dark. And by the time the 15
2 minutes was up, I guess, it was dark completely. And, you
3 know, we went to go look for them and -- because we couldn't
4 find either one of them. And we went to the side of the
5 house right there that's visible. At that first window
6 there's like -- there's no lighting back there whatsoever.
7 And we got right there, and it being dark and us being
8 young, we were scared to go any further. So we turned
9 around and went back to the front porch and waited for them.
10 About five or 10 minutes later they showed up.

11 Q Now, you already said it was about dark. And how old
12 were you again?

13 A Nine.

14 Q And Sam was how old?

15 A Ten.

16 Q And you were afraid of the dark. So you said you went
17 to that window but you wouldn't go any farther?

18 A Right.

19 Q Were there any lights on at that house?

20 A Just the front porch, and that would have been facing
21 that way.

22 Q Facing towards the road?

23 A Right.

24 Q Were there any lights in the back of the house?

25 A No, sir.

1 Q I want to show you what's been entered into evidence as
2 State's Evidence 5. What's that tall thing on the right?

3 A Power pole.

4 Q Was there a light on that power pole?

5 A No, sir.

6 Q If there was a light on that power pole what would that
7 light up?

8 A I'm not really sure where that's located, but if I'm
9 correct that would be the back of the house and that would
10 light up the whole entire back yard.

11 Q Okay. But there's no light on that pole?

12 A Right.

13 Q Now, Brandon, go back to -- you said that after that
14 last game it got dark. You said you were afraid of the
15 dark.

16 A Right.

17 Q And what did you and Sam do?

18 A We went to the side of the house to where his bedroom
19 window would have been, and we got right there to that point
20 and it was dark, and me being afraid of the dark I was like
21 we can't go any farther. I'm scared of the dark. And he
22 was like, okay, so we'll -- we'll go sit on the front porch
23 and wait for them to come out. And they showed up about
24 five, 10 minutes later, after we got on the front porch,
25 from the right side of the house.

Brandon Mc

CROSS EXAMINATION

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- 1 Q Who showed up?
- 2 A Scott and K.B.
- 3 Q How old was Scott at that time? Do you know?
- 4 A I have no idea, but I know he was --
- 5 Q Was he an adult?
- 6 A Uh-huh (affirmative.)
- 7 Q Is Scott in the courtroom today?
- 8 A Sure.
- 9 Q Can you point him out for me?
- 10 (Whereupon, witness points to Defendant.)
- 11 Q What's he wearing?
- 12 A Purple Polo shirt.
- 13 MR. BROWN: Judge, make record that Mr. Brandon
- 14 McDowell pointed out the Defendant also.
- 15 THE COURT: All right. The record shall so reflect.
- 16 Q Brandon, after you and same were on the front porch and
- 17 you said that Scott and K.B. walked up, what do you
- 18 remember?
- 19 A They went into the house and we followed them and me
- 20 and Sam went back into the bedroom and started playing
- 21 games.
- 22 Q Did you notice anything that --
- 23 A I mean, he was sweating pretty bad. That's all.
- 24 Q Do you remember seeing K.B. later on that night?
- 25 A No. Not at all. Because I went -- me and Sam, after

1 we went in and played video games for about 30 minutes to an
2 hour, I went to sleep.

3 Q And do you know -- how long did Scott and his wife Kim
4 stay at the house after that last game of hide and seek?

5 A Well, I remember sitting in there and about five to 10
6 minutes after we went in there we heard a car crank up and
7 they left.

8 Q Who left?

9 A Scott and Kim.

10 Q Was your uncle there at that time?

11 A I'm not sure.

12 Q You don't know if he --

13 A I don't remember.

14 Q Earlier you said that he'd gone. He left to go to the
15 store or something?

16 A Or something.

17 Q But you don't know when he got back?

18 A Right.

19 MR. BROWN: No further questions, Your Honor.

20 THE COURT: Cross.

21 CROSS EXAMINATION

22 BY MR. NASROLLAHI:

23 Q Now, you said when you guys started playing hide and
24 seek it was starting to get dark but it was about 88 percent
25 light.

Brandon Mc

CROSS EXAMINATION

304

1 A Right.

2 Q Okay. And you guys played about five or six games of
3 hide and seek before you called it quits?

4 A Right.

5 Q And you said the last game that you were playing was
6 right at dark?

7 A Right.

8 Q Okay. Did you and Sam hide together each game?

9 A Uh-huh (affirmative.)

10 Q Okay. The last game you guys were hiding together?

11 A Right.

12 Q Okay. How long were you guys hiding before you decided
13 that nobody was coming to look for you?

14 A Well, it was getting -- it was dark by the time that we
15 decided, you know, where's everybody at. So when it got
16 dark, you know, it was like, wow, you know, where is
17 everyone. So we went to look and that's when we got to the
18 -- we walked to the window to check, you know, in the
19 backyard and we were like, wow, it's really dark back here.
20 I was scared of the dark, so we went back to the --

21 Q Right. My question is approximately how long had you
22 and Sam been hiding in that last game before you decided to
23 go scout out whoever was supposed to be looking for you?

24 A Ten minutes.

25 Q Ten minutes. Okay. So you guys were hiding for about

1 10 minutes before you decided nobody's coming to look for
2 me. Let's go look for the other people?

3 A Right.

4 Q Okay. How long did you guys look for her
5 approximately?

6 A I mean, literally probably about two to three minutes,
7 because as soon as we got out from behind the car we went
8 straight to the side of the house and -- because, you know,
9 usually -- well, check the backyard because they're
10 obviously not in the front or else they'd be visible to see.
11 And we got right there. It was too dark to see anything,
12 got scared, turned around and walked back to the porch.

13 Q Okay. And there you guys waited on the porch for five
14 to 10 minutes?

15 A Right.

16 Q So altogether this last -- between the beginning of the
17 last game and by the time Scott and K.B. showed up we're
18 looking at about 25 minutes?

19 A Right.

20 Q Half an hour? Okay. And you said that it was an off
21 winter day?

22 A Right.

23 Q It was a nice winter day. Just to get a point of
24 reference, do you remember yesterday morning?

25 A Fairly well, yeah.

Brandon Mc

CROSS EXAMINATION

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- 1 Q The temperature?
- 2 A Yeah, it was -- it was really cool yesterday morning.
- 3 Q It was pretty cold yesterday morning.
- 4 A Yeah.
- 5 Q It was pretty chilly. Compared to that weather how
- 6 much warmer was it?
- 7 A Fifteen degrees maybe.
- 8 Q Fifteen degrees, okay. And was that roughly the
- 9 temperature when you guys started playing?
- 10 A Right. It slowly got cooler as, you know, as the
- 11 evening went on.
- 12 Q But did it drop or did it just get a little cooler?
- 13 A It dropped.
- 14 Q It dropped, okay. Did it get really cold?
- 15 A I wouldn't say really, but it -- it was colder than
- 16 what it was earlier in the day.
- 17 Q Now, was it as cold as yesterday morning?
- 18 A Roughly.
- 19 Q Okay. So just to reiterate here, the last game --
- 20 between the beginning of the last game, by the time Scott
- 21 and K.B. showed up, there was about a half an hour --
- 22 A Right.
- 23 Q -- outer limits. And by the time you guys had finished
- 24 playing K.B. dad hadn't come back up to the house yet?
- 25 A Right.

1 Q And he had just stepped out to go to the store?

2 A I don't know where they went.

3 Q But he had stepped out before you guys started playing
4 hide and go seek?

5 A Right.

6 Q Okay. How long had you guys been playing hide and
7 seek?

8 A Thirty -- 30 minutes. Thirty, 45 minutes?

9 Q Including the last game or up to the last game?

10 A Well, including the start of the last game.

11 Q Including the start of the last game. Clarify that for
12 me.

13 A Okay. So say there were six games played, 30 to 45
14 minutes in between the five games and then the sixth game is
15 not included.

16 Q Okay. So 30 to 45 minutes for the first five games and
17 then another 10 minutes for the last game?

18 A Right.

19 Q So all and all we're looking at 45 minutes for the
20 entire series of games?

21 A Correct.

22 Q Now, did you guys play hide and go seek a lot?

23 A I mean, again, we're kids. Of course.

24 Q Okay. I mean, did you go over there and play hide and
25 go seek a lot?

Brandon Mc

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1 A Uh-huh (affirmative.)

2 Q It wasn't something completely unusual that stuck out
3 in your mind that you were playing hide and go seek?

4 A I mean, obviously not. We're kids. We're going to
5 play outside. We're going to have fun.

6 Q Right. And being closely related to the alleged victim
7 in this case I'm sure you have some knowledge of the facts
8 of this case?

9 A Explain.

10 Q Is it your understanding that K.B. never disclosed
11 what she says happened until the end of January?

12 A I'm not sure.

13 Q Did she tell you anything about it?

14 A I had no idea.

15 Q Okay. So how is it that you remember this particular
16 game on December 29th?

17 A Because it was brought up to me that the attack
18 happened on that specific night, and when something like
19 that is said that's always going to be imprinted in your
20 brain forever. You know, you've never going to forget
21 something like that.

22 Q Who brought it up?

23 A Her mom.

24 Q Her mom? Did she ask you questions about what
25 happened?

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1 A Yeah. Basically the same thing that's going on now,
2 what did me and Sam remember.

3 Q Okay. And you told her roughly the same thing that was
4 going on now?

5 A Yes, sir.

6 Q And you were nine years old at the time that this
7 happened?

8 A Uh-huh (affirmative.)

9 Q Yes?

10 A Yes.

11 Q You've got to answer out loud.

12 A Sorry. Yes.

13 MR. NASROLLAHI: No further questions.

14 THE COURT: All right. Thank you, sir. You can step
15 down.

16 (Whereupon, the witness steps down from the witness
17 stand.)

18 THE COURT: Call your next witness, please, Mr. Brown.

19 MR. BROWN: Judge, the State is going to take a witness
20 out of order just for purposes of her being able to be here.
21 The State calls Dr. Lyle Pritchard.

22 THE COURT: All right.

23 DR. LYLE PRITCHARD, having been
24 first duly sworn, testified as follows:

25 MR. BROWN: Judge, we've got a witness in the back that

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1 needs to step out.

2 THE COURT: Okay. That's fine.

3 DIRECT EXAMINATION

4 BY MR. BROWN:

5 Q Good afternoon, Dr. Pritchard.

6 A Hi.

7 Q Would you state your full name for me?

8 A Lyle Lesesne Pritchard.

9 Q And, Dr. Pritchard, where do you -- where do you
10 practice medicine?

11 A Self Regional Hospital.

12 Q And how long have you been with Self Regional?

13 A I've been there for 17 years.

14 Q Where were you before Self?

15 A I was in Birmingham, Alabama.

16 Q And what were you doing in Birmingham, Alabama?

17 A I received my training in pediatrics and then was in
18 private practice for about five years.

19 Q What is your job title here at Self Medical in
20 Greenwood?

21 A I'm on the pediatrics faculty at Self Regional
22 Hospital.

23 Q Okay. And where did you go to college?

24 A I went to the College of William and Mary.

25 Q And where did you go to medical school?

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1 A To the Medical University of South Carolina.

2 Q Where did you do your residency?

3 A I did part of my residence in Charleston at the Medical
4 University of South Carolina and part in Birmingham,
5 Alabama.

6 Q And you've been in Greenwood for 17 years?

7 A That's right.

8 Q And you were here for 17 years. Are you licensed in
9 the state to --

10 A I am.

11 Q -- practice medicine?

12 A I am.

13 Q And did you have -- is the nature of your practice more
14 general, or does it specialize in anything?

15 A I do general pediatrics but I also spend time
16 specializing in child abuse. I'm part of a state child
17 abuse team of medical providers that provide child abuse
18 exams for children in South Carolina.

19 Q So you do -- you do medical exams on children when
20 there's an allegation that comes up?

21 A That's correct.

22 MR. BROWN: Judge, at this time I offer Dr. Pritchard
23 as a medical doctor expert in examinations. Medical
24 examinations.

25 THE COURT: All right. Any -

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1 MR. NASROLLAHI: You can't qualify a witness. I
2 understand the foundation that she's a doctor, but he can't
3 qualify a witness.

4 THE COURT: All right. I understand. Is it general
5 medical knowledge or pediatric specifically or any
6 subspecialty that you're seeking qualification in?

7 MR. BROWN: General -- pediatric exams.

8 THE COURT: All right. Any objection to her being
9 qualified as an expert in the field of pediatrics?

10 MR. NASROLLAHI: Yes. We were never notified that
11 they'd be calling an expert witness and it's been my
12 understanding -- I mean, I'm not trying to split hairs here,
13 but it's just understanding that she was going to go over
14 factual observations. I'm not going to have any objections
15 if she gets into any of the observations that she has, but I
16 don't think it's anything that's necessary to require
17 qualifying an expert.

18 THE COURT: All right. Well, let's proceed this way.
19 I would find that she's an expert in the field of
20 pediatrics. She is qualified, of course, to give pediatric
21 exams. Any objections that you have with the substance of
22 her testimony simply alert me to them when -- when the issue
23 arises, please, Mr. Nasrollahi.

24 Now, ladies and gentlemen of the jury, understand that
25 normally when a witness testifies they have to testify as to

1 something that they've observed or heard or seen or sensed
2 with one of their five senses. Okay? An exception to this
3 rule exists for individuals who are qualified as experts in
4 some particular field or expertise. If a person is
5 qualified because of education or training as an expert
6 witness they can give opinion testimony and they can also
7 state the reasons for that opinion. It doesn't mean that
8 you have to accept their opinion, but it is evidence for you
9 to use as you deem appropriate. In this case Dr. Pritchard
10 has been qualified by the court as an expert in the field of
11 pediatrics and pediatric exams, therefore she can give
12 opinion testimony in this regard.

13 Mr. Brown, you can continue, please.

14 Q Dr. Pritchard, did you have the occasion to examine

15 K.B.

16 A I did.

17 Q When did -- when did that exam take place?

18 A February 22nd, 2006.

19 Q And during the course of this exam -- what do you
20 normally do during an exam?

21 A I take a full history of the reason they've been
22 brought to see me, discover any past medical history, family
23 history or social history that might be important. And then
24 I do a full physical exam. And when there are allegations of
25 abuse I use a colposcope which allows me to look at the

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1 genitalia, and it's something that goes inside of the child
2 but it enlarges and brightens the outside of the genitalia
3 so I can look for any evidence of injuries, scars,
4 infections. I also do testing as I see appropriate.

5 Q And you saw K.B. on February 22nd, 2006,
6 right?

7 A That's right.

8 Q During your exam what did you -- what did you notice in
9 your observation during exam?

10 A The patient had an appropriate demeanor. She had
11 basically a normal physical exam for a child. She -- her
12 genitalia, she had a -- the hymen is the tissue that
13 surrounds the opening of the vagina. In the hymen she had a
14 small little cleft, a little bend in the hymenal tissue, but
15 she otherwise had a completely normal exam.

16 Q It was a normal exam. And would you expect anything
17 different than normal exam?

18 A No.

19 Q And tell me about -- tell me about just in general
20 about the hymen and -- about the hymen and what -- I guess
21 it's healing properties?

22 MR. NASROLLAHI: Judge, I'm going to object to this.

23 THE COURT: On?

24 MR. NASROLLAHI: I mean, I'm objecting -- I mean, I
25 know she's qualified at this point, but we've not been given

1 a summary of anything that she's going to say pursuant to
2 our Rule 5. I was under the impression that her testimony
3 would only be regarding her observations in this case as the
4 treating physician. Not as an expert with regard to the
5 healing properties of the hymen.

6 THE COURT: All right. She can -- as a physician she
7 can speak generally about questions of anatomy. I think
8 that the question might be perhaps a little awkwardly
9 phrased. Perhaps you would care to reconsider how you're
10 asking this question --

11 MR. BROWN: Yes, Your Honor.

12 THE COURT: -- and what you're looking at getting at.

13 Q How quickly after an alleged assault would a child need
14 to be brought in generally to be able to find any type of --
15 any type of damage, any type of irregularity in a hymen or
16 just the genitalia of a female victim?

17 A Well, first of all, the hymen is -- like I said, the
18 tissue that surrounds the opening of the vagina. And once a
19 female reaches puberty the hymen becomes very soft and
20 elastic and supple and bends very easily. So when a child
21 is traumatized there may or may not be any damage to the
22 hymen at all. In fact, in the studies show in the majority
23 of cases --

24 MR. NASROLLAHI: I'm going to object to this on the
25 exact same grounds.

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1 THE COURT: All right. You all approach up here just
2 one moment, please. Doctor, I'm sorry.

3 (Whereupon, a sidebar was held.)

4 THE COURT: Mr. Brown, why don't you restate the
5 question, please.

6 Q Let me see if I can restate that question. Generally -
7 - I've got to go back and remember what I said. Generally
8 what is -- what is normal protocol and what would be -- if
9 you were to examine a child that's been -- that's alleging a
10 sexual assault, what timeframe would that require and why?

11 A I can -- I can examine a child anytime after sexual
12 assault. Most children don't disclose initially. It takes
13 a while before they feel comfortable or get their nerve up
14 to tell anybody what happened. So frequently there's an
15 extended period of time between when I actually examine the
16 child and when the assault occurred. As I said, in a mature
17 female there's -- even if you examine the child immediately
18 after assault there may not be any evidence of any kind of
19 an injury. But certainly the more time that's elapsed
20 between the assault and when I examine her, if there were
21 small injuries, they would have quickly healed by then.

22 MR. BROWN: Judge, I have no further questions for this
23 witness.

24 THE COURT: All right. Cross.

25 CROSS EXAMINATION

1 BY MR. NASROLLAHI:

2 Q It's been your testimony on direct that this
3 examination was otherwise normal?

4 A That's correct.

5 Q Otherwise unremarkable?

6 A That's correct.

7 Q Andy you said that there was a cleft in the hymen?

8 A That's correct.

9 Q And that in and of itself is not indicative of any kind
10 of kind of sexual abuse?

11 A That's correct. A cleft can result from trauma, but
12 there are other causes of having a cleft. A little girl can
13 be born with a little cleft in the hymen.

14 Q Okay. And her -- in this case the hymen was completely
15 normal?

16 A Yes, that's correct.

17 Q It was estrogenated and everything looked --

18 A I'm sorry. What was your other --

19 Q It was estrogenated and everything looked unremarkable?

20 A Yes, that's correct.

21 Q Okay. You didn't observe any other abrasions?

22 A No.

23 Q No other bruises or anything that would lead you to
24 believe that sexual trauma had occurred?

25 A That's correct.

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1 Q Okay. That's all I have.

2 THE COURT: Doctor, thank you very much for coming.

3 You may step down and you are free to go?

4 (Whereupon, the witness steps down from the witness
5 stand.)

6 THE COURT: Mr. Brown, call your next witness, please.

7 MR. BROWN: The State calls Leslie Norman.

8 LESLIE NORMAN, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BROWN:

12 Q Good afternoon, Ms. Norman.

13 A Good afternoon.

14 Q Ms. Norman, were are you employed?

15 A Abbeville County Sheriff's Office.

16 Q And how long have you been employed at the Abbeville
17 County Sheriff's Office?

18 A Seventeen and a half years.

19 Q Seventeen and a half years?

20 A Yes.

21 Q And what is your position at the sheriff's department?

22 A Sergeant deputy.

23 Q Sergeant deputy. And, Ms. Norman, were you working
24 back the end of 2005 and also 2006 with the sheriff's
25 department?

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1 A Yes.

2 Q And as part of your job duties there working at the
3 sheriff's department would you sometimes investigate cases?

4 A Yes.

5 Q And, Ms. Norman, do you remember getting a call
6 regarding an assault that took place on December 29th, 2005?

7 A Yes, sir.

8 Q What was that call about?

9 A It was a criminal sexual conduct case against a minor.

10 Q Against a minor. Who was the minor?

11 A K.B.

12 Q Do you know how old the minor was at that time?

13 A K.B. She was 13.

14 Q Thirteen. Who was the alleged assailant?

15 A Scott Cross.

16 Q Ms. Norman, when you got that call did you go out to
17 the house to answer that call?

18 A No. I believe I was off work that day and I came to
19 the office and spoke with her.

20 Q You came to what office?

21 A At the LEC. The Abbeville County Law Enforcement
22 building at 21 Old Calhoun Falls Road.

23 Q Okay. And where -- where did the alleged assault take
24 place?

25 A At [REDACTED] Highway 81 North, Iva, South Carolina, which is

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1 in Abbeville County.

2 Q Which is in Abbeville County. And so, you never -- you
3 never actually went out of the house for the initial call?

4 A No.

5 Q Do you know if -- to your knowledge do you know if
6 anybody went out to that call?

7 A Yes, sir. I can't remember the name but someone did go
8 out to the initial call.

9 Q Another road deputy?

10 A Yes, sir.

11 Q Okay. When you -- again, when you met with K.B.
12 Byrum who else did you see? Who else did you meet with?

13 A With her mother.

14 Q And how old did you say K.B. was?

15 A Thirteen.

16 Q Thirteen. I'm going to show you what's been previously
17 marked State's Exhibit Number 9 for ID -- identification
18 purposes. Take a look at that and tell me what that is.

19 A That's K.B. at that time.

20 Q Is that what she looked like when you --

21 A Yes.

22 Q -- first saw her?

23 A Yes.

24 MR. BROWN: Judge, I move State's Exhibit 9 to State's

25 Evidence Number 9.

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1 MR. NASROLLAHI: Without objection.

2 THE COURT: Without objection State's Nine is in
3 evidence.

4 (Whereupon, State's Exhibit Number 9 was entered into
5 evidence.)

6 Q You said that's what you remember K.B. looked like
7 when she was 13 years of age?

8 A Yes.

9 Q Now, Sergeant Norman, after you spoke with her, during
10 your investigation were you able to collect any forensic
11 items?

12 A No, I wasn't.

13 Q And why -- why were you not?

14 A She had already taken a bath and they had already
15 washed the clothes that she had on.

16 Q And when did you meet with her?

17 A It was on the 31st of January, 2006.

18 Q And when was the alleged assault?

19 A December 29th, 2005.

20 Q 2005. So somebody -- if she washed her clothes -- did
21 she even know which clothes -- did you ever ask her what
22 kind of clothes she had on or -

23 A No.

24 Q Okay. Did you ever collect a diary of any kind from
25 the family?

LESLIE NORMAN-CROSS EXAMINATION

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1 A No. I never did.

2 Q You never did. Did -- can you say for sure? You might
3 not know? Do you have any knowledge that deputies that
4 first responded to the house, do you know if they got a
5 diary?

6 A I don't have any -- any knowledge of that.

7 Q Okay. But you've never -- you've never actually seen a
8 diary?

9 A I never seen a diary.

10 Q Okay. After you took a report and investigated the
11 case did you -- what else did you do with regard to the
12 investigation?

13 A After I spoke with the victim we referred her to the
14 Child's Place for forensic interview.

15 Q Was there anything else you referred her to that you
16 remember?

17 A No, sir. I referred her -- her and her mother to the
18 Child's Place for a forensic.

19 MR. BROWN: No further questions.

20 THE COURT: Cross.

21 MR. NASROLLAHI: If it please the court.

22 CROSS EXAMINATION

23 BY MR. NASROLLAHI:

24 Q Deputy Norman, I'm assuming you have a copy of your
25 incident and supplemental in your hand?

LESLIE NORMAN-CROSS EXAMINATION

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1 A I do.

2 Q Is that what you're reading from?

3 A Yes.

4 Q Just making sure we're on the same page here.

5 A Yes. Yes. It's the same thing.

6 Q But you were the investigating officer on this case?

7 A Yes.

8 Q Okay. And in the course of investigating this case and
9 cases in general you take notes on what you observe and what
10 you hear?

11 A Yes.

12 Q Okay. And the reason you take notes on all that is so
13 you can draft an incident report and supplemental reports as
14 may be necessary?

15 A Yes.

16 Q Okay. And the reason that we have incident reports and
17 supplemental incident reports is so that when you come into
18 court like today you'll have something to go by instead of
19 just going from memory?

20 A Yes.

21 Q Okay. And as an officer you're trained to understand
22 that?

23 A Yes.

24 Q Okay. And so, when you're out there investigating a
25 case and gathering facts it's important that you collect as

LESLIE NORMAN-CROSS EXAMINATION

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1 much information as possible?

2 A Correct.

3 Q Okay. And it's important that you provide as much
4 detail in your incident report as possible?

5 A Correct.

6 Q In other words, so that we don't have to worry about
7 things falling through the cracks come trial?

8 A Yes.

9 Q Okay. Going to your supplemental. You were informed
10 by the victim that she was playing hide and go seek on
11 December 29th?

12 A Yes.

13 Q Okay. You were also informed that the victim -- the
14 alleged victim and her brother and her cousin were out there
15 playing with them?

16 A Yes.

17 Q Okay. And you're also informed that the Defendant
18 sexually battered the alleged victim behind a tree?

19 A Yes.

20 Q Okay. Do you recall that as being what the alleged
21 victim in this case told you?

22 A Yes. That's what she told me.

23 Q Okay. Did she tell you anything about being up against
24 a tree?

25 A No. It was behind a tree.

LESLIE NORMAN-CROSS EXAMINATION

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1 Q Behind a tree?

2 A Uh-huh (affirmative.)

3 Q And you understand that to mean behind a tree?

4 A Yes.

5 Q Okay. But if she would have said something like he put
6 me against a tree that would have been an important piece of
7 information that you would have included in your
8 supplemental?

9 A Yes.

10 Q Okay. Now, I've also noticed in here in both your
11 primary incident report and your supplemental detailed that
12 the victim -- the victim states she said kind of and kind of
13 not in response to the accused advances?

14 A Uh-huh (affirmative.)

15 Q Okay. And you recall her telling you that?

16 A Yes. She recalled after the subject asked her that,
17 yes.

18 Q Okay. Now, you wouldn't have put that in your incident
19 report if she hadn't said that?

20 A Yes.

21 Q Okay. You wouldn't put anything in your incident
22 report that wasn't actually said or wasn't actually
23 observed?

24 A I wouldn't have.

25 Q Okay. You also said you spoke with K.B. with her

LESLIE NORMAN-CROSS EXAMINATION

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1 mother being present? I think you said that on direct.

2 A Her and her mother came to the LEC, but I spoke with

3 K.B. alone. Her mother stepped out of the room.

4 Q Mother stepped out of the room?

5 A She was kind of back and forth, yes.

6 Q Okay. So she was coming in and out. And --

7 A Per my direction. I asked her to step out when we need
8 to talk.

9 Q And the purpose of that is to make sure that, you know,
10 you're getting one person's story and not the others?

11 A Yes.

12 Q Okay. What was her demeanor like on that day? K.B.
13 that is?

14 A K.B. I remember her to be -- she was -- at times
15 shaken. Shaken up. She became kind of anxious when she --
16 when she talked about it and she looked really traumatized.

17 Q Now, did you have an opportunity to speak to her
18 mother?

19 A Her mother, yes.

20 Q Okay. Did she tell you how the alleged sexual assault
21 was disclosed?

22 A Yes.

23 Q What did she tell you?

24 A She told me that her -- her husband found a diary in

25 K.B. room and he read it and that's how everything came

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1 -- came about.

2 Q Did you ask to see the diary?

3 A No, not at that time. We were at the law enforcement
4 center.

5 Q Right. But did they -- did they say they had already
6 given it to a law enforcement officer or --

7 A No. We didn't discuss that at that time.

8 Q Okay. So all you knew was that they had read the
9 diary?

10 A Yes.

11 Q And, you know, as you said on direct, you never
12 personally collected the diary?

13 A No.

14 Q Okay. In this case has any diary ever been admitted
15 into the Abbeville County evidence locker, to your
16 knowledge?

17 A To my knowledge, no, but -- one has never been
18 presented to me. Whether or not it was given to another
19 officer or we didn't get it, I don't know.

20 Q But you were never given one?

21 A No.

22 Q And as far as you know, one was never placed into
23 evidence --

24 A No.

25 Q -- in Abbeville?

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1 MR. NASROLLAHI: Okay. That's all I've got.

2 THE COURT: Thank you very much. You can step down.

3 (Whereupon, the witness steps down from the witness
4 stand.)

5 THE COURT: All right. Does anyone need a brief break
6 for five minutes? If you do, raise your hand. Don't be
7 ashamed. I saw some people squirming up there. I couldn't
8 tell if we needed a break. All right. Apparently we're
9 okay. Solicitor, call your next witness, please.

10 MR. BROWN: Judge, the State calls Tony Byrum.

11 TONY BYRUM, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BROWN:

15 Q Good afternoon, Mr. Byrum. Could you tell me your full
16 name?

17 A Tony Byrum, Jr.

18 Q Tony Byrum, Jr. Tony, I'm going to stand back here for
19 the most part, so if I can hear you I think the jury can
20 hear you. Most importantly is the court reporter here. She
21 needs to write down everything we say.

22 Mr. Byrum, how old are you?

23 A Forty-one.

24 Q Forty-one. And who are you married to?

25 A Angela Byrum.

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- 1 Q Do you have any children?
- 2 A K.B. and S.B.
- 3 Q Okay. And how old is K.B. now?
- 4 A She's 21.
- 5 Q How old is Sam?
- 6 A He'll be 18 in two days.
- 7 Q And do you have any brothers?
- 8 A I got two brothers.
- 9 Q Do they have any children?
- 10 A Yeah. They got four altogether.
- 11 Q What are their names?
- 12 A Holland Byrum, Trey Byrum, Brandon Mc - oh, God.
- 13 Q It slipped your mind? All right. Mr. Byrum, where do
- 14 you live now?
- 15 A I live in West Brook Street Apartments.
- 16 Q In Iva?
- 17 A Uh-huh (affirmative.)
- 18 Q Do you remember where you were living back in 2005 and
- 19 2006?
- 20 A 81 North, Abbeville County.
- 21 Q Do you remember the address right offhand?
- 22 A No, I can't remember it.
- 23 Q Okay. But it was 81 North, Abbeville County, South
- 24 Carolina?
- 25 A Yeah.

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1 Q Mr. Byrum, I want to ask you about specific dates. Do
2 you remember the date of December 29th, 2005?

3 A Yeah.

4 Q What do you remember about that date?

5 A I remember Mr. Cross and his old lady come over.

6 Q And you were kind of pointing. Is Mr. Cross in the
7 room?

8 A Right there.

9 Q What's he wearing?

10 A A purple shirt.

11 Q Purple shirt. And who's his old lady?

12 A Kim.

13 Q Kim. And were they married at the time? Do you
14 remember?

15 A I don't -- I don't think -- I can't remember if done
16 got married or they planned to get married. I think they
17 was married.

18 Q Now, you said that they came over. Do you remember
19 what time of day they might have come over?

20 A it was in the evening time when they got there.
21 Probably 4:00 or something like that. I ain't too long got
22 home from work myself.

23 Q Where were you working?

24 A Electric -- I work for an electric company up there in
25 Anderson.

1 Q Okay. And you had gotten home and you said they got
2 there sometime after you got home. And who -- who was all
3 at the house at that time?

4 A Me, my wife and my son, my daughter, and my nephew
5 Brandon.

6 Q Brandon? And what were you all doing there when they
7 got there at 3:00 or 4:00 -- or I think you said 4:00 or
8 something like that. What were you all doing when they got
9 there? Was this a normal thing where they'd come over?

10 A They'd pop up every once in a while.

11 Q Did you ever go to Anderson, to their house?

12 A A few times we did. Not very many.

13 Q Did your daughter, K.B. and Angela go up there
14 some?

15 A Yeah, they went up there some.

16 Q Now, what do you remember about that day while you were
17 -- while you were at the house and you all were at your
18 house? While you're at it, I want to show you what's been
19 marked as State's Evidence 8. Do you recognize --

20 A Oh, yeah. That's the house we lived in.

21 Q Is that the house you all were living in --

22 A Uh-huh (affirmative.)

23 Q -- December 29th, 2005? Is that basically what it
24 looked like --

25 A Yeah.

TONY BYRUM-DIRECT EXAMINATION

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1 Q -- at that time?

2 A Yeah. It looks the same.

3 Q Also I want to show you what's been marked as State's
4 Evidence 9. Who is that?

5 A My daughter, K.B.

6 Q Do you know how old she was in that picture?

7 A Thirteen. Thirteen or 14. Thirteen, I believe.

8 Q Mr. Byrum, while you were at the house what do you
9 remember happened that afternoon, or what do you remember
10 going on that afternoon whenever everybody was over at your
11 house?

12 A We was all there talking. The youngins wanted
13 something to eat and I went out and got something to eat for
14 them, supper.

15 Q What time do you think you left?

16 A About 5:00. It was getting dusky dark when I left,
17 about 5:00.

18 Q Is that what you normally -- what do you consider dusky
19 dark?

20 A You can still see, but -- you don't need headlights but
21 it's getting dark.

22 Q It's going to get dark? So you said you left the house
23 to go to Iva?

24 A Uh-huh (affirmative.)

25 Q And what were you going to Iva for?

TONY BYRUM-DIRECT EXAMINATION

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1 A To pick up stuff for supper.

2 Q Who went with you to Iva?

3 A Nobody.

4 Q Who was still at your house when you left?

5 A Scott and his wife, three kids, my wife and a friend of
6 ours, Jeremy.

7 Q What's Jeremy's last name?

8 A Hanks.

9 Q And when you went to Iva do you know roughly how long
10 you were gone?

11 A Forty-five minutes to an hour. Something like that.

12 Q Forty-five minutes to an hour. When you came back to
13 your house what did you notice there at your house?

14 A Scott and Kim was gone.

15 Q They had left?

16 A Yeah.

17 Q Was that what they usually did when they came over to
18 the house?

19 A No.

20 Q What do you mean by no?

21 A Well, he said he had -- he said his sugar or something
22 run up and he was feeling sick and had to leave.

23 Q And when you got back from Iva were they at the house?

24 A They were gone when I got back from Iva.

25 Q What kind of lighting was outside when you got back?

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1 How light outside was it when you got back from Iva?

2 A It was dark.

3 Q It was dark. Mr. Byrum, with regard to your house at
4 that time how did you have the -- how was it set up with
5 lighting? When it got dark how would you light up the yard
6 and all?

7 A There was a porch light and there was a street light
8 kind of far away from the house.

9 Q How far away from the house?

10 A About 50, 60 foot. It was halfway down the driveway.

11 It was coming towards -- there's a tree out back, or to the
12 side. It was right there. It really wasn't light at all.

13 Q Okay. I'll show you -- and with the light on the front
14 of the house, what direction would the light on the front of
15 the house -- how would that light up?

16 A It mostly lit up the bottom of the driveway to the road
17 out there.

18 Q Toward the road? Was the back of your house lit up
19 any?

20 A Not even there. That out there is dark back there.

21 Q Dark in the back of the house? Mr. Byrum, were you --
22 do you remember if your daughter, K.B. or your son, Sam,
23 or nephew, Brandon, being 13, 10 and nine, were they afraid
24 of the dark?

25 A Oh, yeah. They didn't mess around out there with

1 nobody with them.

2 Q How do you know when nobody was with them?

3 A They wouldn't go out there by themselves.

4 Q Would they go out there with an adult?

5 A Oh, yeah.

6 Q Do you -- when you got back from the store that night
7 who do you remember seeing just around the house that was
8 still in the den or on the front porch?

9 A Only people I seen was my wife, Jeremy, Sam and Brandon
10 and K.B.

11 Q You do remember seeing K.B.

12 A Well, I seen her. She was in the bathtub when I got
13 back and she went straight to bed. She didn't even eat.

14 Q Wouldn't eat? Did she tell you anything that night?

15 A Didn't even talk to me.

16 Q Never talked to you? What did the boys do that night?
17 Do you remember?

18 A They ate and played video games a little bit and went
19 to bed.

20 Q Went to bed? Mr. Byrum, would you consider yourself a
21 protective father or more of a -- would you let your kids
22 kind of go wherever they wanted to?

23 A Huh-uh (negative.) My youngins very -- very seldom go
24 anywhere.

25 Q Very seldom go anywhere?

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1 A Most the time they went anywhere it was grandma and
2 grandpa's house.

3 Q Grandparent's house. Where else would they go
4 sometimes?

5 A Well, spend the night -- spend the night with Kim and
6 them once or twice.

7 Q Why would you go spend the night at Kim and Scott's
8 house?

9 A Well, I kind of trusted them.

10 Q How did you know Kim and Scott?

11 A My wife knew Kim. We met Kim years back and she met
12 him, of course, in a store or something and just started
13 talking.

14 Q And then you all started kind of hanging out?

15 A Yeah, a little bit.

16 Q Do you know how old Scott was at that time?

17 A No. I never did ask him.

18 Q Was he an adult?

19 A Oh, yeah. He was -- he's older than I am, I guess.
20 Well, he had to be.

21 Q All right. Mr. Byrum, how did you find out what
22 happened that night?

23 A My kids was gone to their grandparents' house. I went
24 in her bedroom looking for something and seen her diary. I
25 picked the lock on the diary trying to find out what was

1 going on. I read the first couple of lines, hollered at my
2 wife -- my wife to read it.

3 Q And that's how you found out?

4 A That's how I found out.

5 Q What do you remember was -- what do you remember
6 reading?

7 A I remember reading my daughter and Scott had sex and
8 that's all I could read. That's all I could stand and all I
9 -- and I didn't need to read no more.

10 Q And what did you do after you first read that?

11 A About lost my mind.

12 Q You said -- did you get -- you said you got your wife?

13 A Yeah. I told her, I said, you read this. I didn't --
14 I read what I read and I didn't read no more. I didn't want
15 to read no more. She read it. I don't know anything else
16 that was in there but what I just told you.

17 Q And what kind of -- how big was this diary? Do you
18 remember?

19 A You can get at any store. A little small diary with a
20 little lock on it.

21 Q What happened after you read that diary and after you
22 told your wife about it?

23 A That night I called my friend to give me a ride, and he
24 wouldn't give me a ride. And the next day when she get out
25 of school, when the momma went out and picked them up, and

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1 Angie called the law.

2 Q When you picked that lock and all -- how did you pick
3 that lock and go in the room without K.B. stopping you
4 that night?

5 A She was at her grandparents' house.

6 Q She was staying at the grandparents' house. And you
7 say they stay there pretty regularly?

8 A Yeah. They spend the night. And somehow our car was
9 tore up that day and we didn't have a way to take them to
10 school, so they spent the night over there to catch the bus.

11 Q Mr. Byrum, do you all still have that diary?

12 A No.

13 Q What did you all do with that diary?

14 A Abbeville County Law got it.

15 Q Did you all make a copy of that diary before you all
16 gave it away to them?

17 A They made copies of it. They kept all that.

18 Q They kept all of it?

19 A Yes, sir.

20 Q All you can know -- all you know is what you read that
21 night?

22 A Yeah.

23 Q And what did you read that night?

24 A Her and Scott had sex.

25 Q You all gave it to the Abbeville County Sheriff's

1 Office?

2 A Yes, sir.

3 MR. BROWN: No further questions, Your Honor.

4 THE COURT: Cross.

5 MR. NASROLLAHI: May it please the court.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. NASROLLAHI:

9 Q You said on direct that you got home from work around,
10 what was it, 4:00, 4:30?

11 A Probably. It was late evening.

12 Q Late evening? Okay. And you had been working at
13 Quality Electric at that time?

14 A Right.

15 Q Ten hour days?

16 A As we get through and have nothing to do.

17 Q Okay. And when you got home Scott and Kris weren't --
18 I mean, Scott and Kim weren't there yet?

19 A Not when we --

20 Q They got there after you got home?

21 A Yeah.

22 Q And you just testified on direct that you went up the
23 street to get some food for your kids?

24 A A little further than going up the street.

25 Q I'm sorry. I can't hear you.

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- 1 A A little further than going up the street.
- 2 Q And you drove out to go get some food?
- 3 A Yes.
- 4 Q Okay. And when you left it was dusky dark?
- 5 A Yeah.
- 6 Q How long were you gone?
- 7 A Like is said, 45 minutes to an hour.
- 8 Q Forty-five minutes to an hour. Okay. And when you got
- 9 back Scott and Kim had already left?
- 10 A Yeah.
- 11 Q Okay. Now, you didn't turn over the diary to law
- 12 enforcement?
- 13 A No. My wife did.
- 14 Q Your wife did. Did you actually see her hand the diary
- 15 over to a police officer?
- 16 A Yes, when they come to the house.
- 17 Q When they came to the house?
- 18 A Yeah.
- 19 Q Okay. She put it in the officer's hand? The diary
- 20 itself?
- 21 A I seen the officer with it when he come out the house,
- 22 so evidently she did.
- 23 Q So she had the diary. You didn't actually see her put
- 24 the diary in his hand, but you saw the officer leave with
- 25 it?

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1 A Yes.

2 Q Okay. You were saying that it was Angie who talked to

3 K.B. about what was written in the diary?

4 A Yeah.

5 Q Okay. Not you? You were too upset?

6 A I didn't want to know no more. I know what I needed to
7 know.

8 Q And this was the next day that she talked to her?

9 A Yeah.

10 Q Did you guys call over there to check on her when you
11 found out about this?

12 A We know she was fine that night. We know where she's
13 at.

14 Q And then the next day after talking to K.B. your
15 wife called law enforcement?

16 A Yeah.

17 Q They came out to your house?

18 A Yeah.

19 Q Do you remember what the officer looked like that came
20 out to the house?

21 A It was a white lady and a white fellow come out in two
22 different cars.

23 Q Okay. Did they take a statement there at the house?

24 A Yeah.

25 Q So they didn't make K.B. go up to Abbeville County

1 to make a statement?

2 A They rode to Abbeville County.

3 Q Say that again?

4 A They rode to Abbeville County with them.

5 Q Okay. And that's where she gave the statement? And
6 you weren't present when she gave the statement to the
7 officer?

8 A No. I was home with my son.

9 Q Okay. Did you and your daughter get along?

10 A Yeah, I love my daughter.

11 Q Did you guys get along around this time?

12 A Yes, we got along.

13 Q You guys didn't argue and fight all the time?

14 A No, we didn't.

15 Q What about you and your wife? You guys got along?

16 A Yeah, we got along. We got along.

17 Q So around that time there were no episodes of domestic
18 violence in your house?

19 A Not around that time.

20 Q Not around that time, but later on?

21 A Yeah.

22 MR. BROWN: Judge, I don't see any -- what's the
23 relevance in this?

24 MR. NASROLLAHI: Bias.

25 THE COURT: All right. You're going to need to lay a

1 little bit better of a foundation. The only testimony so
2 far is that problems started sometime later on. I'm --

3 MR. NASROLLAHI: I'll just withdraw the question.

4 THE COURT: -- I'm struggling to understand how that
5 would be relevant, but -- so at this point sustained for
6 lack of a foundation.

7 MR. NASROLLAHI: That's fine. No further questions.

8 THE COURT: All right. Thank you, sir. You can step
9 down.

10 (Whereupon, the witness steps down from the witness
11 stand.)

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, you may not need a break but I do, and that's one of
14 the benefits of being a judge is I can call a break if I
15 want one, so we're going to take a break. If some of you
16 need to step outside for a few moments, that's fine. The
17 bailiff will take you downstairs. Again, don't discuss the
18 case. We'll be back on the record in about five or 10
19 minutes. Okay? You all adjourn to the back and we'll be at
20 ease.

21 (Whereupon, the jury exits the courtroom at 4:10 p.m.)

22 (Whereupon, court was in recess from 4:10 p.m. to 4:26
23 p.m)

24 THE COURT: All right. If we could, we'll go ahead and
25 go back on the record. One quick housekeeping matter.

1 During Dr. Pritchard's testimony the sidebar that was held,
2 the Defense basically raised -- what they asserted was a
3 Rule 5 issue concerning Dr. -- the Doctor's testimony. I
4 told counsel that I would put this on the record once we
5 were at a break where the jury was not present.

6 It was explained to me at sidebar by Mr. Brown that
7 basically the medical documents had been provided to the
8 Defense pursuant to Rule 5 and Brady. Mr. Nasrollahi, did
9 you have an objection that you needed to interpose at this
10 point and time or --

11 MR. NASROLLAHI: I just have an objection to her being
12 qualified as a witness and giving expert opinion testimony.
13 I believe that with regard to furnishing the medical report
14 is one thing. Furnishing, you know, a Rule 5 complaint
15 report is -- is lacking in this case. And for that reason
16 that's why I objected. I also objected to the introduction
17 of the indictment in this case. Just to fully preserve the
18 argument that I have with regard to that, I had an objection
19 with Mr. Brown introducing the indictment in this case
20 insofar as it's improper for an attorney to present evidence
21 in a case, and in this regard my client doesn't have the
22 opportunity to cross examine it and to confront witnesses
23 presenting testimony against him and he's been in that
24 regard denied is Sixth Amendment right to confront witnesses
25 against him.

1 THE COURT: All right. But as far as the initial Rule
2 5 issue you don't -- you do agree that you received copies
3 of the medical reports, correct?

4 MR. NASROLLAHI: I received a copy of a medical
5 examination. The report of the medical examination.

6 THE COURT: Okay. I've looked at Rule 5. I believe
7 that that does comply with the Rule 5. I don't know that --
8 and the Rule does not seem to require that the State provide
9 you with a full synopsis of the expert's testimony under
10 Rule 5. If I'm mistaken, you can point me to some other
11 provision. I'm happy to perhaps revisit that. But when I
12 look at Rule 5 it's Rule 5-1 -- sorry, A1D reports of
13 examinations of -- and tests. That's what has to be
14 disclosed and apparently that's what was disclosed.

15 Concerning the Sixth Amendment argument and the
16 indictment that was presented, that indictment was self-
17 authenticating, so I don't know, and I don't believe it was
18 necessary for anyone to be called to testify. It speaks for
19 itself. It is what it is. And it's no different than a
20 situation where -- we've been using the burglary analogy
21 throughout this trial. But in a trial for burglary first
22 degree the State can simply present or have introduced
23 certified copies of the two prior burglary convictions to
24 support a burglary first conviction. So -- but your
25 objections are noted for the record and that would be my

S.B.

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1 ruling.

2 MR. NASROLLAHI: Thank you.

3 THE COURT: All right. Let's have the jury in. Is
4 your next witness in the courtroom?

5 MR. BROWN: He is, Your Honor.

6 THE COURT: All right. Very good.

7 (Whereupon, the jury entered the courtroom at 4:26
8 p.m.)

9 THE COURT: Let the record reflect that the jury is
10 back and seated. At this point, Mr. Brown, if you'll call
11 your next witness, please.

12 MR. BROWN: The state calls S.B.

13 S.B. having been first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BROWN:

17 Q Good afternoon, Sam.

18 A Good afternoon.

19 Q I'm going to stand back from you just to make sure I
20 can get you talk a little louder so everybody in the
21 courtroom can hear you clearly. Okay?

22 A Yes, sir.

23 Q Sam, what's your full name?

24 A S.B.

25 Q And Sam -- you go by Sam?

S.B.

DIRECT EXAMINATION

347

1 A Yes, sir.

2 Q Who is in your family?

3 A My dad Tony, my mom Angela, and my sister K.B.

4 Q Do you have any cousins?

5 A **Brandon Mc**

6 Q Do you have any other cousins?

7 A Holland Byrum, Trey Byrum, and I believe that's all
8 that I pretty much hang around.

9 Q You hang around. How old are you now?

10 A I'm 17, sir.

11 Q Do you have a birthday coming up?

12 A Yes, sir.

13 Q When is that?

14 A In about two days.

15 Q Two days. Now, jumping right to the chase. Do you
16 remember December 29th, 2005?

17 A Some parts, because it's been so long ago. But I
18 pretty much remember some of it. My cousin came over around
19 1:00 or 2:00, I'm guessing. I never really paid attention
20 to the time and I was just busy --

21 Q How old were you then?

22 A I'm guessing around nine or 10, sir. And -- well, I
23 guess Scott and Kim come over. And I never really paid
24 attention because, you know --

25 Q Who came over?

S.B.

DIRECT EXAMINATION

348

- 1 A Scott and Kim.
- 2 Q What's their last name?
- 3 A Cross, sir.
- 4 Q Is Scott Cross in the courtroom today?
- 5 A Yes, sir. He's wearing purple.
- 6 Q Wearing a purple shirt?
- 7 A Yes, sir.
- 8 Q How old was he in 2005? Do you remember?
- 9 A I think about 35, 30 something. Around his 30s.
- 10 Q Was he an adult?
- 11 A Yes, sir.
- 12 Q Sam, walk me through the afternoon.
- 13 A Well, we had -- we were playing a game. My sister came
- 14 in and asked me and Brandon did we want to play hide and
- 15 seek. So that whole day we had been hide and seek.
- 16 Q The whole day?
- 17 A Well, pretty much. Yes, sir. We took a couple breaks
- 18 here and there.
- 19 Q What about -- when did -- who was all at your house
- 20 that day?
- 21 A My dad -- my dad and mom's friend Jeremy, my mom was
- 22 there, Brandon, me and my sister, and Kim.
- 23 Q Kim?
- 24 A Yes, sir.
- 25 Q And who else would you say was there?

S.B.

DIRECT EXAMINATION

349

1 A Scott Cross.

2 Q Scott Cross was there. So that's all who was there at
3 the house that day?

4 A Yes, sir. My dad would have gone somewhere. I believe
5 he had gone to the store.

6 Q Your dad had gone to the store?

7 A Yes, sir.

8 Q Do you remember why he went to the store?

9 A No, sir.

10 Q But he was gone?

11 A He was gone.

12 Q Do you remember what time of day that was when he went
13 to the store?

14 A I really can't remember that part. I was --

15 Q Was it daylight or nighttime?

16 A It was -- it was in the middle. In the evening, like
17 getting kind of -- I'd say the sun was still out. It was
18 pretty bright. But I'd say around 3:00 something.

19 Q 3:00 something?

20 A Yes, sir.

21 Q But it was almost -- the sun was going down then?

22 A Well, yes, sir. Well, around 4:00 or 5:00.

23 Q You don't remember the time?

24 A I really don't remember the time, sir. I really --
25 never paid attention. You know, I was a kid that liked

S.B.

DIRECT EXAMINATION

350

1 staying outside. Never paid attention until the sun went
2 down, you know, back then.

3 Q Okay. Now, who all played hide and seek that night?

4 A Me, Brandon, K.B. and Scott Cross.

5 Q Okay. And so, how old was K.B. at that time?

6 A She was 13, sir.

7 Q Okay. And where did you all play hide and seek?

8 A It was all around the house. You know, just certain
9 places. Me and Brandon would hide under the porch and all
10 this. And I never really paid attention to where they hid
11 at, except for when I was it. And most of the times I found
12 them hid behind my -- you know, I had like a little, I
13 think, building I had built. You know, something I played
14 in. Like I'd find them behind there sometimes. Not
15 together but separately. You know, my sister would be
16 somewhere else. But, you know, getting around towards dark
17 time it was getting dark, so it was Scott that was it. And
18 me and Brandon, we were hiding behind his car, you know,
19 waiting. Just waiting. It started getting too long and,
20 well, we looked at each other and we asked, well, it's
21 getting dark. We might as well go ahead and find them. So
22 we set out to go find them, and we got to where my window
23 was, because that's where the lot stopped is where my window
24 was, and pretty much went and turned around and went back
25 because we was scared of the dark, you know. We didn't like

S.B.

DIRECT EXAMINATION

351

1 the dark. And went back to the porch where the base was.

2 And, well, waited a few more minutes and then finally they
3 came around.

4 Q Who's they?

5 A Scott Cross and K.B.

6 Q Is K.B. your sister?

7 A Yes, sir.

8 Q Where did they come from?

9 A Well, they came around from the side where my bedroom
10 window was at, sir.

11 Q I want to show you what's been entered as State's
12 Evidence Number 8. Can you tell me what that is?

13 A It's that window closest to the tree, sir.

14 Q Well, back up a little bit. What house is that?

15 A That is my house, sir.

16 MR. BROWN: Judge, I ask permission for the witness to
17 point to where he was talking about.

18 THE COURT: Why don't you step down and you can either
19 do it on the projector or stand over next to the screen,
20 please, sir.

21 (Whereupon, the witness steps down from the witness
22 stand.)

23 A We had stopped around right there. That window. Not
24 the closest one but that one right there, sir.

25 Q The middle window?

S.B.

DIRECT EXAMINATION

352

- 1 A Yes, sir.
- 2 Q And that was whose bedroom?
- 3 A That my mine and my sister's bedroom, sir.
- 4 Q And you said what -- why did you stop there?
- 5 A Well, it was too dark and me and my cousin, you know,
- 6 we were scared of the dark. We never really liked it. We
- 7 always slept with a nightlight on, so, you know, we never
- 8 really want to go there. It was scary back in there. You
- 9 couldn't see nothing.
- 10 Q Scary back in where?
- 11 A In the backyard. You couldn't see nothing. It was
- 12 pitch black. Like you couldn't even see your hand in front
- 13 of your face when you went back there.
- 14 Q Why was it always dark back there?
- 15 A It was just a field. A big open field and --
- 16 Q Were there any lights back in the back?
- 17 A No, sir. It was out in the middle of nowhere.
- 18 Q Where did you all have lights on that house when it got
- 19 dark?
- 20 A The front porch. We had a motion sensor light.
- 21 Q What would that light up?
- 22 A Just pretty much to where that front window would be
- 23 where the tree is covering. The tree is covering the front
- 24 window. The first window. And the light would stop right
- 25 there.

S.B.

DIRECT EXAMINATION

353

1 Q Which way would it point?

2 A It would -- would you mind if I showed you?

3 Q Yeah.

4 (Whereupon, witness steps down from the witness stand.)

5 A It pretty much covered this area to right there.

6 That's pretty much all it covered. It never went any

7 further back.

8 Q So that's the driveway area?

9 A Yes, sir.

10 Q I'm going to show you State's Evidence Number 5.

11 A Yes, sir.

12 Q What is that on the right there?

13 A That is the tree my sister said they were hid behind.

14 Q Which tree?

15 A The tree that she said that Scott Cross had raped her

16 behind.

17 Q What's this -- what's this thing here?

18 A It is a power pole, sir.

19 Q Does that power pole have a light on it?

20 A No, sir.

21 Q Has it ever had a light on it when you lived there?

22 A No, sir.

23 Q So if you went back in that area when it was dark could

24 you see?

25 A No, sir.

S.B.

CROSS-EXAMINATION

354

1 Q Sam, do you remember talking to a law enforcement
2 officer?

3 A No, sir.

4 Q You don't remember talking to anybody when they came
5 out to your house?

6 A No, sir.

7 Q Okay. Well, after you all got done playing hide and
8 seek when it got dark what do you remember after that?

9 A Well, me and Brandon, I asked him did he want to go
10 play the game. And, well, Scott Cross had started sweating,
11 acting nervous and everything. And, well, after that I
12 didn't really pay no attention, you know. I thought he was
13 just -- just sweating from all that activity outside. But
14 he was in a hurry to leave.

15 Q How fast did they leave after you all got done playing
16 hide and seek?

17 A I'd say about two or three minutes. Not -- well, they
18 didn't stay long.

19 Q Can you really -- do you really -- can you put a number
20 of minutes on it or you just don't know?

21 A I don't know, sir.

22 Q But it was fairly quick afterwards?

23 A Yes, sir.

24 Q Where was your dad after you all got done playing?

25 A He was supposedly on his way home, sir.

1 Q And who was at your house when -- when you all got done
2 playing hide and seek and you saw Scott sweating and all
3 what did you and Brandon -- or what did you and Brandon go
4 do?

5 A Well, we was going to the room to play a video game.
6 So that's --

7 Q Did you all play video games regularly?

8 A Yes, sir. We played them a lot. We were big fans of
9 video games.

10 Q You were nine and he was -- or you were --

11 A I think I was 10, maybe nine. Because our birthdays
12 ain't that far apart so --

13 Q Not that far apart.

14 A Yes, sir.

15 Q Do you remember what K.B. did after that last game?

16 A No, sir. I never really paid attention to what she
17 did.

18 MR. BROWN: No further questions, Your Honor.

19 THE COURT: Cross.

20 CROSS EXAMINATION

21 BY MR. NASROLLAHI:

22 Q Around what time of day did you say you guys went out
23 there to play hide and seek?

24 A Around 1:00 or 2:00.

25 Q 1:00 or 2:00?

S.B.

CROSS-EXAMINATION

356

- 1 A Yes, sir.
- 2 Q Okay. And what time did Scott and Kim come over?
- 3 A Well, they were already over there. I couldn't exactly
- 4 remember where they -- when they had came. But they were
- 5 over there before my cousin had came.
- 6 Q So they got there prior to 1:00 or 2:00?
- 7 A I'd probably say around 12:00 something.
- 8 Q Okay. So they were there around noon?
- 9 A Yes, sir.
- 10 Q And you guys were outside playing hide and go seek.
- 11 And by you guys I mean you and Sam and K.B.
- 12 A It was me, Brandon, K.B. -
- 13 Q I'm sorry. I think I referred to your cousin as Sam
- 14 and you're Sam.
- 15 A Yes, sir.
- 16 Q I'm sorry about that.
- 17 A Yes, sir. It was me, K.B. Brandon, and Scott Cross
- 18 when the game started.
- 19 Q When the game started. What time -- approximately what
- 20 time did the game start?
- 21 A Well, like I said, I can't remember. I know it was
- 22 daylight still when it started, and that's pretty much all I
- 23 remember.
- 24 Q Okay. So Scott got over there -- Scott and Kim came
- 25 over around noon and you said Brandon came over around 1:00

S.B.

CROSS-EXAMINATION

357

1 or 2:00?

2 A Yes, sir.

3 Q Just ballpark it. How many hours went by before you
4 guys started playing hide and go seek?

5 A I'd say an hour. Hour or so.

6 Q Okay. So by 3:00 you guys are outside playing hide and
7 seek?

8 A Yes, sir.

9 Q And just to be clear, Scott's out there with the three
10 of you playing hide and go seek?

11 A Yes, sir.

12 Q So the first game was around 3:00 and the last game --
13 I think you said on direct that it was -- it was --

14 A It was dark.

15 Q It was dark?

16 A Yes, sir.

17 Q Completely dark or --

18 A It was completely dark.

19 Q Okay. So a few hours you guys were playing?

20 A Sir?

21 Q Were you guys were playing for a few hours?

22 A After it was dark?

23 Q No, no, no. Between the time you started and the
24 between the time you stopped. A few hours?

25 A Yes, sir. A few hours.

S.B.

CROSS-EXAMINATION

358

- 1 Q Approximately how many games is that?
- 2 A I'd say 14, 20, something. I can't really remember how
- 3 many games it was. Like I said, it's been so long ago.
- 4 Q Got you. And everybody was hiding in different spots?
- 5 A Yes, sir.
- 6 Q So you had your space where you went and hid?
- 7 A Yes, sir.
- 8 Q Okay. Brandon had his spot that he went and hid in?
- 9 A Yes, sir.
- 10 Q And K.B. had her spot that she went and hid in?
- 11 A Yes, sir.
- 12 Q And when Scott had to hide he had his spot he had to go
- 13 hide in?
- 14 A Yeah.
- 15 Q Okay. Now, you just said on direct that you don't
- 16 remember speaking to a law enforcement agent.
- 17 A Yes, sir.
- 18 Q You don't remember that?
- 19 A No, sir. I don't remember.
- 20 Q Yes, you don't remember?
- 21 A I don't remember.
- 22 Q Okay. So you don't recall saying to investigator -- or
- 23 deputy Norman from the Abbeville County Sheriff's Department
- 24 that you and Brandon went looking for Scott?
- 25 A Like I said, it's been so long ago, you know, I can't

1 remember back way then. It's probably been a whole long
2 time ago. I try my best to forget that day. I didn't
3 really care for it because, you know, my sister had got
4 raped by this man and I remember --

5 Q I mean, so you don't remember?

6 A I don't remember.

7 Q You don't remember talking -- you don't remember saying
8 to her that you and Brandon went looking for Scott and

9 K.B.

10 A No, sir.

11 Q So you don't remember telling her that while you were
12 looking for Scott and K.B. you heard kissing sounds?

13 A No, sir.

14 Q You don't remember saying that?

15 A No, sir. I don't remember none of that, because, you
16 know, like I said, it's been so far -- it's been so long
17 ago.

18 Q Okay. And did you guys play hide and seek a lot?

19 A No. That was actually -- first time actually playing
20 hide and seek, with him anyway.

21 Q Okay. Did you and Sam and K.B. play hide and seek?

22 A We played it a couple of times. Most the times, you
23 know, probably just hung out and played video games.

24 Q Right. I mean, the reason I'm asking is, you know, I'm
25 thinking that, you know, the game of hide and go seek is

S.B.

CROSS-EXAMINATION

360

1 what makes this a unique detail for you to remember why it
2 happened on this day. Is that so?

3 A Yes, sir.

4 Q Okay. So you guys didn't play -- you K.B. and
5 Brandon didn't play hide and go seek that often?

6 A We played it -- like I said, we played it like kind of
7 halfway, you know. We played it pretty often when we got
8 bored, and that was, like I said, pretty often. But, you
9 know.

10 Q Okay. But let me back up just a little bit here. On
11 December 29th, 2005 you recall that last game of hide and go
12 seek?

13 A Yes, sir.

14 Q Okay. And, you know, you just said that this is a --
15 this was a traumatic day for you that you'd like to forget
16 but it's still standing out in your memory?

17 A Yes, sir.

18 Q Okay. So you've still got a clear image of what
19 happened on that day?

20 A Yes, sir.

21 Q Okay. And you and Brandon were hiding in two different
22 stops while K.B. was hiding somewhere else?

23 A Yes, sir.

24 Q Okay. And that's -- I mean, that's a perfectly clear
25 recollection of what happened as sure as you're sitting

S.B.

CROSS-EXAMINATION

361

1 there?

2 A Yes, sir.

3 Q Vivid memory of what happened?

4 A Not -- not clear memory. Not clear.

5 Q Okay. So you're not exactly sure on that?

6 A No, sir. Like I --

7 Q I understand. It's been a long time. It's been a long

8 time. Just to reiterate. By the time you guys were

9 finished playing hide and go seek it was completely dark?

10 A Yes, sir.

11 Q And that's why you said that -- you know, I guess when

12 you hit the edge of that light you guys decided to go back

13 inside?

14 A Yes, sir.

15 Q Because you were scared of the dark?

16 A Yes, sir.

17 Q Okay. After you guys stopped looking for -- let me

18 back up. Did you and Brandon go looking for Scott and Kris

19 -- K.B.

20 A Like I side, we -- we went to look for them but we only

21 looked in the spots that was light. We didn't go nowhere

22 where it was dark.

23 Q Okay. So you guys had been hiding prior to looking for

24 Scott and K.B.

25 A Yes, sir.

S.B.

CROSS-EXAMINATION

362

- 1 Q And nobody came and found you?
- 2 A No, sir.
- 3 Q So you guys decided to go figure out what's going on?
- 4 A Yes, sir.
- 5 Q Okay. How did you and Brandon find each other?
- 6 A Well, we were both hiding behind the car together.
- 7 Q Okay. So you guys were both hiding together now?
- 8 A Yes, sir.
- 9 Q Okay. How long did you guys -- you only looked in the
10 let areas?
- 11 A Yes, sir.
- 12 Q Approximately how long did you look for Scott and
13 K.B.
- 14 A Probably about 10 something minutes.
- 15 Q Ten something?
- 16 A (??).
- 17 Q Okay. And after you guys gave up looking for them
18 where did they go?
- 19 A To the porch where base was.
- 20 Q Okay. How long did you wait there?
- 21 A I'd say about -- I can't really remember.
- 22 Q Five minutes, 10 minutes?
- 23 A Possibly.
- 24 Q Okay. And right around, I guess, after five or 10
25 minutes that's when Scott and Kim, you say, came back to the

1 porch?

2 A No. Scott and my sister came back to the --

3 Q I mean, Scott and -- I'm sorry. I keep messing up
4 names. It's been a long day.

5 A Yes, sir.

6 Q So Scott and K.B. came back up to the porch?

7 A Yes, sir.

8 Q Okay. And you don't recall hearing anything about
9 kissing noises?

10 A No, sir. I can't remember.

11 Q Now, tell me exactly how it is that you remember this
12 day in particular?

13 A Well, how I remember it is because when my dad found
14 the diary, you know, he was all mad and we wanted to know
15 why, and that's when we found out that she had been raped
16 that night because it was written in the dictionary that
17 they were hidden behind the tree and he had did stuff to
18 her. I can't really remember that well of what it was or
19 what my parents told me, because they didn't want to get
20 detailed in with it with me because I was a young kid. But
21 that's all I remember is my dad finding out about it and
22 that it was on that night of the day we played hide and
23 seek.

24 Q Okay. Now, you said that your dad was really upset?

25 A Oh, he was more than upset.

S.B.

REDIRECT EXAMINATION

364

1 Q Okay. Like hit the roof?

2 A More than hit the roof.

3 Q More than hit the roof.

4 A Uh-huh (affirmative.)

5 Q Now, did your dad or did your mom ask you any questions
6 about what you remember?

7 A They asked me some.

8 Q They asked you some? Your dad or your mom?

9 A Mostly my mom. My dad was too upset to talk about it.

10 Q She just asked you about what happened?

11 A Yes, sir.

12 MR. NASROLLAHI: No further questions.

13 MR. BROWN: Judge, just a couple of things.

14 REDIRECT EXAMINATION

15 BY MR. BROWN:

16 Q Sam, how often did you and your sister and cousin play
17 hide and seek?

18 A Well, we would normally play -- not until it was dark.
19 Probably like when it was a little bit of light left out and
20 then probably go back in, chill out, watch TV and --

21 Q But you as a young kid would play with other young kids
22 at that time, right, hide and seek?

23 A Yes, sir.

24 Q How many times did you play hide and seek with Scott
25 Cross?

S.B.

REDIRECT EXAMINATION

365

- 1 A That one time.
- 2 Q That one time?
- 3 A Yes, sir.
- 4 Q Sam, do you have a good concept of time during the day
- 5 and what hours --
- 6 A No, sir.
- 7 Q How long do you think you've been on that stand today?
- 8 A Seems like a good while.
- 9 Q A good while?
- 10 A Yes, sir.
- 11 Q Do you remember being -- when you were nine or 10 did
- 12 you have a good -- did you have a good concept of time then
- 13 of hours and minutes and all that?
- 14 A No, sir. When I was a little kid I liked playing
- 15 around. I didn't really care about the time.
- 16 Q Did you wear a watch on your wrist then?
- 17 A No, sir.
- 18 Q Did you look at a clock every time you came in the
- 19 house then?
- 20 A No, sir.
- 21 Q Are you guessing at the time that --
- 22 A I was just guessing, sir.
- 23 Q Guessing what?
- 24 A The time.
- 25 Q At the time they got there?

1 A Yes, sir.

2 Q Are you guessing on when you all played hide and seek
3 around dark?

4 A Yes. Yes, sir.

5 Q You're guessing?

6 A Just guessing. Because, you know, I never had a watch.
7 We didn't have a clock in the house. When we looked --
8 wanted time, you know, we normally asked probably my dad
9 because he's the only one. He'd open his phone up and look
10 at the time, or my mom. They're the only ones with phones.

11 Q Well, what -- what was the lighting like outside when
12 you got done playing hide and seek?

13 A It was really dark.

14 Q It was dark?

15 A Yes, sir.

16 MR. BROWN: No further questions.

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

18 (Whereupon, the witness stepped down from the witness
19 stand.)

20 THE COURT: Solicitor, do you have a brief witness or
21 the next one is going to take a little bit longer?

22 MR. BROWN: It might take a little longer. It might be
23 a good time to break for the day.

24 THE COURT: All right. You all sit right there, hold
25 tight. Let me speak with you all over here about

JEREMY HANKS-DIRECT EXAMINATION

369

1 this point, Solicitor, if you'll call your next witness,
2 please.

3 MR. BROWN: The State calls Jeremy Hanks.

4 JEREMY HANKS, having been first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Good morning, Jeremy.

9 A Good morning.

10 Q Jeremy, I'm going to stand back here so I can get you
11 to talk a little louder so I can hear you back here so
12 everybody in the courtroom can hear you.

13 A All right.

14 Q Jeremy, what's your name? Full name.

15 A Jeremy David Hanks.

16 Q And, Jeremy, where do you live?

17 A In Iva, South Carolina.

18 Q In Iva. And how old are you?

19 A Thirty.

20 Q Thirty? Where do you -- who do you live with in Iva?

21 A My mother.

22 Q And are you related to the Byrums?

23 A No, sir.

24 Q How do you know the Byrums?

25 A I met them through -- just known them for a long time.

JEREMY HANKS-DIRECT EXAMINATION

370

- 1 Q Known them for a long time? Did you know them back in
2 the end of 2005?
- 3 A Yes, sir.
- 4 Q And do you remember December 29th, 2005?
- 5 A Yes, sir.
- 6 Q What do you remember about that day?
- 7 A Well, we had a get together there at Tony's house.
- 8 Q Tony -- who's Tony? Tony Byrum?
- 9 A Tony Byrum.
- 10 Q What time do you remember -- or can you remember what
11 time you got there to the house that day?
- 12 A Around 5:30.
- 13 Q To the Byrums' house?
- 14 A Yeah.
- 15 Q Who was at the Byrums' house when you got there?
- 16 A It was me, Tony, his wife, his two kids and their
17 little cousin, Scott Cross, Kim. His wife or whatever.
- 18 Q Okay. And around 5:30 in the afternoon you said you
19 got there?
- 20 A Yeah.
- 21 Q While you were there what did you all do? Or what do
22 you remember?
- 23 A We was in the inside just watching TV, and Scott was
24 outside playing hide and go seek with the kids.
- 25 Q Who was on the inside watching TV?

JEREMY HANKS-CROSS EXAMINATION

371

1 A All the adults.

2 Q All the adults, or who -- who was in there? Who do you
3 remember watching TV?

4 A Me, Tony, Kim, Angie.

5 Q Was Tony there the whole time?

6 A Well, until he left and went and got us something to
7 eat.

8 Q So Tony left. But who -- after Tony left who was
9 inside?

10 A Me, Angie, Kim.

11 Q And who was outside?

12 A Tony's son, his nephew, and his daughter, and Scott
13 Cross.

14 Q What do you remember -- what do you remember after
15 that?

16 A Well, he said he got -- Scott said he got sick. And
17 Tony had left to go get something to eat, so he said he'd be
18 back in a minute maybe with something to eat that would help
19 him. Because I didn't know if he was a diabetic, but he was
20 sweating and stuff.

21 Q What did he look like when he came in from playing hide
22 and seek?

23 A He was like he was having a nervous breakdown or
24 diabetic, something or another.

25 Q You said he -- was he sweating?

JEREMY HANKS-CROSS EXAMINATION

372

1 A Pulsating.

2 Q He was what?

3 A He was like pulsating sweat.

4 Q After they came back in from playing hide and seek how
5 long did the Crosses stay at the Byrums' house?

6 A Probably 25 to 35 minutes at the most.

7 Q And did Tony get back?

8 A No.

9 Q When did they leave? Did they leave before Tony got
10 back?

11 A Yeah. Yes, sir.

12 Q Is that pretty much all you remember from that day?

13 A Yes, sir.

14 MR. BROWN: No further questions.

15 THE COURT: Cross.

16 CROSS EXAMINATION

17 BY MR. NASROLLAHI:

18 Q You got there at 5:30?

19 A Yes, sir.

20 Q Okay. And by that time the children were outside
21 playing hide and go seek?

22 A Yes, sir.

23 Q Scott was out there playing hide and go seek?

24 A Yes, sir.

25 Q And Tony Byrum was still at the house?

JEREMY HANKS-CROSS EXAMINATION

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- 1 A Yeah.
- 2 Q When you got there?
- 3 A Uh-huh (affirmative.)
- 4 Q Approximately how long after you got there did Tony
- 5 Byrum leave?
- 6 A A couple of hours.
- 7 Q A couple of hours after you got there Tony Byrum left
- 8 to go get food?
- 9 A Let to go get something.
- 10 Q Okay. And when he left to go get -- when he left to go
- 11 get food were Scott and Kim still there?
- 12 A Yes, sir.
- 13 Q And was -- when -- by a couple of hours, I mean, you're
- 14 saying about two hours after that?
- 15 A Yeah.
- 16 Q After you got there?
- 17 A Two and a half.
- 18 Q Two and a half. So around 7:30, 8:00, that's when Tony
- 19 Byrum left to go get some food?
- 20 A Yes, sir.
- 21 Q And at that time Scott and the three children were
- 22 still outside --
- 23 A Yes, sir.
- 24 Q -- playing hide and go seek?
- 25 A Uh-huh (affirmative.)

JEREMY HANKS-CROSS EXAMINATION

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- 1 Q Do you recall exactly how long Tony was gone?
- 2 A Maybe two, three hours.
- 3 Q Tony was gone for two or three hours?
- 4 A Yeah, at the most.
- 5 Q To go get some food?
- 6 A Yes, sir.
- 7 Q Okay. So he left around, would you say, 7:30, 8:00?
- 8 A Yes, sir.
- 9 Q And was gone for two or three hours to go get some
10 food?
- 11 A Yes, sir.
- 12 Q So he would have been getting back around 10:00 or
13 11:00 with the food?
- 14 A Yes, sir.
- 15 Q And approximately how long after Tony Byrum left did
16 Scott Cross come back inside the house?
- 17 A It was probably around two and a half hours.
- 18 Q After Tony left? That's when he came back inside?
- 19 A Yeah.
- 20 Q So he came back inside the house around 10:00 or 11:00?
- 21 A Yeah. Like right before Tony got back.
- 22 Q Before Tony got back?
- 23 A Uh-huh (affirmative.)
- 24 Q And is it safe to say that 10:00 or 11:00 is completely
25 dark outside?

JEREMY HANKS-REDIRECT EXAMINATION

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1 A Yes, sir.

2 Q So when you got there at 5:30 Scott Cross and the three
3 children were outside playing hide and go seek?

4 A Yes, sir.

5 Q Okay. How did you know they were playing hide and go
6 seek?

7 A Because when he came back in that's what they said they
8 did.

9 Q They came back in around 10:00 or 11:00 they said
10 that's what they're doing?

11 A Uh-huh (affirmative.)

12 Q So they got there at 5:30. Scott Cross came back in
13 the house around 10:00 or 11:00?

14 A Yes, sir.

15 Q So he had been out there playing hide and go seek with
16 three kids --

17 A Yes, sir.

18 Q -- for about four and a half hours --

19 A Yes, sir.

20 Q -- five hours? Okay. Have you discussed your
21 testimony with anyone else prior to today?

22 A Yes, sir. Just...

23 Q Just who?

24 A Huh?

25 Q Just who? Who?

JEREMY HANKS-REDIRECT EXAMINATION

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1 A The gentleman.

2 Q Do you recall telling him the exact same thing you're
3 telling the jury now?

4 A Yes, sir.

5 MR. NASROLLAHI: No further questions.

6 REDIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Mr. Hanks, do you remember -- are you good with time --
9 about roughly how long something took?

10 A Not too good.

11 Q Not too good. Do you remember on that day though, do
12 you remember who was at the house?

13 A Yes, sir.

14 Q And do you remember what they were -- do you remember
15 when -- who was at the house when they were playing hide and
16 seek?

17 A Yes, sir.

18 Q And who was at the house?

19 A Tony, Scott, Kim, Angie, me and their two kids and the
20 nephew.

21 Q Do you know exactly when Tony left?

22 A About 7:30, 8:00.

23 Q Do you know that time to be a definite time or are you
24 just guessing on the time?

25 A I'm just guessing from eight years ago.

JEREMY HANKS-REDIRECT EXAMINATION

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1 Q So being eight years ago you can't really remember the
2 exact times?

3 A No, sir.

4 Q You just remember -- you remember who was at the house?

5 A Yes, sir.

6 Q And what they were doing?

7 A Uh-huh (affirmative.)

8 Q And you remember your observations with the kids and
9 Mr. Cross came back up to the house?

10 A Yes, sir.

11 Q And what did you observe?

12 A He was sweating like he was having some kind of nervous
13 breakdown or something.

14 Q Mr. Hanks, you live in Iva?

15 A Uh-huh (affirmative.)

16 Q How far away would -- how long would it take you to get
17 to the Byrums' house from right there in downtown Iva?

18 A Twenty, 30 minutes.

19 Q Twenty, 30 minutes?

20 A Uh-huh (affirmative.)

21 Q Are you sure about that or are you just guessing?

22 A I'm sure, because they -- they live like way down
23 almost, you know.

24 Q How long does it take you to get to Abbeville
25 Courthouse from Iva?

JEREMY HANKS-RE-CROSS-EXAMINATION

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- 1 A About 35, 40 minutes.
- 2 Q Thirty-five, 40 minutes?
- 3 A You go speed limits.
- 4 Q Are you sure it took Tony Bryum three hours to go to
5 Iva to get food, or are you guessing on that? Do you
6 remember exactly, or are you just thinking he was gone for a
7 while?
- 8 A I'm pretty sure it took him about two hours.
- 9 Q It took two hours?
- 10 A Uh-huh (affirmative.)
- 11 Q Regardless of time, you know who was at the house that
12 night, right?
- 13 A Yes, sir.
- 14 Q And is James Scott Cross, is he in the courtroom today?
- 15 A Yes, sir.
- 16 Q Where is he?
- 17 A Right over there.
- 18 Q What's he wearing?
- 19 A A blue shirt.
- 20 Q Are you confident he was at that house that night?
- 21 A Yes, sir.
- 22 Q And he was outside playing hide and seek with the kids?
- 23 A Yes, sir.
- 24 Q No further questions.
- 25 THE COURT: Thank you, sir. You can step down -- or

ANGELA BYRUM-DIRECT EXAMINATION

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1 did you have another question?

2 MR. NASROLLAHI: Real briefly..

3 THE COURT: Go ahead.

4 RE CROSS EXAMINATION

5 BY MR. NASROLLAHI:

6 Q By the time Tony Byrum left your house -- left his
7 house, was it dark outside?

8 A Yes, sir.

9 Q Okay. When Scott Cross came in approximately two hours
10 later --

11 A Uh-huh (affirmative.)

12 Q -- it was completely dark outside?

13 A Yes, sir.

14 Q Okay. When Tony Byrum got back from getting food it
15 was completely dark outside?

16 A Yes, sir.

17 MR. NASROLLAHI: That's all I have.

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

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

21 THE COURT: Call your next witness, Solicitor.

22 MR. BROWN: The State calls Angela Byrum.

23 ANGELA BYRUM, having been first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

ANGELA BYRUM-DIRECT EXAMINATION

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- 1 BY MR. BROWN:
- 2 Q Good morning.
- 3 A Good morning.
- 4 Q Restate your full name for me.
- 5 A Angela Michelle Byrum.
- 6 Q Ms. Byrum, are you married?
- 7 A Yes.
- 8 Q Who's your husband?
- 9 A Tony Byrum, Jr.
- 10 Q And do you have any children?
- 11 A Yes.
- 12 Q Who are they?
- 13 A K.B. and S.B.
- 14 Q And who else is in your family that live around here?
- 15 A My mother-in-law, Elizabeth Byrum, Tony Byrum, my
- 16 father-in-law, Joseph Byrum, my brother-in-law, Emanuel
- 17 Byrum, my brother-in-law, [REDACTED] my nephew. That's
- 18 close family that's closest to me.
- 19 Q Closest to you. Now, Ms. Byrum, how -- do you remember
- 20 -- getting to the chase. Do you remember December 29th,
- 21 2005?
- 22 A Yes.
- 23 Q What do you remember about that date?
- 24 A I remember the day because it was an odd day for
- 25 December. It was kind of -- it was a real pretty day. It

1 wasn't like winter jacket cold. It was like maybe a light
2 jacket kind of weather. The sun was shining. It was really
3 pretty outside.

4 Q And did you -- who was all at your house that day, or
5 who came into your house that day?

6 A Me, my husband, my son, my daughter, my nephew, and
7 then Scott and Kim come to my house later that afternoon
8 probably around -- probably around 3:00 or so.

9 Q Did anybody else come to your house that day?

10 A Jeremy Hanks.

11 Q And how do you know Jeremy Hanks?

12 A My brother went to school with Jeremy and that's how I
13 sort of -- I knew Jeremy before because my cousin had
14 married his mother and I knew Judy and I knew -- his mother,
15 Judy, and then I knew Jeremy. But I got to know Jeremy when
16 my brother -- him and my brother become friends in school.
17 And when my brother would come they -- you know, they'd come
18 over to our house, teenagers. They'd come over and visit
19 us.

20 Q Did he come over regularly?

21 A Yes.

22 Q Kind of just hang out with you?

23 A Yes. He -- he took a liking to Tony, so he -- yeah, he
24 liked to come over and just hang out, and him and Tony have
25 -- you know, Tony kind of took him under his wing and just

ANGELA BYRUM-DIRECT EXAMINATION

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1 befriended him, and they've been friends ever since.

2 Q Now, Ms. Byrum, how do you know Kim and Scott Cross?

3 A Well, I -- me and Kim become friends -- I don't know
4 how many years ago. I met her through the guy that she was
5 dating at the time, Shane Brown, and we just kind of
6 clicked, you know, and we were friends. We had been friends
7 for a long time. And then we kind of -- for a little while
8 kind of went -- she went her way, I went my way, and then we
9 reconnected. And when we reconnected she was dating Mr.
10 Cross.

11 Q So you all have been long time friends?

12 A Yes.

13 Q Were you all friends in 2005?

14 A Yes. Best friends.

15 Q And would they come over to your house sometimes?

16 A Yes.

17 Q Would you sometimes go to their house in Anderson?

18 A Yes.

19 Q Where would you -- would sometimes -- would you allow

20 K.B. to go stay at their house in Anderson sometimes?

21 A Yes, I did. I trust Kim with my children because she
22 was a -- I thought that she was my best friend and I thought
23 that she would protect my children --

24 Q Were you --

25 A -- the same way.

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1 Q You were actually in their wedding, weren't you?

2 A Yes.

3 Q And what do you remember -- going back to December
4 29th, 2005, what do you remember happening -- or what do you
5 remember after everybody got to your house?

6 A Whenever everybody come in the house -- well, my
7 daughter come in first and she went to -- she went straight
8 to her bedroom.

9 Q Let's back up. When -- I guess when Jeremy came over,
10 or when everybody got there -- kind of what were you all
11 doing when everybody got there initially?

12 A Well, the kids were kind of in and out playing. Kim
13 and Scott had come in the house -- when they first got there
14 they had come in the house and we was just sitting around
15 talking and stuff. Then, you know, the kids got to
16 hollering they was hungry and I didn't have anything in the
17 house, so somewhere within that time I asked Tony would he
18 go to the store, you know, to get something to eat,
19 something to drink, you know, for everybody. And so, the
20 kids started playing. They were kind of in and out of the
21 house. I was kind of in and out of the house, because Kim
22 was pregnant and she was in the house and I didn't want to
23 leave her in the house by herself while my kids were outside
24 playing. So I would go outside and check on them, come in
25 the house and sit with her. You know, it was kind of back

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1 and forth like that.

2 Q You said she was pregnant. How far along was she?

3 A I don't remember. I just know that she was very
4 pregnant. She was very round.

5 Q She was --

6 A Yeah, she was --

7 Q -- pretty far along?

8 A -- pretty far along.

9 Q Now, after -- when did Tony go get the food for the
10 kids?

11 A It was probably right before it started -- before it
12 started getting dark, because the kids went outside to play
13 hide and go seek. And so, he left and they started playing
14 out -- playing hide and go seek outside.

15 Q Who all played hide and seek?

16 A Sam, Brandon, K.B. and Scott.

17 Q Did you think anything of it at that time that --

18 A I did not --

19 Q -- an adult, Scott, went out there to play hide and
20 seek?

21 A I did not, because I play with my kids, you know. I
22 mean, and he never -- never give me any kind of reason or
23 thought that it -- you know, that he would do anything to
24 hurt my children. You know, he always just joked and cut up
25 with my kids, you know. Because he had a daughter of his

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1 own, you know. I just -- he didn't give me any reason to
2 feel unsafe about it.

3 Q And how long do you remember were they out playing hide
4 and seek, if you can remember?

5 A I'd probably say about 45 minutes to an hour. I think
6 they might have played a couple two or three games. Because
7 my son is -- he's afraid of the dark and when it gets --
8 when it gets past dusk he's -- he's not going to be outside,
9 so...

10 Q And where was Tony when they were playing?

11 A He was gone to the store.

12 Q How long do you think Tony was gone?

13 A Probably close to an hour.

14 Q And when -- tell me about the lighting around your
15 house.

16 A I had a --

17 Q If it gets dark at night where do you all have lights?

18 A On my front porch.

19 Q I'm going to show you what's been marked as State's
20 Evidence 1. What is that?

21 A That's my front porch.

22 Q What's the address of that house?

23 A [REDACTED] North, Iva.

24 Q What county is that in?

25 A Abbeville.

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1 Q And what state is that in?

2 A South Carolina.

3 Q And were you living in that house December 29th, 2005?

4 A Yes.

5 Q And you were saying the lighting. Where were the
6 lights on that house?

7 A We had one on the -- on the wall of the -- beside the
8 door, I'm thinking. But Tony had a floor light that he kept
9 on the -- that he kept on the front porch that shine -- it
10 would shine at an angle down our driveway.

11 Q I want to show you what's been marked as State's
12 Evidence 8. What does that show?

13 A Yeah, see, the light that Tony had would shine -- see
14 where the big tree is at? It would shine down that way like
15 where the driveway's at, because of the way the house is and
16 the front porch, because he had it on the front like where
17 the -- this side. This side of the house.

18 MR. BROWN: Judge, permission to -- if she wants to
19 step down --

20 THE COURT: If she needs -- if she needs to step down
21 to show where she's indicating, go ahead, ma'am.

22 (Whereupon, the witness steps down from the witness
23 stand.)

24 A Right here is where the floor light was at and it
25 pointed like this right here, so it went -- when it shined.

1 Like right -- right here. It went down like this at an
2 angle until it just cutoff towards middle ways of the
3 driveway.

4 Q So -- you can take your seat.

5 (Whereupon, witness returns to the witness stand.)

6 Q So it basically just covered the driveway?

7 A Yes.

8 Q Did you have any floodlights or any lights in the back
9 of that house?

10 A No, sir.

11 Q Now, Ms. Byrum, when you -- I'm going to show you also
12 what's been marked State's Evidence 9. Who is that?

13 A That's K.B.

14 Q Do you know how old she was in that picture?

15 A Thirteen.

16 Q How do you know that?

17 A Because it's a school picture.

18 Q School picture from that time?

19 A Uh-huh (affirmative.)

20 Q Now, Ms. Byrum, when they got done playing hide and
21 seek what do you remember?

22 A I remember K.B. coming in first and she went
23 straight to her bedroom, and then I remember Scott coming
24 in, and my boys were on the porch when they come in, and
25 then my boys just followed behind and they come in. And

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1 when Scott come in he was sweating, he was pale, he was
2 shaking. And he -- he said he was having an attack of some
3 sort and said that he needed to go home. And I offered a
4 wet rag. I offered a drink of water. I offered anything
5 that I could to try to make him feel better, because I
6 didn't know what was going on with him, and he just was
7 adamant about going. And I kept telling him that my husband
8 would be back with something to eat. I thought maybe
9 something to eat or something to drink might help him. He
10 was like no, I've got to go. I've got to go. I've got to
11 go. And then they got up and they left.

12 Q How long do you think they were in the house after they
13 got done playing hide and seek?

14 A How long they were in the house?

15 Q Or how long they stayed at your house?

16 A It wasn't long. Once they come in the house and he was
17 all -- just whatever was happening to him -- I didn't know
18 at the time what was happening to him. It was probably 15
19 minutes, maybe 20 at the most. It wasn't very long at all.

20 Q And had Tony gotten back by the time they left?

21 A No.

22 Q What do you remember K.B. doing that night after
23 they got -- after she came in from playing hide and seek?

24 A She came in and she went straight to her bedroom and
25 she stayed in her bedroom for -- for a little while. And

1 her being 13-years-old to me, you know, 13-year-old girls
2 like to stay in their room and listen to their music and,
3 you know, or talk to a friend or something, so I didn't
4 really think nothing of it. And I guess maybe an hour, hour
5 and a half later or so she come out and went to the bathroom
6 and took a bath and went to bed.

7 Q Did she tell you anything that went on that night?

8 A No.

9 Q How did you find out about what happened that night
10 with Scott and K.B.

11 A She went to spend the night with her grandma and
12 grandpa.

13 Q Which grandmother and grandfather?

14 A Tony and Elizabeth Byrum. And my husband's kind of a
15 nosey father. He likes to know what's going on with his
16 kids. And so, he just -- he went in her room and he was
17 just being a nosey daddy, rambling around, and he found --
18 we had bought her a little -- little key latch diary like
19 you get from the Dollar Store. He found it and opened it up
20 and he looked at me and he was like please tell me this
21 don't say what I think it says, and he handed me the diary
22 and I read the pages, and I just told him, I said, yeah. It
23 says exactly what you read. And it upset him so bad that he
24 -- he was trying to leave the house. And our car happened
25 to be tore up at the time, so he couldn't -- he didn't have

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1 a way to leave, because he was so mad.

2 Q Where do you think he was going?

3 A Going to find him.

4 Q But your car was broken?

5 A Yes.

6 Q After you read that what did you do?

7 A I -- the next day I called and told K.B. that I
8 needed her to come home. That I really needed to talk to
9 her. It was real important. And so, they brought her home
10 and I took her into my bedroom, just me and her, and I
11 locked the door and I sit her down on my bed and I told her,
12 I said, baby, I said, this is what's happened. And I told
13 her that daddy had read her diary and that momma had read
14 her diary and that I needed for her to tell momma everything
15 in detail what had happened. And we sit there for about two
16 and a half hours while my youngin described in detail what
17 had happened to her that night.

18 Q And what did she say -- or what did -- who did she say
19 did something to her that night?

20 A Scott Cross.

21 Q Scott -- is Scott Cross in this courtroom?

22 A Yes.

23 Q Point him out to me.

24 (Whereupon, witness points to Defendant.)

25 Q What's he wearing?

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1 A He's wearing a blue shirt and tie.

2 Q Does he have any facial hair?

3 A Yes.

4 Q After you talked to K.B. that day what did you do?

5 A We called the law.

6 Q Who did you call?

7 A Called Abbeville County.

8 Q And what did Abbeville County do?

9 A It was an officer that come out to our house.

10 Q Do you remember what the officer looked like?

11 A I do not.

12 Q Was it a male or a female?

13 A I think it was a female.

14 Q Did you then have to go -- or what did you tell the law
15 officers when they got there to your house? Did they take a
16 report right then or did you just talk to them initially?

17 A We talked to them and told them how we found out what
18 had happened and -- it's been so long it's so hard to
19 remember. I think he wrote some stuff down, or she. I
20 can't remember. But I do know that we were told to go to
21 the sheriff's -- to county to file reports on this. On what
22 had happened.

23 Q What did you do -- you talked about you read the diary
24 and all. What did you do with the diary when the deputies
25 came to your house?

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1 A I took the diary with me when we went to county. And I
2 -- I initially tore the pages out of what she had wrote,
3 because it wasn't the whole diary. It was just -- it was
4 several pages that she had wrote in the diary. I tore the
5 pages out and give them to Abbeville County.

6 Q Do you remember who you gave them to?

7 A I do not.

8 Q You can't say for sure which deputy you gave them to?

9 A I cannot.

10 Q Did you make -- did you make a copy before you gave it
11 to the sheriff's department?

12 A I did not.

13 Q So what you remember the diary saying is what you can
14 testify here today to? You don't know what the sheriff's
15 department did with it?

16 A I do not.

17 Q But you're saying there was a diary and that's how you
18 found out about it?

19 A Yes.

20 Q Now, after the sheriff's department -- after you made a
21 report to the sheriff's department what do you remember
22 happening after that?

23 A She -- they made arrangements for her to start going to
24 the Child's Place which was to get her counseling and help
25 to get through this. She had to go to have a pelvic exam to

1 see if anything -- any damage had been done. If there was
2 any kind of anything.

3 Q How long after the alleged -- after the incident with
4 Scott Cross did she go -- when did she go get that medical
5 exam?

6 A January.

7 Q In January?

8 A I think.

9 Q Or do you even remember?

10 A I'll say I don't remember because I'm not positive.

11 Q But you just remember she went and got a medical exam?

12 A Yes.

13 Q Ms. Byrum, was there any ill will between you and Scott
14 Cross or any ill will between you and Kim Cross?

15 A While we were friends?

16 Q Yeah. When they came over to your house that night?

17 A No.

18 Q Would you have let them come over to your house that
19 night if you all were in a bad relationship?

20 A No.

21 Q What did -- weren't you in their wedding --

22 A Yes.

23 Q -- the early part of January --

24 A Yes.

25 Q -- right after this because K.B. -

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1 A Yes.

2 Q After -- it was before you read the diary?

3 A Yes.

4 Q Ms. Byrum, what do you observe -- or how have you
5 watched your daughter since that time on December 29th,
6 2005? What have you noticed?

7 A Around that time every year my daughter sinks into a
8 depression. She withdraws from everybody. She does not --
9 she doesn't feel worthy to be alive because she hurts so
10 bad. And this lasts for a while. As a mother I feel like
11 I've let her down. I try to be there, be supportive and
12 love her and tell her that it's not her fault. That she
13 feels worthy to be alive because she's my child and I love
14 her with all my heart and that it's going to be okay. And
15 it's every year for the last eight years. I have to do this
16 every year. I have -- I have to talk my child into
17 believing that she's -- her life is worth living and that
18 she means a lot to a lot of us. And it's really hard to do
19 that because I feel like if I had never been friends with
20 Kim to start with that none of this would have ever happened
21 to my child.

22 MR. BROWN: No further question.

23 THE COURT: Tara, do you need a moment? Are you okay?

24 COURT REPORTER: Yes, sir.

25 THE COURT: Cross, please.

1 MR. NASROLLAHI: May it please the court.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. NASROLLAHI:

5 Q Angela, you said today and on prior occasions you tore
6 the pages out of the diary?

7 A Yes.

8 Q Okay. It was a single entry that your daughter had
9 made into this diary? It wasn't like you were looking
10 through the diary to find this particular page. It was a
11 single entry she had made in the diary about --

12 A It wasn't just one sheet. It was several sheets.

13 Q But I'm just saying, we're not talking about multiple
14 dates in the diary. We're talking about --

15 A No.

16 Q -- one entry in the diary, multiple pages?

17 A Yes.

18 Q You tore that out?

19 A Yes.

20 Q And you gave that and the diary -- the rest of the
21 diary to law enforcement at the law enforcement complex --

22 A Yes.

23 Q -- when you were taken up there. So you had that in
24 your possession all the way up to the time you arrived at
25 the law enforcement complex?

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1 A Yes.

2 Q Okay. Now, I want to talk to you about what's happened
3 after December 29th, 2005. Okay?

4 A Okay.

5 Q Now, the date that you say that your daughter -- or
6 that -- let me back up. The date that you say that your
7 husband read your daughter's diary was approximately January
8 25th, January 26th?

9 A Yes, I -- yeah. I don't know. I can't remember.

10 Q Okay. Do you recall talking to Susan Bentley, the lady
11 who performed the interview at the Child's Place about the
12 history of K.B. mental and physical health in addition
13 to the allegations in this case. Do you remember giving her
14 that background?

15 A I do not, but I know we went to Child's Place. I can't
16 -- I can't remember anybody's name. But I do know that they
17 talked to me when we went to Child's Place.

18 Q Right. Do you remember on the first time that you went
19 to Child's Place speaking with someone and giving them a
20 background on both the health of your daughter and the
21 allegations in this case?

22 A I remember speaking to somebody, but I don't -- I don't
23 remember -- I mean, I know it was -- I don't know. I'm just
24 --

25 Q Okay. So you don't recall telling Susan Bentley that

1 it was January 26th when you confronted your daughter with
2 her diary?

3 A I do not remember.

4 Q So approximately -- you would still agree with me it
5 was around January 25th or January 26th when the diary was
6 discovered by her father?

7 A Yes.

8 Q Okay. Now, I want to talk to you about the day that
9 your husband found the diary. He read it but he didn't read
10 all of it?

11 A He did not.

12 Q He did not. He came to you trembling, angry, standing
13 there with the diary in his hands?

14 A Yes.

15 Q Okay. He said I've read a little bit but I can't read
16 any more?

17 A He asked me would I please read it and tell him that it
18 does not say what he thinks it says.

19 Q Okay. And so at that point you took the diary from him
20 and you read it?

21 A Yes, I did.

22 Q And you read the entire story of what happened on
23 December 29th according to your daughter's diary?

24 A Yes.

25 Q Okay. And you were shocked and you were horrified?

ANGELA BYRUM-CROSS-EXAMINATION

398

1 A Yes.

2 Q You were so shocked, you were so horrified, but you
3 didn't go get your daughter?

4 A I did not.

5 Q You were so shocked and you were so horrified that you
6 didn't talk to your daughter until the next day?

7 A When my husband found the diary it was 12:30 at night
8 and my child was in the bed asleep. That is why I did not
9 get my child or call my child that night.

10 Q So you were so shocked and you were so horrified that
11 you didn't go get your daughter?

12 A At 12:30 at night? No, I didn't.

13 Q 12:30 at night?

14 A I did not.

15 Q You were so shocked and you were so horrified by what
16 you read in your diary you didn't call her grandparents and
17 say wake my daughter up, I need to talk to her right now?

18 A I did not. My car --

19 Q You were so shocked and you were so horrified by what
20 you read in that diary that you didn't call the police
21 immediately?

22 A I did not.

23 Q Okay. You were so shocked and you were so horrified of
24 what you read in that diary that you didn't call the police
25 until January 31st, five days later?

ANGELA BYRUM-CROSS-EXAMINATION

399

1 A No.

2 MR. NASROLLAHI: Permission to approach.

3 THE COURT: Please.

4 Q I'm going to show you this document. Just take a
5 second to read over it. Does that appear to be a 911 CAD
6 report?

7 A It's a -- I don't know. I just know what it says.

8 MR. NASROLLAHI: I'd like to have this marked.

9 THE COURT: What are we up to, Defendant's 2, 3?

10 MR. NASROLLAHI: Well, for identification purposes, 2.

11 THE COURT: Right.

12 (Whereupon, CAD report was marked as Defendant's
13 Exhibit Number 2 for identification.)

14 THE COURT: The witness is requesting just a brief
15 break. We're going to go ahead and take a break. Ma'am,
16 please don't discuss your testimony with anybody while we're
17 on break. Ladies and gentlemen of the jury, if you'll
18 adjourn to the back of the jury room. Please don't discuss
19 the case. Thank you.

20 (Whereupon, the jury exits the courtroom at 10:14
21 a.m.)

22 (Whereupon, a recess was taken from 10:14 a.m. to 10:25
23 a.m.)

24 THE COURT: Let's go back on the record. The last
25 witness is back on the witness stand. Let's have the jury

ANGELA BYRUM-CROSS-EXAMINATION

400

1 back, please.

2 (Whereupon, the jury entered the courtroom at 10:25
3 a.m.)

4 THE COURT: Let the record reflect that the jury is
5 back and seated. Mr. Nasrollahi, you may continue, please.

6 MR. NASROLLAHI: At this time I'd like to move this
7 into evidence as Defendant's 1.

8 THE COURT: Defendant's 2? Is it 2 or 1?

9 MR. NASROLLAHI: We have two identification exhibits.
10 This would be our first entry into evidence. I don't know
11 how that --

12 THE COURT: Any objection to --

13 MR. BROWN: No objection.

14 THE COURT: Without objection, Defendant's 2 will be in
15 evidence.

16 (Whereupon, Defendant's Exhibit Number 2 was entered
17 into evidence.)

18 Q Now, you recall calling 911 to make a report, right?

19 A Yes.

20 Q Okay. Do you recall calling them on January 31st of
21 2006?

22 A No.

23 Q No, you don't recall calling them on January 31st?

24 A I do not recall the date that I called them.

25 Q Okay. Now, let's take a step back before I get into

1 this. Now, you testified that you don't recall speaking to
2 anybody at the Child's Place about the history of these
3 allegations?

4 A I do remember speaking to somebody about the history of
5 these allegations, but I do not remember talking to anybody
6 about her background or what -- whatever that questions was
7 you asked me.

8 Q Okay. And the day that your husband came to you with
9 that diary and he showed you that diary that day changed
10 your life, didn't it?

11 A Yes, it did.

12 Q It was a horrible day.

13 A Yes, it was.

14 Q Probably the most horrible day of your life?

15 A Yes, it was.

16 Q Reading that diary is still as vivid in your memory
17 today as it was the day that you were reading it?

18 A Pretty much.

19 Q You've been scarred by what you read in that diary?

20 A Yes, I have.

21 Q Today you can take the stand and tell this jury your
22 story detail by detail of what happened on December 29th,
23 2005, but you can't tell them the date of the worst day of
24 your life?

25 A I cannot tell a date.

ANGELA BYRUM-CROSS-EXAMINATION

402

1 Q Okay. You told 911 that they needed to send an officer
2 out there to take a report.

3 A Yes.

4 Q You didn't say send an ambulance?

5 A I did not.

6 Q You didn't say bring a rape kit out here?

7 A It had been over a month and I did not request a rape
8 kit because there would have been nothing there for them to
9 test.

10 Q You just wanted to file a report?

11 A I wanted justice for my child.

12 Q You wanted justice for your child over the health and
13 safety of your child?

14 A I did not say that.

15 Q Let's talk about your concerns about the health and
16 safety of your daughter. You said to this jury that this
17 was such a traumatic episode for your daughter that every
18 year around the same time she gets depressed and withdrawn.

19 A Yes.

20 Q And she doesn't think that she's worthy of living?

21 A Yes.

22 Q That must be something terrible for a child to go
23 through?

24 A Yes.

25 Q A horrible experience for a child?

1 A Yes.

2 Q Something no child should have to deal with alone.

3 A Yes.

4 Q Something that a child would need professional help
5 with to deal with? And you saw your child go through all
6 this, didn't you?

7 A Yes.

8 Q That's what you say happened. And that's why after
9 only three months of counseling you stopped taking her to
10 see her therapist. Your last visit with her sexual trauma
11 counselor was on June the 7th of 2006. After that you
12 stopped taking her. Despite all the trauma that she'd been
13 through and the yearly relapses that's deep in horrible
14 depression, you didn't think it warranted taking her to see
15 a therapist?

16 A I do believe that she needed to still see a therapist,
17 but because I work a job that only pays less than minimum
18 wage, and if I do not have a way to go 50 to 70 miles one
19 way to get her there and the same amount of time to get her
20 back with a car that does not run and a job that does not
21 pay enough to put -- hardly put gas, much less food on my
22 table, it's very hard to do. I am -- I am -- I work day by
23 day. I get paid on a daily basis, and I have always worked
24 that way and it's very hard for me to get from Iva to
25 Greenwood. I was having to -- I was having to ask people to

ANGELA BYRUM-CROSS-EXAMINATION

404

1 take us as long as she did go, and when I couldn't get
2 anybody else to help then I had no choice.

3 Q And for seven years you just couldn't find the time to
4 take her to see a counselor?

5 A I did not say the time. I said I did not have --

6 Q Couldn't find -- couldn't find --

7 A -- the financial situation.

8 MR. BROWN: Judge, if he'll let her answer the
9 question.

10 THE COURT: We need to -- if we could, we need to stop
11 talking over each other, please, because it makes it very
12 difficult for my court reporter. So you were saying, ma'am?
13 You wanted to finish.

14 A I did not say what he said. It was financially
15 difficult for my family to -- because we have no insurance
16 and I have no way to pay for therapy.

17 Q At the time your daughter was going to the Child's
18 Place that tab was being picked up by the State's Office of
19 Victim's Assistance.

20 A My gas wasn't.

21 Q You weren't paying anything out of your pocket to take
22 her to see Kim Perry at the Child's Place in Greenwood?

23 A How do you know that? Did you drive me? No.

24 Q I'm asking you. Did you pay Kim Perry for counseling
25 sessions?

ANGELA BYRUM-CROSS-EXAMINATION

405

1 A I did not pay anybody for counseling sessions.

2 Q Okay. So your daughter was receiving counseling
3 sessions free of charge to you?

4 A Yes.

5 Q Now, on February 22nd of 2006 your daughter had her
6 pelvis examined and the results of an STD screen; is that
7 right?

8 A I know she had an exam but I don't know what date it
9 was.

10 Q And she was given an initial STD screen, and then you
11 were scheduled for a followup STD screen, correct?

12 A I don't know.

13 Q You don't know?

14 A No.

15 Q So you don't recall having your husband call the
16 Child's Place to reschedule the first followup screen?

17 A Excuse me? Say that one more time, please.

18 Q You do not recall having your husband, Tony Byrum, call
19 the Child's Place and tell them to please reschedule the STD
20 screen?

21 A I do not recall Tony -- asking Tony, because Tony does
22 not take care of major medical things like that. I take
23 care of those kind of things.

24 Q Okay. So if anybody would have called to reschedule it
25 would have been you?

ANGELA BYRUM-CROSS-EXAMINATION

406

- 1 A More than likely.
- 2 Q Okay. But nevertheless a followup screening was
3 scheduled for your daughter?
- 4 A I don't remember.
- 5 Q Okay. On December 29th, 2005 where were you living?
6 What was your street address?
- 7 A [REDACTED], Iva, Abbeville County.
- 8 Q How long after December 29th, 2005 were you living at
9 that address?
- 10 A How long did I live at that address after that day?
- 11 Q Yes.
- 12 A I don't know.
- 13 Q When did you move out of that house?
- 14 A I don't -- I do not remember.
- 15 Q Were you there for another year?
- 16 A I don't remember.
- 17 Q You don't remember. Okay. So I'm guessing you don't
18 recall receiving a letter dated October 19th, 2006 from the
19 Child's Place begging you to schedule a followup a STD
20 screen?
- 21 A I don't -- I don't know.
- 22 Q You don't recall receiving a letter on October 11th,
23 2006 saying please come in for a followup screening. It's
24 important to your daughter's health.
- 25 A I do not.

1 Q Okay. And so, you certainly don't remember getting a
2 letter dated September 13th, 2006 from the Child's Place
3 months after you recorded this event saying please, please,
4 please bring your daughter in --

5 A Can I see the letter where it says please, please,
6 please, please?

7 Q Certainly. I'll show all three of them to you.

8 MR. NASROLLAHI: Permission to approach.

9 THE COURT: Please.

10 Q Here you go.

11 A Nowhere in these papers do I read where it says please,
12 please, please, please. But yes, it does ask that I bring
13 her back for a followup. And as I said before, financial
14 matters has kept me from taking her back to Greenwood
15 because it was very hard and I did not have insurance to
16 send her anywhere else. It was not that I was not concerned
17 for my child. It was just the circumstances that I happen
18 to live in. I work -- like I say, I work day by day. I get
19 paid daily. And I can do the best I can do with what I
20 have.

21 Q The followup exam, according to the letters you just
22 read, was for syphilis. You just read it.

23 A It had several different things.

24 Q I'm asking you. One of the things the test would test
25 for was syphilis.

ANGELA BYRUM-CROSS-EXAMINATION

408

- 1 A yes.
- 2 Q That's a serious venereal disease.
- 3 A Yes.
- 4 Q One of the diseases this test would screen for was
- 5 hepatitis.
- 6 A Yes.
- 7 Q That's a serious venereal disease?
- 8 A Yes.
- 9 Q And lastly, one of the things that that test would
- 10 screen for was HIV.
- 11 A Yes.
- 12 Q It doesn't get much more serious than that, does it?
- 13 A Yes.
- 14 Q Okay. You had read your daughter's diary where she
- 15 said that she had been attacked by a man.
- 16 A Yes.
- 17 Q And you weren't concerned that perhaps she would have
- 18 contracted some disease?
- 19 A Yes, I was worried about that.
- 20 Q But not worried enough to take her in for a followup
- 21 screen. Now, the truth of the matter is you did read her
- 22 diary, didn't you?
- 23 A Yes.
- 24 Q Okay. When he -- when Tony Byrum brought it to you he
- 25 didn't understand what he was reading.

ANGELA BYRUM-CROSS-EXAMINATION

409

1 A I did not say that.

2 Q He only saw what she had said about sex with Scott

3 Cross and he read no further. He got upset.

4 A I do not -- I do not know how much of it he read. I
5 just know that he read some of it and then he asked me what
6 I've already said which was to read it please and tell me
7 that it does not say what I think it says. I've answered
8 this question before.

9 Q Okay. But when you read it you, in fact, saw it for
10 what it was. You saw that it was just a story. You didn't
11 believe it.

12 A I didn't say that. I believed everything --

13 Q You didn't believe it.

14 A -- that was in there because my daughter wrote it.

15 Q You didn't believe it and that's why you waited until
16 the next day to talk to her.

17 A I did believe it. My husband believed it. My husband
18 was trying his best to get out of the house because he had
19 intent on putting his hands on Scott Cross, and I was there
20 --

21 Q I understand your husband was upset.

22 A -- and I was there trying to calm him down, because I
23 knew that if my husband did anything crazy that I would lose
24 my husband, my children will lose their daddy, and the my
25 family would be torn apart even more than what it was

ANGELA BYRUM-CROSS-EXAMINATION

410

1 already torn about by what he had already done to my 13-
2 year-old child.

3 Q I understand your husband was upset. But after reading
4 that diary that you didn't think that it warranted enough
5 caution and emergency to call your daughter that night and
6 ask her immediately about it?

7 A It was 12:30, 1:00 in the morning. My daughter was
8 with her grandparents. I knew she was in a safe place, and
9 I did not want to wake her up and upset her at that moment.
10 I felt that it would be best if we did it first thing in the
11 morning, because I was trying to calm my husband down
12 because he was so angry and so intent on leaving to go find
13 Scott until it took me all night begging and pleading with
14 my husband to try to keep him from going and doing something
15 that would have cost him probably his life.

16 Q But you testified earlier that the car was tore up and
17 you knew he wasn't going anywhere.

18 A I know the car was tore up. Yes, I did testify to
19 that. But he called a couple of friends trying to get them
20 to come and get him and nobody would come and get him. And
21 he was intent on if nobody would come and get him he was
22 going to walk, and it took me all night begging and pleading
23 and begging and pleading with my husband because he was
24 intent on taking care of it.

25 Q You went with your daughter to the Abbeville Law

1 Enforcement Complex to give the statement.

2 A Excuse me?

3 Q You went with your daughter to Abbeville Law

4 Enforcement Complex so that she would give a statement --

5 A Yes.

6 Q -- to the police. And you took the diary with you?

7 A Yes.

8 Q And she gave her first of many stories that day.

9 A She give her story that day, yes.

10 Q Did she tell you about the three prior incidents that

11 she alleged happened with Scott and -- back in October?

12 A The day I set her down in my room she had told me about

13 one of them.

14 Q Did she tell you about two incidents in Anderson other

15 than that one that she told you about with Scott at any

16 point after that?

17 MR. NASROLLAHI: I'll withdraw that question.

18 Q But it still goes to show the Child's Place called you,

19 called you, called you, they wrote you letters, they called

20 you, nothing happened? I don't think you believed -- you

21 didn't believe your daughter and what she had written in

22 that journal. But your husband was so upset that you had to

23 go.

24 A I did believe my daughter. I don't care how many times

25 you say I did not believe her, I did believe her. I

ANGELA BYRUM-REDIRECT EXAMINATION

412

1 believed every word that she told me. I believe every word
2 that she wrote in her diary. I had no reason to believe
3 that my daughter was lying to me and I still have no reason
4 to believe that my daughter was lying to me.

5 MR. NASROLLAHI: Nothing further.

6 THE COURT: Redirect.

7 MR. BROWN: Judge, just a few.

8 REDIRECT EXAMINATION

9 BY MR. BROWN:

10 Q Ms. Byrum, he was asking you about something that
11 another lady wrote down in some report that said about
12 January 26th, '06. He forgot the about word that he was
13 referring to. Do you remember what question she asked you
14 then? When you think you called the police or when you
15 first found out? Do you remember what she exactly asked
16 you?

17 A I do not.

18 Q Do you know exactly what she wrote?

19 A I do not.

20 Q Did she get you to read over it and check what she
21 wrote?

22 A I don't remember.

23 Q So you don't know what she wrote in here, do you?

24 A I do not.

25 Q Do you remember calling law enforcement, calling 911?

1 A Yes, I do.

2 Q As Defense has moved into evidence Defendant's Exhibit
3 1, that said January 31st, 2006. Do you remember what date
4 you went and met at the Child's Place?

5 A I do not.

6 Q I think you said it was February 9, 2006. Could it
7 have been possible that Ms. Bentley asked you how far along
8 or how far back did you call police. Could you -- could you
9 give a definite? Do you know exactly what you said? Could
10 you have said about two weeks ago, which would have been
11 roughly correct, and she would have written down about
12 January 26th?

13 A It's possible.

14 Q But you know -- you read the diary, right?

15 A Yes.

16 Q And after you read the diary what did you do?

17 A I started crying. I freaked out because I couldn't
18 believe that somebody who was supposed to be best friends
19 with me and my husband would do something like that to my
20 child. I spent the night -- I spent most of the rest of the
21 night trying to calm my husband down to keep him from
22 leaving the house because he was so angry.

23 Q In your opinion, would that have been good for your
24 daughter to see that night?

25 A No, sir.

ANGELA BYRUM-REDIRECT EXAMINATION

414

1 Q And who was she with?

2 A She was with her grandparents, Tony and Elizabeth
3 Byrum.

4 Q Who is she sitting with right now?

5 A Her grandparents, Tony and Elizabeth Byrum.

6 Q Now, did you take K.B. to go meet at the Child's
7 Place?

8 A Yes.

9 Q Did you take her to go get a medical exam?

10 A Yes.

11 Q If you didn't believe her would you have done that?

12 A No.

13 Q If you didn't believe her would you have called the
14 police?

15 A No.

16 Q Ms. Byrum, you mentioned earlier -- he was asking you
17 about all these letters that were sent. Where do you work?

18 A I work at Kay's Place. It's a restaurant.

19 Q In Iva?

20 A In Iva.

21 Q How far away is that from your house?

22 A I don't know. About eight miles. Seven, eight
23 roughly.

24 Q How far away is Greenwood from your house?

25 A I don't know. It's more than 50.

1 Q Who bought the clothes that are on your daughter's back
2 today?

3 A I have.

4 Q Who feeds your daughter and your son?

5 A I do.

6 Q And how are you able to pay for that?

7 A I work.

8 Q So if you didn't care about their well being would you
9 put clothes on their back?

10 A No.

11 Q Would you make sure they're feed?

12 A No.

13 Q Would you have called the police?

14 A No.

15 Q Would you have taken her to go get a medical exam?

16 A No.

17 Q Would you have taken her to counseling all the way to
18 June 7th, 2006?

19 A No.

20 Q Isn't it true that the reason you were able to take her
21 that many times is because the State office of Victim's
22 Assistance was helping you out?

23 A Yes.

24 Q And the State Office of Victim's Assistance does not
25 keep paying indefinitely for counseling. That it runs out

1 eventually --

2 A Yes.

3 Q -- like all money.

4 A Yes.

5 Q You didn't deliberately stop taking her just because
6 you didn't believe her --

7 A No.

8 Q -- to go to counseling. Why did you have to stop?

9 A Because our -- our transportation was no longer
10 available and the money was -- I couldn't pay my bills
11 because I -- and I don't want you all to take that the wrong
12 way, but I only make so much money and it's hard to put 20
13 and \$30 worth of gas in a car when I know 20 or \$30 could
14 buy supper for us to eat.

15 Q Ms. Byrum, this took place December 29th, 2005.

16 A Yes.

17 Q If you didn't believe your daughter would you be
18 sitting in this courtroom in front of all these people?

19 A No.

20 Q And would you have called the police and gone through
21 all that and wasting -- and use precious money that you work
22 hard for to take her to something you didn't believe in?

23 A I would not have.

24 MR. BROWN: No further questions.

25 MR. NASROLLAHI: Nothing further.

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

2 (Whereupon, the witness steps down from the witness
3 stand.)

4 THE COURT: Solicitor, call your next witness, please.

5 MR. BROWN: The State rests, Your Honor.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, there are some matters that I need to take up with the
8 attorneys involving the law in this case. I won't keep you
9 for very long. What I'm going to do is ask that you adjourn
10 to the back again. In a moment, once we're done addressing
11 those issues, I'll let you all step outside and have a brief
12 break outside if you need to. But again, don't discuss the
13 case yet. I'll tell you when you can and I'll have you back
14 out here as soon as possible. Thank you very much.

15 (Whereupon, the jury exited the courtroom)

16 THE COURT: All right. The jury is out. At this
17 point, Mr. Nasrollahi, any motions?

18 MR. NASROLLAHI: We move for a directed verdict of the
19 charges. We do not believe that credible evidence has
20 entered by the State as to the allegations in this case.
21 Numerous witnesses have been presented to back up the
22 State's position that my client was over at the house that
23 evening; however, the only witness to any kind of sexual
24 assault has been impeached, in my opinion, thoroughly, and
25 for that reason we believe there's only circumstantial

1 need to put you under oath. Okay, sir?

2 JAMES SCOTT CROSS, having first been
3 duly sworn, testified as follows:

4 THE COURT: Are you James Scott Cross?

5 MR. CROSS: Yes, sir.

6 THE COURT: Mr. Cross, at this time I'm going to
7 explain to you certain rights that you have and if you don't
8 understand something I'm saying stop me and I'll either let
9 you talk to Mr. Nasrollahi or you can ask me about it.
10 Okay, sir?

11 MR. CROSS: All right.

12 THE COURT: We've reached a point in the trial where
13 you can present a defense and I'm informing you that you've
14 got the right to claim the protections given to you under
15 the Fifth Amendment to the United States Constitution and
16 the similar amendment under the constitution of this state.
17 The Fifth Amendment states that no person shall be compelled
18 in a criminal case to be a witness against himself. What
19 this means, Mr. Cross, is that you cannot be required to
20 testify in this case. Certainly you've got the right to
21 testify on your own behalf if you want to. This is a
22 personal right though and nobody can make you testify if you
23 don't want to testify. Do you understand that, sir?

24 MR. CROSS: Yes, sir.

25 THE COURT: That means that no one can waive this right

1 except for you. Now, Mr. Cross, if you decide to testify
2 understand that you'll be subject to the same rules that
3 govern other witnesses and you can be examined or cross
4 examined on any relevant issue in this case. In addition,
5 if you have any convictions involving dishonesty or false
6 statements or for crimes punishable by imprisonment for more
7 than a year and the court determines that the probative
8 value of those convictions outweighs the prejudicial effect
9 then the Solicitor will be able to introduce your prior
10 record in order to attack your credibility. Do you
11 understand? If you have prior convictions, what I'm telling
12 you is that if you have prior convictions that have recently
13 -- that have taken place and I find that they're not too
14 remote in time and I find that the probative value outweighs
15 the prejudicial effect to you then the State can bring up
16 your prior convictions. I'll let you speak to your attorney
17 for a second.

18 (Whereupon, there was a discussion held between
19 Defendant and his counsel.)

20 THE COURT: What I'm saying, for example, Mr. Cross, is
21 if you have a conviction for grand larceny or something like
22 that that took place five years ago, that's a crime
23 involving dishonesty and the Solicitor would be able to talk
24 to you or ask you about that particular crime just for the
25 sole purpose of attacking your credibility. Attacking your

1 believability in front of that jury. Do you understand
2 that?

3 MR. CROSS: Yes, sir.

4 THE COURT: Okay. And that's if I were to determine
5 that it's more valuable to the State to be able to attack
6 your credibility than it would be prejudicial to you. Okay?

7 Now, Mr. Scott, you understand -- or, sorry, Mr. Cross,
8 you understand that if you decide to testify this decision
9 on your part has to be freely, voluntarily and intelligently
10 made with the full knowledge of the protections given to you
11 under the Fifth Amendment and the consequences of your
12 decision to testify. So if you decide not to testify, Mr.
13 Cross, I'll instruct the jurors that they cannot give the
14 fact that you did not testify any consideration whatsoever
15 and that there's to be absolutely no prejudice to you
16 because you decided not to testify. Do you understand?

17 MR. CROSS: Yes, sir.

18 THE COURT: All right. It's left entirely up to you
19 whether or not you want to testify. I would encourage you
20 to talk to your attorney. You can talk to friends, family
21 members, anyone you want to to try and help you make this
22 decision. But you understand that the final decision has to
23 be yours. If you decide to take the stand that final
24 decision has to be yours. Do you understand, Mr. Cross?

25 MR. CROSS: Yes, sir.

1 THE COURT: All right. And you understand what I've
2 explained to you?

3 MR. CROSS: Pretty much. If I don't understand I'll
4 ask him.

5 THE COURT: Okay. Do you have any questions that you
6 feel like you need to ask me or are you comfortable asking
7 your attorney?

8 MR. CROSS: I'm comfortable with my attorney right at
9 the moment.

10 THE COURT: All right. The way I usually do this, Mr.
11 Cross, is if you decide to testify simply tell your attorney
12 that and he'll call you as a witness. Okay? And that will
13 mean that you are automatically waiving your Fifth Amendment
14 right. Okay? Is that acceptable to you, sir?

15 MR. CROSS: Yes, sir.

16 THE COURT: Very good. I'll let you all discuss this
17 for a few minutes. You say that none of your other
18 witnesses are here. The --

19 MR. NASROLLAHI: I have one witness who is here. I can
20 put her up. I'll need to speak with her briefly.

21 THE COURT: Sure.

22 MR. NASROLLAHI: But for the -- in order to properly
23 discuss this, he does have a prior conviction over 10 -- he
24 completed his sentence over 10 years ago. It's the prior
25 CSC with a minor first. I'm correct in stating that he only

1 has that one conviction. It would be applicable for
2 impeachment purposes, and for that reason I would like the
3 court's guidance on what it's ruling on using that prior CSC
4 for impeachment purposes would be.

5 THE COURT: That conviction, I believe, took place in -
6 -

7 MR. NASROLLAHI: It was in 1992. He served 10 years
8 and was released in 2002.

9 THE COURT: Okay. Released in 2002?

10 THE COURT: Well, he says 1997. My records say 2002.
11 Either way -

12 MR. CROSS: I got in 2000 -- it was 1997.

13 MR. NASROLLAHI: Either way, I think it's still under -
14 - over the 10 years.

15 THE COURT: All right. Do you want to speak to that?

16 MR. BROWN: Judge, also look on down. A conviction
17 more than 10 years old is calculated as -- it's usually not
18 admissible unless opponent gives adverse party sufficient
19 advanced notice of attempt to use the evidence. We've given
20 sufficient notices as part of the element that's going to be
21 introduced as trial, and that was sufficient notice that we
22 -- if he were to testify that we'd use that against him as
23 well. Because it's actually already been used against him
24 as an element.

25 MR. NASROLLAHI: I just think that the prejudicial

1 value far outweighs the probative value.

2 THE COURT: This is a different matter entirely though
3 because if it were used for impeachment purposes that goes
4 to credibility as opposed to the way that I've instructed in
5 my instructions --

6 MR. BROWN: Yes, sir.

7 THE COURT: -- which I emailed last night. My
8 understanding is that that prior indictment, and I know that
9 you've redacted a copy of it, but I think it involved a CSC
10 first with a 10-year-old. The incident date was in '91 or
11 '92?

12 MR. BROWN: The incident date is '91. The conviction
13 is '92.

14 THE COURT: '92. Okay. Does the State have any
15 indication when he was released from custody?

16 MR. BROWN: I'd have to do a quick -- a quick look, but
17 it was a ten-year-sentence.

18 THE COURT: It was a 10 year sentence. It would have
19 been pre 85 percent under the old law. So he would have
20 been parole eligible after typically a third of his
21 sentence, and he says he was released in '97. That would
22 sound about right.

23 MR. NASROLLAHI: And even if he served the full 10 he
24 still would have been out in --

25 MR. CROSS: Maxed out in five years.

1 THE COURT: All right. Now, the rule regarding the 10
2 years limitation, I realize that it is from the date of
3 release. How does that rule -- read to me that rule again,
4 Mr. Brown, if you would. I want to make sure --

5 MR. BROWN: Evidence of conviction under this rule was
6 not admissible with a period of more than 10 years has
7 elapsed since the date of the conviction or of the release
8 of the witness from the confinement imposed from that
9 conviction, whichever is later -- whichever is the later
10 date unless the court determines in the interest of justice
11 that the probative value of the conviction supported by
12 specific facts and circumstances substantially outweighs
13 its prejudicial affect.

14 THE COURT: All right. The State is not contending
15 that this conviction is a crime of moral turpitude,
16 correct?, or a crime involving dishonestly like larceny?
17 It's based solely on the one year is my understanding. Is
18 that right?

19 MR. BROWN: It would be.

20 THE COURT: The rule is silent on the question of
21 whether the 10 years applies to the date of the offense or
22 the date that the trial takes place. That's a problem.
23 What's the State's position on that? Because this incident
24 allegedly took place in late 2005 which would put us within
25 the 10 years if that's the purpose of the ruling --

1 MR. BROWN: That's correct.

2 THE COURT: -- and he did get out in '97. But
3 obviously the trial is taking place in 2013 which is 16
4 years after he was released from confinement. With regard
5 to credibility determinations what should the court do,
6 gentlemen? Do you have suggestions?

7 MR. NASROLLAHI: It's an ambiguity in the law which
8 requires that it be construed in favor of the Defendant.

9 THE COURT: Mr. Brown, can you cite the court any
10 holding or any guidance either from this state or from our
11 sister states?

12 MR. BROWN: Judge, I would have to have a moment to do
13 a little research on that.

14 THE COURT: I'll ask my clerk to do the same thing.
15 Very good. I'm -- because it does not involve a crime of
16 dishonesty I'm leaning against allowing it. I'm not sure.
17 I mean, it's already in evidence for purposes of
18 establishing the element. Impeachment is a different matter
19 entirely. I'll let you all do a little bit of research and
20 we'll see where we are. Credibility at trial seems to be
21 the key issue, and because so much time has elapsed it would
22 seem that the purpose of the 10 year rule is that you don't
23 -- and I'm just thinking out loud here, gentlemen, but it
24 seems that the purpose of the 10 year rule would be that you
25 don't want somebody impeached with very remote convictions

1 that don't involve dishonesty that aren't crimes of moral
2 turpitude at the time of trial. That would be my initial
3 thinking. But I'll allow you all to do some research.

4 All right. If you all want to take -- if you want to
5 let the jurors go outside in the back and have a smoke break
6 or stretch their legs.

7 MR. BROWN: Judge, one thing before we leave.

8 THE COURT: Yes, sir.

9 MR. BROWN: We do have a -- here's a conviction on his
10 record we pulled up of a fraudulent check in 2005.

11 MR. NASROLLAHI: We've received no notice of their
12 attempt to use a fraud check.

13 MR. BROWN: It is listed on the criminal history in
14 2005. 3/17/2005 is when the arrest was made. And
15 disposition was 3/29/2005.

16 THE COURT: All right. Mr. Nasrollahi, if you'll
17 double check and see if you were provided with notice of
18 that and --

19 MR. NASROLLAHI: Well, he's saying that he gave me the
20 -- I mean, I have a copy of his file. I mean, I'm not
21 saying he did anything intentionally or maliciously. I have
22 a copy of his file. There is on the rap sheet an arrest for
23 a fraud check, but there's nothing that I see that I was
24 provided with showing that he had been convicted. And I've
25 been given -- and the rule says sufficient notice of their

1 intent to use prior bad acts to impeach.

2 MR. BROWN: Judge, Ms. Odom who is here with me today,
3 she actually emailed the complete file on the grand larceny
4 that he also has pending to Mr. Nasrollahi that does have a
5 complete criminal history. It shows a conviction on the
6 fraudulent check.

7 MR. NASROLLAHI: That's an entirely different case.

8 MR. BROWN: Judge, he does have a criminal history on
9 both of these charges. An updated criminal history.

10 THE COURT: Under Rule 5, and I'm assuming that that's
11 what we're operating under, it says, "Upon request by the
12 Defendant the prosecution shall furnish to the Defendant
13 such copy of his prior criminal record, if any, as is within
14 the possession, custody or control of the prosecution,"
15 blah, blah, blah, "to the attorney," et cetera. If you're
16 representing, Mr. Cross, the grand larceny and you did
17 receive that, the fraudulent check could be used for
18 impeachment. That would be my ruling.

19 MR. NASROLLAHI: And with regard to the prior CSC
20 you're leaning away from --

21 THE COURT: I'm leaning against not allowing it because
22 the purpose of the 10 year limit in dealing with issues of
23 credibility the key inquiry is when is the testimony given.
24 He would be testifying in 2013, because this only affects
25 credibility at the time of trial. It can't be used as

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1 evidence that he acted in conformity. That's the danger of
2 those types of cross examination questions and that kind of
3 impeachment. So the relevant date would have to be today.
4 Did it take place within 10 years of today in order for the
5 State to impeach Mr. Cross. Because again, the purpose of
6 the 10 year limit is to prevent people from being impeached
7 by crimes that don't involve dishonesty, by crimes that
8 carry more than a year when those crimes are just too
9 remote. And he may have been released in '97, and it sounds
10 like he was released in '97. That puts it too remote for
11 the underlying -- based on the underlying purpose. The
12 underlying reasoning for that 10 year rule. That's my
13 understanding. It's the testimony today that's important.
14 Not what happened in -- for purposes of impeachment, it's
15 the testimony today that's important. Not the fact that
16 this happened in 2006.

17 But I'll afford you all an opportunity to double check
18 while the jurors take a brief break. And we'll be at ease.

19 (Whereupon, a recess was taken.)

20 MR. NASROLLAHI: Judge, we're ready to proceed at this
21 time.

22 THE COURT: All right. Very good. Let's have the jury
23 out then, please.

24 (Whereupon, the jury entered the courtroom at 11:38
25 a.m.)

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1 THE COURT: Let the record reflect that the jury is
2 back and seated. Ladies and gentlemen of the jury, we're
3 about to resume the trial of this case at this point. Mr.
4 Nasrollahi, you may call your first witness, sir.

5 MR. NASROLLAHI: Thank you, Judge. The Defense calls
6 Jessica Bell to the stand.

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

9 DIRECT EXAMINATION

10 BY MR. NASROLLAHI:

11 Q Ms. Bell, state your full name for the record.

12 A Jessica Bell.

13 Q Okay. And what is your current occupation?

14 A I'm a therapist and the director of clinical services
15 at Beyond Abuse.

16 Q Okay. Has Beyond Abuse always been known as Beyond
17 Abuse?

18 A No. We were formerly known as Sexual Trauma and
19 Counseling Center.

20 Q Okay. And you're the director at Beyond Abuse?

21 A Of the sexual abuse program I am, yeah.

22 Q In the course of this case were you subpoenaed for any
23 documents?

24 A I can't confirm or deny anything about claim
25 information unless I'm ordered to do so by the judge.

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1 THE COURT: You're requesting such an order?

2 MR. NASROLLAHI: I'm requesting such an order.

3 THE COURT: You'll need to answer his questions,
4 please.

5 A Yes. I was subpoenaed and gave over the client therapy
6 record in this case.

7 Q Okay. In the course of client therapy is it the usual
8 practice of your office to keep case tracking notes?

9 A Help me understand what you're meaning.

10 Q Does your office keep notes as to developments in --

11 A In the therapy files?

12 Q Yes, ma'am.

13 A If it's pertinent to the therapy and how the client is
14 progressing we will.

15 Q Okay. And that is kept as a usual part of your
16 business activity?

17 A Yes, it is.

18 MR. NASROLLAHI: Judge, can we sidebar?

19 (Whereupon, a sidebar was held.)

20 Q While we wait on that to print. Is it the usual
21 practice of Beyond Abuse to monitor developments in a
22 patient's case?

23 A The Children's Advocacy Program is the one that does
24 the followup to monitor the progress mainly, so that would
25 be in that separate file for the Children's Advocacy

1 Program. If there's something that happens that would
2 affect the client's functioning, that's when it shows up in
3 therapy record.

4 Q I apologize for the wait. I'm going to hand you this
5 document.

6 MR. NASROLLAHI: If I can approach?

7 THE COURT: Please.

8 Q I ask if you can identify what that document is.

9 A It's our activity record for the therapy file.

10 Q Is that activity record maintained as a usual part of
11 your office's practice?

12 A It is.

13 MR. NASROLLAHI: I'd like to mark this and move this
14 into evidence as Defendant's 3?

15 THE COURT: It'll be 3.

16 MR. NASROLLAHI: Judge, I'd like to move this into
17 evidence.

18 THE COURT: Any objection?

19 MR. BROWN: No objection, Your Honor.

20 THE COURT: Without objection, that'll be Defendant's 3
21 in evidence.

22 (Whereupon, Defendant's Exhibit Number 3 was admitted
23 into evidence.)

24 MR. NASROLLAHI: And that's all I have for this
25 witness.

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1 THE COURT: Cross?

2 MR. BROWN: Just a short one.

3 CROSS EXAMINATION

4 BY MR. BROWN:

5 Q Ms. Bell, Defense showed you what's now Defendant's
6 Evidence Number 3. Tell me what that is?

7 A It's an activity record. So it shows where -- like the
8 dates that the client was seen or if they were scheduled and
9 they didn't attend an appointment, and the followup attempts
10 if somebody didn't attend an appointment. And we also will
11 log in when we get subpoenas and when we send letters.

12 Q Okay. And whose name is at the top of that page?

13 A The client's name?

14 Q Yeah.

15 A K.B.

16 Q How old was she?

17 A Thirteen.

18 Q And what was the address you wrote down?

19 A [REDACTED], Iva, South Carolina 29655.

20 Q What was your initial contact with her?

21 A I'm not the person --

22 Q Well, what does it say on that sheet?

23 A Oh, okay. The first contact date was February 16th of
24 2006.

25 Q Who was the contact person?

JESSICA BELL-CROSS-EXAMINATION

1 A The contact person is Angela Byrum.

2 Q And type of assault that says?

3 A Sexual assault.

4 Q Now, on 2/16 how long did they meet with the provider
5 at your -- well, now it's Beyond Abuse for Sexual Trauma
6 Counseling Center?

7 A One hour.

8 Q And then at 3/1 what does it say?

9 A No show.

10 Q 3/15 what does it say?

11 A One hour.

12 Q And what is -- when it says type of service, what is
13 that?

14 A That means the type of service. Whether it was initial
15 assessment or individual treatment.

16 Q And what does it say there?

17 A On the 15th?

18 Q That's right.

19 A Individual treatment, which means an individual therapy
20 session.

21 Q And then, I guess, it would be two weeks later what
22 does it say?

23 A One hour individual treatment session.

24 Q Do you know who was bringing her -- do you know -- can
25 a 13-year-old drive themselves?

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- 1 A They can't drive as far as I know. Not legally.
- 2 Q Who brought her to those?
- 3 A As far as I -- I'm not aware.
- 4 Q You're not aware?
- 5 A I honestly don't know.
- 6 Q But the contact person is who?
- 7 A Angela Byrum. So I would assume it would be mom, but I
- 8 can't say that for certain.
- 9 Q Do you know how far away Iva is from Greenwood?
- 10 A Not exactly, no.
- 11 Q Is Iva in --
- 12 A Thirty minutes, an hour.
- 13 Q Is Iva in Greenwood County?
- 14 A No. It's in Abbeville County.
- 15 Q Now, after 3/29 what was the next date?
- 16 A 4/18/2006.
- 17 Q Did they show up then?
- 18 A Yeah. One hour.
- 19 Q How long?
- 20 A Huh?
- 21 Q How long?
- 22 A One hour treatment.
- 23 Q And what type of service is that?
- 24 A Individual treatment session.
- 25 Q Did they come back?

1 A They did.

2 Q What date was that?

3 A May 2nd, 2006.

4 Q And what kind of treatment did they have?

5 A Individual treatment again.

6 Q And did they come back again?

7 A Yeah. May 17th, 2006 and they had a one hour

8 individual treatment session again.

9 Q And then did they ever show up again after that?

10 A They didn't, but there was a phone conversation that

11 happened.

12 Q On what dates were those?

13 A It looks like the last contact would be a phone

14 conversation on October 23rd at 2006.

15 MR. BROWN: Mark this.

16 (Whereupon, Sexual Trauma Intake Form was marked as

17 State's Exhibit Number 10 for identification.)

18 Q I'm going to show you what's been marked for State's

19 identification purposes only at this time as State's ID 10.

20 What is that?

21 A This is the first page of the forms that are filled out

22 as soon as they first come in on that first appointment.

23 Q Is that kept in the normal course of business at

24 Child's Place, or Beyond Abuse, which was formerly Sexual

25 Trauma and Counseling Center?

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1 A It is, yes.

2 Q And is that a document that you also had custodial
3 control over?

4 A Yes.

5 Q And you provided for the Defense in this case?

6 A Yes.

7 MR. BROWN: Judge, at this time the State moves in as
8 evidence State's Evidence 10.

9 THE COURT: Any objection?

10 MR. NASROLLAHI: No objection.

11 THE COURT: Without objection, State's 10 is in
12 evidence.

13 (Whereupon, State's Exhibit Number 10 was admitted into
14 evidence.)

15 Q I'm going to get you to put this on the -- I'll get
16 another cop so I can follow along with you. I'll show you
17 what's been entered as State's Evidence 10. Whose name is
18 at the top of that page?

19 A K.B.

20 Q And what's the date when they came in?

21 A February 16th, 2006.

22 Q Does it have a birth date for her?

23 A [REDACTED].

24 Q How old would that have made her in 2006?

25 A I'm not good at math off the top of my head. I'm

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1 assuming it would match up with the 13-year-old thing on
2 that activity record we looked at before.

3 Q And the address?

4 A [REDACTED], Iva, South Carolina 29655.

5 Q And the next part says parent, legal guardian.

6 A Uh-huh (affirmative.)

7 Q Whose name is that?

8 A Angela Byrum.

9 Q Relationship. What does that say?

10 A Mother.

11 Q And it gives the same address and all?

12 A Yes.

13 Q A little lower it gives an income range. Did she
14 circle an income range?

15 A She did. She circled 9,000 to \$11,000 yearly.

16 Q Yearly?

17 A Uh-huh (affirmative.) I'm assuming that was yearly.
18 That's what it's meant to be.

19 Q That's what it's meant to be is yearly?

20 A Uh-huh (affirmative.)

21 Q And the Angela Byrum signed that at the bottom?

22 A She did.

23 Q You said Iva is where?

24 A Abbeville County.

25 Q And Beyond Abuse Sexual Trauma Counseling Center is

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1 where?

2 A It's on 115 East Alexander Avenue in Greenwood, South
3 Carolina. So uptown Greenwood.

4 Q And just with your knowledge where Iva would be, how
5 long would it take a car to get there?

6 A I would assume 30 minutes to an hour, but that's
7 totally guessing because I've never really been to Iva.

8 Q Somebody who has a yearly income between \$9,000 and
9 \$11,000 would you find that kind of hard to make a trip, as
10 on the previous log they were coming every two weeks, it
11 looks like. Wouldn't that be kind of burdensome on that?

12 THE COURT: Hold on one second. Don't answer.

13 MR. NASROLLAHI: We're speculating at this point.

14 THE COURT: That would require the witness to have
15 information that she does not have information, or at least
16 there hasn't been a foundation laid, if you want to back up.
17 And if she has information about the financial wherewithal
18 of the family that might be a different ruling. But
19 sustained otherwise.

20 Q How many times can you count that they came and they
21 did come to counseling?

22 A Six times.

23 Q Six times?

24 A Uh-huh (affirmative response.)

25 Q And each time was an hour?

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1 A Yes.

2 Q And their address where they live said Iva, South
3 Carolina, right?

4 A Yes, it did.

5 Q And your place of business hasn't changed? It's always
6 been in Greenwood, right?

7 A Exactly. It's always been the same location.

8 Q And they circled an income range of \$9,000 -- between
9 nine and \$11,000?

10 A Yes.

11 MR. BROWN: No further questions.

12 MR. NASROLLAHI: Nothing on redirect.

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

15 (Whereupon, the witness steps down from the witness
16 stand.)

17 THE COURT: Mr. Nasrollahi, call your next witness,
18 please.

19 MR. NASROLLAHI: We call Susan Bentley to the stand.

20 THE COURT: Do you have somebody getting her?

21 MR. NASROLLAHI: Ms. Bell is going to grab her.

22 THE COURT: Okay. Thank you.

23 SUSAN BENTLEY, having first been
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

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1 BY MR. NASROLLAHI:

2 Q Ms. Bentley, please state your full name for the
3 record.

4 A Susan Bentley.

5 Q And where are you currently employed?

6 A I'm retired.

7 Q Okay. And on February -- on or around February 9th,
8 2006 where were you employed?

9 A By the Child's Place and Sexual Trauma Counseling
10 Center.

11 Q And what was your capacity at the Child's Place?

12 A I was a forensic interviewer.

13 Q And are you a -- do you hold the title of LMSW?

14 A Yes.

15 Q Okay. And what does that mean?

16 A Licensed Master of Social Work.

17 Q Does that mean that you are licensed by the State of
18 South Carolina?

19 A Yes.

20 Q Okay. And are you licensed as a social worker to
21 conduct interviews with children disclosing potential sexual
22 problems?

23 A Yes. I'm certified as a forensic interviewer.

24 Q On February 9th of 2006 do you recall meeting with

25 K.B.

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1 A Yes, I do.

2 Q Okay. Did you -- after your interview with Ms. Byrum
3 did you complete a report?

4 A Yes.

5 Q And do you have a copy of that report with you today?

6 A Yes.

7 Q Have you had an opportunity to review that report?

8 A Yes.

9 Q Let me back up a little bit and ask you. When you meet
10 with a child with regard to allegations of sexual trauma
11 what is the procedure that you go through when you're
12 interviewing them?

13 A This procedure is a semi-structured procedure that is
14 known by it's acronym RATAAC. If you want me to explain
15 that.

16 Q Yes, please.

17 A It stands for the five stages of an interview. The
18 first one is to gain rapport with the child by talking about
19 various things the child is interested in. The next is to
20 do an anatomy identification to find out what the child
21 calls the different parts of the body. The third stage is
22 touch inquiry where you determine if the child has been
23 touched in a place that is inappropriate or is -- is
24 sexually inappropriate, and the next phase is the -- if
25 there is one, is the abuse scenario, and the next stage is

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1 closure.

2 Q And when you interview -- when you interview K.B.

3 Byrum who was present for that interview?

4 A Let's see. You mean who was observing the interview?

5 Q Do you recall who was with you when -- in person

6 interviewing K.B.

7 A Okay. When I interview her it's only by myself.

8 Q Okay. Are other individuals observing the interview?

9 A Yes.

10 Q How would they be observing the interview?

11 A Through a closed circuit television.

12 Q And where do you interview -- or where did you

13 interview K.B.

14 A At the Child's Place. The Sexual Trauma Center.

15 Q Okay. Can you describe a little bit for the jury what

16 the interview room looks like.

17 A It's a room that basically has very little in it. It's

18 two chairs and that's really about it. And there's a little

19 TV camera. The child is told that there's a camera there so

20 that people who need to know can watch.

21 Q Okay. And prior to interviewing K.B. were you

22 provided with any information regarding the allegations?

23 A Yes, I was.

24 Q Okay. What kind of information were you provided?

25 A I was provided with the charges -- what the charges --

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1 pending charges were.

2 Q Okay. And in the interview did you discuss with

3 K.B. what she said happened?

4 A Yes, I did.

5 Q And when she talked to you were you taking notes at the
6 time?

7 A Yes.

8 Q Okay. And when you took those notes how accurate were
9 they?

10 A I believe they were accurate.

11 Q Okay. Was it important to you to have as accurate a
12 recollection of your interview as possible?

13 A Of course.

14 Q And is it important in your -- as an interviewer to
15 collect as much detail as possible?

16 A Yes.

17 Q Okay. And tell the jury a little bit about what kind
18 of details you'd be looking for in a usual interview?

19 A As many details as the child will give me. I ask more
20 -- I ask them to expand on whatever they tell me so that --
21 so I am clear as to what they mean.

22 Q Right. Are details regarding the location of the
23 incident or incidents important to your inquiry?

24 A Yes.

25 Q Okay. Are details about time important to your

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1 inquiry?

2 A Yes.

3 Q Are details about other incidents of child maltreatment
4 important to your inquiry?

5 A Yes. It's common to ask about anything else.

6 Q And is it important for your interview to inquire into
7 these types of details as much as possible?

8 A Yes.

9 Q In your interview with K.B. on February 9th
10 did she tell you the location of the assault that she
11 alleged occurred on December 29th, 2005?

12 A Yes, she did.

13 Q Where did she say that happened?

14 A In a field outside her house, which I believe is
15 located in Iva.

16 Q Right. And she said in a field?

17 A In a field.

18 Q In a field. Did she tell you what she was doing out in
19 that field?

20 A She said she was playing hide and seek with her little
21 brother and cousin and Scott Cross.

22 Q Okay. Did she make any reference to a tree in your
23 interview?

24 A I do not recall her talking about a tree.

25 Q If there was a detail about a tree being involved,

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1 about the location involving a tree, would that have been an
2 important piece of information for you?

3 A If she had mentioned a tree I think I would have put it
4 down.

5 Q And did she tell you about a conversation that she had
6 with Scott prior to the alleged assault?

7 A I'd have to refer to the report.

8 Q Sure, if you need to refresh your memory.

9 A Yes, she did.

10 Q Okay. What did she say at that conversation happened?

11 A She said that Scott said you want it and she replied
12 kind of.

13 Q Okay. And that's what she told you?

14 A Yes.

15 Q She said that that conversation happened?

16 A Uh-huh (affirmative.)

17 Q Now, with regard to details of what transpired during a
18 sexual assault is it important for you to collect as many
19 details about the actual physical assault?

20 A Yes.

21 Q Okay. And would the position of the assault, the
22 manner in which the alleged victim and the perpetrator are
23 in, would that be an important detail for your report?

24 A Yes.

25 Q Did K.B. disclose any particular details about

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1 the position to you?

2 A Yes.

3 Q Okay. What did she say about that?

4 A I believe she said that they were lying in a field and
5 that he was --

6 Q Let me ask you some more questions.

7 A Uh-huh (affirmative.)

8 Q Did she disclose to you other alleged incidents of
9 sexual maltreatment prior to that incident?

10 A Yes.

11 Q What did she tell you happened?

12 A She said there were three other incidents prior to
13 that.

14 Q What did she tell you happened in those three prior
15 incidents?

16 A She said that two times he fondled her breasts and put
17 his fingers in her vagina, and that on Halloween of 2005 he
18 put his fingers in her vagina while he was pretending to be
19 asleep on the floor of Scott's house.

20 Q And again, I'm looking at subsection five. We're about
21 five paragraphs down. It starts with open quotations, E,
22 Scott Cross.

23 A Yeah. He started by kissing on me and then he started
24 fingering me and playing with my boobs. He said be quiet
25 because the dogs and Sam and Brandon were coming. He, Scott

SUSAN BENTLEY-DIRECT EXAMINATION

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1 -- this is about the hide and seek incident.

2 Q That's right. That's right.

3 A He, Scott, was pretending to play hide and seek. She
4 said that after Sam and Brandon found him they all went to
5 the front of the house, then they went back down to the
6 field. It was completely dark outside, but K.B. said she
7 was used to being out in the dark. Brandon was on the porch
8 counting. Scott, K.B. and Sam went back down in the
9 field.

10 Q Okay. And when she -- when she gave you that statement
11 did she ever make any reference to a tree?

12 A I didn't write it down in my report and I don't
13 remember.

14 Q Okay. But if she would have told you that this
15 incident occurred behind a tree would that have been an
16 important detail you would have included in your report?

17 A I think I would have.

18 Q But you reported in your report that this occurred down
19 in the field?

20 A She said -- let's see. He got on top of her. She said
21 she was lying in the field.

22 Q But just to reiterate. She also told you that Brandon
23 was on the porch counting?

24 A That's what -- yes. That's what I wrote in the report,
25 yes.

SUSAN BENTLEY-CROSS-EXAMINATION

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1 Q Okay. I'm going to -- let's go over to the next page,
2 and the second paragraph on the next page. She makes
3 another reference to being in the field.

4 A Yes.

5 Q And what did she say about that?

6 A When in the field Scott told her not to tell her mom or
7 daddy or Kim.

8 Q And she's clear on that reference, when she's in the
9 field?

10 A Uh-huh (affirmative.)

11 MR. NASROLLAHI: That's all I have at this time.

12 THE COURT: Cross.

13 MR. BROWN: Yes; sir.

14 CROSS EXAMINATION

15 BY MR. BROWN:

16 Q Ms. Bentley, you have your report in front of you?

17 A Yes.

18 Q Let's go back to allegation history. When you're
19 filling in this, you note -- you write -- do you write down
20 every question you ask, or do you know exactly how you
21 phrase each question you ask, I guess, the parent or the
22 child? Do you write that down in each question, or are you
23 supposed to write down the response?

24 A Just write down the responses in my report.

25 Q You can't -- you don't really remember exactly --

SUSAN BENTLEY-CROSS-EXAMINATION

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1 A How I worded it?

2 Q -- how you worded it, do you?

3 A No.

4 Q And I'm looking specifically at number four on alleged
5 -- or allegation history on date of disclosure.

6 A Uh-huh (affirmative.)

7 Q You wrote down 1/26/06. What is before that date?

8 A About.

9 Q About. Why would you have written about?

10 A Because -- I would have written about because obviously
11 it was not a date that was --

12 Q Definite?

13 A -- definite. That's it.

14 Q Would you have asked her -- this interview was on
15 February 9th, 2006, right?

16 A Yes.

17 Q Could the question you posed to Ms. Bryum could you
18 guess how far -- how far back to you remember this being
19 disclosed?

20 A Yes. I always ask --

21 Q Could she have said --

22 A -- when did the -- when did the child disclose.

23 Q Could she have said, well, I guess it was about two
24 weeks ago?

25 A She could have.

SUSAN BENTLEY-CROSS-EXAMINATION

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- 1 Q And you picked a date of 1/26?
- 2 A No. I think --
- 3 Q Are you sure about that?
- 4 A No. I'm not sure.
- 5 Q Not sure.
- 6 A But --
- 7 Q But you can't remember exactly how you posed that
- 8 question to Ms. Byrum, right?
- 9 A No.
- 10 Q Okay. You don't know exactly that's the date that she
- 11 disclosed right or about? You just wrote about though,
- 12 right?
- 13 A I think she was not clear, so I put about.
- 14 Q Before Mr. Nasrollahi asked you about did you know
- 15 about the allegation or did you get the incident report
- 16 before you saw K.B. and her mom came to see you, do
- 17 you know the date on that incident report? When they
- 18 called?
- 19 A I had a copy of the incident report. I would have seen
- 20 it.
- 21 Q If I told you that was January 31st, 2006 when they
- 22 called the police would you agree with me?
- 23 A I don't know. I don't remember what date was on there.
- 24 Q But you would say 1/26/06 is about two weeks before
- 25 February 9th? If you posed that question, say, when do you

SUSAN BENTLEY-CROSS-EXAMINATION

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1 think this -- this allegation came about or when she
2 disclosed it, would that be -- could that be a plausible
3 reason why --

4 A Why I put that there?

5 Q -- it's not a definite date?

6 A Yeah, or -- or if the mother said she's not sure what
7 date it was.

8 Q If she just said maybe about two weeks go. Okay. Now,
9 you said when you do an interview -- who's in the room with
10 you when you do this interview?

11 A I'm alone with the child.

12 Q So momma's not there?

13 A No.

14 Q Momma's not sitting there speaking in her ear?

15 A No.

16 Q It's just the child, right?

17 A Yes.

18 Q Now, Mr. Nasrollahi is asking you -- now, tell me
19 again, when you do RATAC you said that is the core --

20 A Anatomy identification, touch inquiry, abuse scenario
21 and closure.

22 Q And closure. When you're doing an interview with a
23 child, 13-year-old, isn't it part of protocol and what
24 you're supposed to do is you ask open-ended questions,
25 right?

SUSAN BENTLEY-CROSS-EXAMINATION

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1 A That's right.

2 Q You're not supposed to lead them?

3 A Right.

4 Q Isn't it true a lot of times when you're speaking to a
5 child sometimes they leave out, you know, some -- some parts
6 of a story?

7 A That's right.

8 Q If they're not directly asked, you know, where exactly
9 did this happen. Do you remember asking where exactly did
10 this happen?

11 A No, I don't. I don't --

12 Q Those questions aren't all in your interview either?

13 A No. Unfortunately we weren't videotaping at that time.

14 Q It's just the report of what you recollect she said
15 during that time, because you're not writing all this down
16 verbatim --

17 A No. I can't --

18 Q -- as it comes out of her mouth?

19 A -- I can't write it all down, no.

20 Q So it's basically what you remember from speaking with
21 her.

22 A That's right.

23 Q You don't have a tape recorder in that room either, do
24 you?

25 A No.

SUSAN BENTLEY-CROSS-EXAMINATION

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1 Q So really you don't know exactly what came out of her
2 mouth that day, do you?

3 A No.

4 Q And when she said the field, do you know what she
5 classifies as a field around her house?

6 A No, not really.

7 Q Do you even know what her house looks like?

8 A No.

9 Q Mr. Nasrollahi also asked you to read a part -- sixth
10 paragraph down. And you said when -- you wrote down when
11 she and Scott were alone Scott said -- what did she say?
12 You put that one in quotes.

13 A When she and Scott were alone Scott said you want it.
14 She replied kind of.

15 Q What's the next line?

16 A When he told her to take off her pants she said no.

17 Q She said no? Do you remember her saying she said no?

18 A Uh-huh (affirmative.)

19 Q He then said what?

20 A Come closer. If you don't take off your pants, I will.

21 Q And what's the next line say?

22 A He got up on top of her.

23 Q She said what?

24 A She said she was lying in the field.

25 Q Now, that's an open question. You're not going to

SUSAN BENTLEY-CROSS-EXAMINATION

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1 directly ask her if there's a tree in this field, are you?

2 A No.

3 Q And isn't it true that sometimes you can leave out if
4 it was in a field, what she considers a field? Would that
5 be a -- I mean, she's telling the truth then? Or what --
6 she's just writing down exactly -- you're writing down what
7 she's saying, but you really don't know exactly where it was
8 since you don't have a picture or anything, right?

9 A That's right. I'm just writing down what she tells me.

10 Q After it says she says she was lying in a field what's
11 the next line that you remember writing down?

12 A He then pulled her pants down and said if you holler
13 I'll put my tongue in your mouth.

14 Q And K.B. added --

15 A K.B. added and then we -- and that was it. And then
16 I just asked her to clarify what she meant by that.

17 Q Yes, ma'am. I'm going to bounce you back up a page a
18 little bit. Who all did she say was out playing hide and
19 seek with her?

20 A Her 10-year-old -- her -- let's see, her brother and
21 her cousin. Her brother was 10.

22 Q And who else did she say was there?

23 A Scott Cross.

24 Q She said this took place on what date?

25 A December the 29th, 2005.

SUSAN BENTLEY-CROSS-EXAMINATION

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1 Q And where did she say that field was? It's in that
2 same paragraph.

3 A Behind the house.

4 Q Of her house in Iva, right?

5 A Yes.

6 Q Going down to the seventh paragraph. Did she -- did
7 you show her anatomical drawings?

8 A Yes, I did.

9 Q Was she able to point out -- well, first of all, did
10 she ever tell you what Scott did to her?

11 A Yes. She said he pulled down his pants. He pulled
12 down my pants. He stuck his thing in mine.

13 Q And with that did you show her a drawing saying what do
14 you mean by thing?

15 A Yes, I did.

16 Q And what did she point to?

17 A She pointed to the penis on the drawing. She called
18 the weiner.

19 Q And then hers. What did she mean by that?

20 A She pointed to the -- she pointed to the vagina on the
21 female anatomical drawing.

22 Q And he also asked you for -- did she ever say anything
23 about a prior incident with Mr. Cross. Did she ever tell
24 you that one?

25 A Yes.

SUSAN BENTLEY-CROSS-EXAMINATION

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1 Q And what timeframe was this?

2 A In October of 2005.

3 Q So was October of 2005 before December 29th, 2005?

4 A Yes.

5 Q Ms. Bentley, since there's no audio recording and since
6 there's no videotaped recording and you're not transcribing
7 this report at the same time she's saying this, and you
8 don't know exactly how you phrased the question or the
9 actual question you gave her, would you say this is just
10 mostly a report but it's not a verbatim statement of what
11 she said?

12 A That's true.

13 Q How long after you interviewed her did you write this
14 report down?

15 A It's usually done within a couple of days.

16 Q A couple of days?

17 A It could be three days.

18 Q You can go back and write down everything she said in
19 three days afterwards? It really would be a recollection of
20 what you remember and maybe not a true indication of what
21 you remember on that day, right?

22 A It's to the best of --

23 Q Is it possible?

24 A It's possible. It's the best I can -- I don't know
25 when I wrote it. It could have been the same day but it

SUSAN BENTLEY-CROSS-EXAMINATION

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1 might have been as much as three days later.

2 Q So you don't know when you wrote it?

3 A No.

4 Q So it could be explanation that that's how -- in direct
5 communication that she was telling a fib or what. It could
6 be part of what you remember or what you interpreted from
7 it, right? Could it be like playing that game where we
8 start a conversation on this end and after a while it gets
9 changed by the time you write the report?

10 A No. I don't -- I don't think it would be to that
11 extent, no. But --

12 Q How many -- how many interviews did you do around this
13 time, if you remember?

14 A I don't remember about this time. I did about 140
15 something interviews in the course of a year and a half.

16 Q Year and a half. Sometimes it might take up to three
17 days before you write the report?

18 A Yes.

19 Q But she did say this took place on December 29th, 2005?

20 A Yes.

21 Q And it did take place behind her house in Iva in a
22 field?

23 A Yes.

24 Q And you don't know what she considered a field, do you?

25 A No, I don't.

SUSAN BENTLEY-CROSS-EXAMINATION

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1 Q Because you ask open-ended questions? You're not
2 supposed to lead a witness to be able to pick out every
3 little detail, right?

4 A I ask for the details I think are necessary.

5 Q Yes, ma'am. And the details in this that are necessary
6 that she's disclosing are sexual assault, right?

7 A That's right.

8 Q And that she said that the Defendant, who she named is
9 James Scott Cross, sexually assaulted her?

10 A She did say that.

11 Q On the date of December 29th, 2005?

12 A Yes.

13 Q In her field -- in the field behind their house --

14 A Yes.

15 Q -- while playing hide and seek --

16 A Yes.

17 Q -- with her brother, her cousin and James Scott Cross?

18 A Yes.

19 Q And they did disclose to you that K.B. father had
20 read her diary, right?

21 A Her mother disclosed that to me.

22 Q Ms. Bentley, let me show you what's been marked State's
23 Evidence 9. Is that the little girl that came in that you
24 interviewed that day?

25 A You know, to be honest, I probably couldn't identify

SUSAN BENTLEY-REDIRECT EXAMINATION

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1 her because it's been so long.

2 Q It's been over almost eight years ago. It's kind of
3 hard everything that's going on at that time, right?

4 A Yes.

5 Q It's pretty easy to forget certain details, right?

6 A Yes.

7 Q Can you say that wasn't her that came and talked to
8 you?

9 A No.

10 Q Does that appear to be a 13-year-old girl?

11 A Yes.

12 Q In almost eight years from the time that she came and
13 spoke with you it's kind of hard to remember exactly what
14 all was said, right?

15 A I'm just going by what I wrote.

16 MR. BROWN: No further questions.

17 THE COURT: Anything on redirect?

18 REDIRECT EXAMINATION

19 BY MR. NASROLLAHI:

20 Q If K.B. would have told you that the perpetrator
21 pushed her against the trunk of a tree, or that she backed
22 up to a trunk of a tree, that would have been a little
23 detail that you could have left out or that would have been
24 an important detail that you would have kept out?

25 A I think I probably would have written that in the

SUSAN BENTLEY-RE-CROSS-EXAMINATION

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1 report.

2 MR. NASROLLAHI: No further questions.

3 MR. BROWN: One followup.

4 RE-CROSS EXAMINATION

5 BY MR. BROWN:

6 Q Again, do you remember when you wrote this report
7 though after you met with her?

8 A The date? No.

9 Q Can you say everything that was said in that room that
10 day you recorded down on this record?

11 A No.

12 Q You can't say that everything that was said --

13 A I can't say that I did that. No. I couldn't have done
14 it.

15 Q So there's a possibility she did say that, right?

16 A It's a possibility.

17 MR. BROWN: No further questions.

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

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

21 THE COURT: Call your next witness, please.

22 MR. NASROLLAHI: Can we have a sidebar?

23 THE COURT: Sure.

24 (Whereupon, a sidebar was held.)

25 THE COURT: If you'll proceed, Mr. Nasrollahi.

GAYE ALLEN-COOK-DIRECT EXAMINATION

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1 MR. NASROLLAHI: The Defense calls Gaye Allen-Cook.

2 GAYE ALLEN-COOK, having first been
3 duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. NASROLLAHI:

6 Q Ms. Allen-Cook, please state your full name for the
7 record.

8 A Gaye Allen-Cook.

9 Q And where are you currently employed?

10 A I'm in a private practice in Florence, South Carolina
11 entitled Therapy Works, Incorporated.

12 Q And how long have you been employed there?

13 A In there since 2007.

14 Q Where did you work prior to 2007?

15 A My career started in 2000 in Charlotte, North Carolina
16 in a mental health center. I was there roughly two years.
17 From there I went to a private practice in Charlotte, North
18 Carolina. I returned back to Florence in 2005 and began
19 working at the Durant Children's Center, which is a child
20 advocacy center in Florence. I was there until December of
21 2007 when I left to start the private practice I just
22 described.

23 Q Okay. Now, tell the jury a little bit about your
24 educational background.

25 A I have a bachelor's degree in early childhood

GAYE ALLEN-COOK-DIRECT EXAMINATION

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1 education. I have a master's degree in clinical counseling.
2 Post graduate studies in trauma and abuse. I'm licensed in
3 the state of South Carolina as an LPC, which is a licensed
4 practicing counselor. Previously I was licensed in the
5 state of North Carolina with that same license. I currently
6 act as a supervisor for the state of South Carolina in the
7 model that we use for trauma and abuse therapy entitled
8 Trauma Focused Cognitive Behavioral Therapy. I've recently
9 received national recognition for my work in trauma and
10 abuse. Have been recently taken notice, I guess, by the
11 Duke Endowment. They have given me awards for the work that
12 I've done in trauma and abuse. I'm recently featured in an
13 article that they publish. I act as a person on the
14 University of South Carolina's list of expert witnesses
15 where I'm called in on cases of trauma and abuse. Testified
16 in family court, criminal court, civil court across the
17 nation regarding trauma abuse.

18 Q Okay. Have you ever conducted a -- what we refer to as
19 a forensic interview?

20 A I have. That was my job when I was Durant Children's
21 Center.

22 Q Approximately how many forensic interviews did you
23 conduct?

24 A That was a long time ago, but I would give a rough
25 estimate of maybe 300.

1 Q Okay. And now that you've come into private practice
2 have you begun treating children?

3 A I've always treated children since 2000.

4 Q Okay. And are you currently treating children?

5 A I am.

6 Q Okay. And have you been -- and you got into this a
7 little bit before. Have you ever been called to testify in
8 court as an expert witness?

9 A I have.

10 Q Okay. Approximately how many times have you been
11 called in court to testify as such?

12 A Rough estimate, 1,500, 1,800. Somewhere in that?

13 Q Okay. Now, in the course of your practice are you
14 required to continue your education?

15 A I am.

16 Q Okay. And have you -- are you required to obtain a
17 certain amount of hours every year in continuing legal
18 education -- I mean, continuing education?

19 A It's a minimum of 40 hours every two years. I just
20 completed that this year. In 2013 it was due.

21 Q Okay. Do you keep yourself apprised of developments in
22 the areas of your practice?

23 A I do.

24 MR. NASROLLAHI: At this time, Your Honor, I'd like to
25 qualify her as an expert witness.

GAYE ALLEN-COOK-DIRECT EXAMINATION

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1 THE COURT: All right. In what field?

2 MR. NASROLLAHI: In the field of post traumatic stress
3 disorder, child sexual trauma and child sexual trauma
4 treatment.

5 MR. BROWN: Judge, I really haven't heard anything
6 about post traumatic stress disorder and how she -- what
7 kind of classes she's taken to get that qualification.

8 MR. NASROLLAHI: I can lay a foundation for that.

9 THE COURT: All right. Mr. Brown, you would not object
10 to her qualifications though in the field of child sex
11 trauma and child sex trauma treatment?

12 MR. BROWN: No, sir.

13 THE COURT: All right. Lay the foundation for PTSD, if
14 you would.

15 Q Have you been educated in any way with regard to post
16 traumatic stress disorder, PTSD, with regard to victim's of
17 childhood sexual abuse?

18 A Yes.

19 Q Okay. Tell the jury about that.

20 A Taken multiple classes on it. Taught classes on it.
21 Continued to read the research on it. Part of the trauma
22 focused cognitive behavior therapy model that I spoke of
23 recently, that -- that's part of PTSD. We diagnose that.
24 We take a look at it. We see what's going on with the
25 child. And usually this is in a treatment model that we're

1 making that determination.

2 Q And have you -- in your private practice have you
3 treated children suffering from PTSD arising out of child
4 maltreatment?

5 A Yes.

6 Q And you're familiar with the symptoms and problems that
7 are related to PTSD?

8 A Yes. Yes.

9 MR. NASROLLAHI: At this time I'd like to qualify her
10 as an expert in the field of PTSD.

11 THE COURT: All right. No objection then from the
12 State, Mr. Brown?

13 MR. BROWN: No objection.

14 THE COURT: Ladies and gentlemen, as I explained
15 yesterday when the doctor testified, normally when a witness
16 testifies they have to speak about or testify about
17 something that they observed with one of their five senses.
18 An exception for this rule exists for people who are
19 qualified as experts in some particular field. In this case
20 this witness has been qualified as an expert in the field of
21 post traumatic stress disorder as well as child sex trauma
22 and treatment, therefore she can state her opinion testimony
23 in those areas. Of course, it doesn't mean that you have to
24 accept her testimony, but it is evidence for you to use as
25 you deem appropriate.

GAYE ALLEN-COOK-DIRECT EXAMINATION

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1 You can continue, please.

2 MR. NASROLLAHI: Thank you, Your Honor.

3 Q Ms. Allen-Cook, jumping right into it. Can you tell
4 the jury about post traumatic -- I mean, PTSD and childhood
5 maltreatment?

6 A Post traumatic stress disorder, which we also call
7 PTSD, was a term that was coined after people were returning
8 from our first war. We didn't quite understand why people
9 had the symptoms that they came back with, the trauma
10 responses that they came back with. So back in that day
11 that began to be studied, hence the coined PTSD. The term
12 PTSD was coined to describe trauma responses in people who
13 have experienced trauma.

14 Q Okay. What are some of the symptoms of PTSD in
15 children?

16 A In children adolescence you typically find that they
17 have responses to stimuli that remind them of the trauma.
18 You find that they often have nightmares. They have
19 difficulty in school. Sometimes they can have juvenile
20 offenses that lead them into legal problems. They sometimes
21 have emotional disturbances. Typically that trauma pretty
22 much runs their life. It's pretty much the thing that they
23 constantly battle sometimes on a daily basis.

24 Q Will PTSD continue on into adulthood?

25 A It can. Typically what happens is when a child has

1 been through some type of maltreatment they usually need
2 intensive counseling to focus on that traumatic experience
3 to help them learn how to cope, to help them learn how to
4 pay attention to when those trauma responses occur, and
5 that's all part of a treatment model for that individual.

6 Q Typically how intensive are these treatment models?

7 A Well, the one that I'm referring to, TFSBT, Trauma
8 Focus Cognitive Behavior Therapy, is a rather new approach.
9 I've been involved with it for about four and a half years
10 now, but it's -- it's a rather new approach. Prior to that
11 we didn't call it that when we treated trauma, but we did
12 use different pieces of it, I guess you could say.

13 Q Okay. Would different children respond differently to
14 symptoms of PTSD?

15 A Well, I think there are some symptoms that are pretty
16 much across the board. Of course, we all are made
17 differently. We all have ways that we respond to various
18 things. But typically when you have post traumatic stress
19 disorder it looks as I explained a few moments ago.

20 Q Okay. Would there be any unique individual factors
21 regarding a child that would impact the symptoms of PTSD?

22 A Well, whenever you're dealing with someone who has
23 experienced trauma what you hope is that that person has a
24 support system. You know, people that can validate their
25 feelings. People that can ensure that they get the

GAYE ALLEN-COOK-DIRECT EXAMINATION

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1 treatment that they need. People that are there to support
2 them through what they're going through.

3 Q Okay. Would such factors as intelligence affect the
4 symptoms of PTSD?

5 A I would say that my experience has been intelligence
6 does not affect PTSD.

7 Q All right. Would certain cognitive issues such as
8 dyslexia, would that impact the symptoms of PTSD?

9 A I could answer that and say I have not seen that in my
10 practice.

11 Q Okay. Now, how -- how long does it take before the
12 symptoms -- between -- how long is it between the sexual
13 incident and the onset of the symptoms of PTSD typically?

14 A That varies. I mean, you know, you have different
15 types of trauma that people go through. I would tell you
16 that I think it would be indicative of how difficult the
17 trauma was for this person. The support system that this
18 person had. We don't always see those symptoms right off
19 the bat.

20 Q Would one of the symptoms of PTSD be memory loss?

21 A It can be.

22 Q Conversely is one of the symptoms of PTSD recalling
23 events vividly?

24 A Typically people can recall the traumatic events
25 vividly, yes.

1 Q In your practice how vivid is this recollection?

2 A I think that varies from child to child. I mean, I've
3 seen some children who could give you very, very, very
4 intimate details of the trauma, and then as they work
5 through those details through therapy those details may not
6 be as intricate as they were before. I've seen other
7 children who, you know, begin with very limited memories and
8 as they go on they recall things more in detail.

9 Q Okay. And in the course of treating a child for sexual
10 trauma can we expect variations in the stories that they're
11 -- their account of the details over time?

12 A Typically there is some variation.

13 Q Okay. How -- typically how varied can that be?

14 A Well, it really just depends. I mean, it depends on
15 that child's personality. It depends on, you know, what
16 parts of that impacted their life. You know, minute details
17 often are forgotten. But, you know, I would say gross
18 grandiose details are not typically forgotten.

19 Q What do you mean by grandiose details?

20 A The best example that I like to use is if we take a
21 child today to McDonald's and, you know, that child orders a
22 cheeseburger happy meal, and while that child is at
23 McDonald's that child falls and busts his or her head and
24 has to go have medical treatment, stitches, what have you.
25 If we fast forward six months and we are talking to that

GAYE ALLEN-COOK-DIRECT EXAMINATION

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1 child and we ask them about their McDonald's experience,
2 that child is probably not going to remember whether or not
3 they ordered chicken nuggets or a cheeseburger, but they're
4 probably going to remember the head trauma, going to the
5 hospital, getting stitches. The huge parts of that that
6 would have probably stuck with them.

7 Q Now, in the course of -- let's talk for a moment about
8 disclosure. When children disclose allegations of sexual
9 trauma is it normal for there to be perhaps one detail of
10 the allegations and then down the line new facts added in?

11 A Typically disclosure is a process. It's not a one time
12 sit down give me all the details and this is the story.
13 Typically children, especially small children, will give us
14 just a little bit of detail to see how we can handle that
15 and how we respond to that, and then they may go on and give
16 us more details as time goes on.

17 Q But would it be uncommon for a child to sit down and
18 give a very vivid and detailed account of a particular
19 sexual trauma?

20 A I'm sorry. Would you ask that again?

21 Q Would it be uncommon for -- or would it be unusual, I
22 should say, for a child to give a very vivid account of the
23 sexual trauma in the first meeting?

24 A I think that varies, and I think it varies in
25 personality, it varies in, you know, maybe who's spoken to

1 that child prior to them giving this disclosure. You know,
2 have people asked them questions. Have, you know, people
3 clarified events for them. I mean, there are lots of
4 factors that come into a disclosure.

5 Q Okay. Is it in your opinion unusual for disclosure of
6 a very traumatic events and then a narrowing down of those
7 events years later?

8 A Typically what happens is when children begin to
9 describe events they're able to give us specific details.
10 Most children can tell us, you know, where things occurred,
11 who was there, what the details were of that. And some of
12 those can get lost, but typically the large details stay --
13 stay the same.

14 Q And by large details what do you mean?

15 A I mean, usually children can remember, you know, where
16 they were, their surroundings, what occurred, you know, what
17 someone smelled like, you know, as they were attacking them,
18 what position this person may have been in when they were
19 attacking them. Details of that nature.

20 Q Okay. Now, have you had an opportunity to review
21 documents in this case?

22 A I have.

23 Q Can you briefly tell us what documents you reviewed in
24 this case?

25 A There were incident reports. There were -- there was

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1 the forensic interview report. There was the file from the
2 Child's Place. There were other things on the DVD -- or CD,
3 I guess you'd say, that you provided me that I can't recall
4 all of those. But -- and then I also listened to an audio
5 recording that your private investigator, when he
6 interviewed the child victim and her mom.

7 Q Okay. Now, in your experience as both a private
8 practitioner and also as someone who is called to the stand
9 and testifies as an expert, is it necessary for you to
10 actually meet with the alleged victim in order to form your
11 opinion?

12 A No.

13 Q Okay. Have you ever been called as an expert witness
14 in a trial such as this in giving your opinion testimony
15 without first having met with the child?

16 A Yes.

17 Q Is it rarer for you to actually meet with the child and
18 speak with the child than it is -- and then come to trial?
19 Would that be a rare -- a more rare scenario?

20 A I think it depends on what capacity I'm coming into the
21 trial. If I've obviously been the treating therapist I've
22 obviously seen that child probably numerous times over a
23 pretty big span of time. If I'm coming in as a consultant
24 it's typical that I haven't with the child victim.

25 Q Okay. And you've been present in the courtroom for the

1 past two days observing testimony in this case also?

2 A I have.

3 Q Has that shaped your opinion in any way?

4 A I would say that it's assisted in checking my opinion,
5 yes.

6 Q Okay. Now, have you had the opportunity to form an
7 opinion as an expert with regard to whether there are
8 symptoms of post traumatic stress disorder present in this
9 case?

10 A I would say from what I viewed I would say I didn't see
11 any.

12 Q Okay. And what leads you to that conclusion?

13 A Well, what was difficult for me is the variation of
14 stories. The different things that have been presented and
15 the different -- different stories that have been told.

16 Q Okay. Now, is it -- does post traumatic stress
17 disorder in children, does that always follow some sort of
18 sexual trauma?

19 A I've treated children that I would say did not have
20 post traumatic stress disorder, but I would say that's very
21 rare.

22 Q Very rare?

23 A Yes.

24 Q Okay. Now, I'm going to ask you a little bit about the
25 treatment of children who have suffered sexual trauma. What

1 kind of treatment do they go through?

2 A Well, typically in my office I don't begin treating a
3 child until they've had their forensic interview done. We
4 don't like to taint what may be said in a forensic interview
5 by already having therapy. So the child has their forensic
6 interview and they're referred to me. Usually that's a
7 pretty prompt referral following the forensic interview.
8 It's actually usually the place that does the forensic
9 interview that may be making the referral. That child comes
10 in for therapy and typically I'll see them once a week,
11 sometimes twice a week depending on the trauma responses
12 that they're having. I'll continue to treat them -- it
13 really just depends. I have some children that I treat for
14 a year, year and a half. I have some children that I treat
15 for, you know, six months, nine months, see them weekly, and
16 then we begin to contract to where I'll seeing them every
17 other week or maybe once a month. But standard operating
18 procedure in my practice is that I continue to check in with
19 my patients and bring them back if necessary. I mean, I
20 have some children that have been in and out of my office
21 for three or four years just because the trauma responses
22 may flare up from time to time.

23 Q So in cases of sexual trauma years of counseling is
24 often necessary?

25 A I would say in my practice I've seen it be most

1 necessary.

2 Q Okay. Would you see any red flags raised for you if a
3 child stopped counseling?

4 A As a therapist I would have great concern if one of my
5 patients stopped therapy.

6 Q Now, in your -- you've heard the testimony in this case
7 from the alleged victim and there was a lot of I forgot, I
8 forget this detail. In your expert opinion, do you believe
9 that those gaps in memory could be related to any PTSD?

10 A I mean, as I stated it's not atypical to forget pieces
11 of the story. It's atypical to forget significant pieces of
12 the story.

13 Q Okay. Now, would it be normal for a child who has been
14 exposed to sexual trauma to repress memories?

15 A They can.

16 Q They can? Tell the jury about a typical case of a
17 child repressing memories.

18 A I mean, I've had cases where, you know, I've treated a
19 child and, you know, maybe they've been sexually abused, and
20 as time goes on as we work on treatment they may begin to
21 recall memories of other people abusing them or other things
22 that have happened to them. I'm not one that likes to pull
23 up the repressed memories. I like to deal with what's going
24 on currently. And I think sometimes we get into a dangerous
25 situation with children whenever we want to push, push, push

1 to have them retain and recall repressed memories, because I
2 truly believe that the mind is able to put -- put those
3 aside when it's -- when it's appropriate.

4 Q Have you ever seen it work the other way around when
5 there's a vivid disclosure and then those vivid memories are
6 repressed?

7 A Not typically.

8 Q Not typically. It's atypical for that to happen?

9 A In my practice I've seen it be atypical, yes.

10 MR. NASROLLAHI: Please answer any questions Mr. Brown
11 has for you.

12 CROSS EXAMINATION

13 BY MR. BROWN:

14 Q Ms. Allen-Cook, let me flip back a couple pages back.
15 Ms. Allen-Cook, how many times have you testified in court,
16 did you say?

17 A I would say between 1,500, 2,000. I'm not exactly
18 sure. It's been quite --

19 Q You've testified in court 1,500 times?

20 A No. I'm sorry. I'm sorry. I thought you were asking
21 me how many people I had treated. I'm sorry. In court 500,
22 700. Somewhere in there. It's been quite a bit.

23 Q You've testified in court 700 times?

24 A In 13 years of practice, yes.

25 Q Now, you said you've got experience in forensic

1 interviewing, right?

2 A I'm sorry?

3 Q You have experience doing forensic interviewing?

4 A Yes.

5 Q That was at the Durant Children's Center in Charlotte?

6 A In Florence.

7 Q In Florence. And then you're out on your own right
8 now, right?

9 A That's right.

10 Q What's the name of your therapy place?

11 A Therapy Works, Incorporated.

12 Q And going back to when you first started talking. You
13 said in children's symptoms of -- we were talking -- you
14 were talking about post traumatic stress disorder. You said
15 coined after people returned from traumatic responses. And
16 you said one thing, that they respond to stimuli. What do
17 you mean by that?

18 A Well, you could have a child who may be walking through
19 the grocery store and there may be bread baking and this
20 smell may cause this child to remember when they were abused
21 because maybe the same smell was going on when the traumatic
22 experience occurred.

23 Q If the child says every year on December 29th, each
24 year after an abuse happens, would that be stimuli?

25 A It could be. It's pretty atypical to have that

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1 specific of a date.

2 Q What about the specific smell of bread? What's the
3 difference?

4 A Well, dates and smells are typically different. What
5 children remember is like I gave the McDonald's experience.
6 They remember the traumatic part of that. The part that was
7 most difficult for them.

8 Q Would having a Defendant as Scott Cross on a 13-year-
9 old girl not be a traumatic experience that she would
10 remember on December 29th, 2005 like a loaf of bread in a
11 grocery store?

12 A I'm not saying she wouldn't remember it. I'm saying
13 that the dates often get sketchy for children.

14 Q But it could be a stimuli?

15 A Could be.

16 Q Which would be, as you said, a symptomatic -- or a
17 symptom of post traumatic stress disorder?

18 A Stimuli is. Yes, sir.

19 Q Okay. That's one symptom that she could have that
20 shows she does have post traumatic stress disorder. Second,
21 you said nightmares. Are nightmares a stimuli for having
22 post traumatic stress disorder or a sign that they might
23 have post traumatic stress disorder?

24 A It's a symptom of --

25 Q A symptom?

1 A -- of post traumatic stress disorder.

2 Q And I'm sure that since you've read all of the
3 production of paperwork that was given down to you that when
4 the Child's Place asked about child behavior history it says
5 -- when asked about sleep disturbances or nightmares the box
6 says yes, and it says, "has had vivid nightmares and dreams
7 throughout all of her life. She has vivid nightmares.

8 Would that be a stimuli of post traumatic stress disorder?

9 A Has vivid nightmares. I didn't hear the rest of it.
10 I'm sorry.

11 Q Would that be a stimuli of PTSD?

12 A No. You said has vivid nightmares all -- I didn't get
13 that.

14 Q Well, she -- in the paperwork it says, when she went to
15 go see a forensic interviewer, that they documented that
16 she's had nightmares.

17 A Okay.

18 Q Would that be a stimuli to post traumatic stress
19 disorder, or would that be a symptom of post traumatic
20 stress disorder?

21 A A symptoms, yes, of PTSD.

22 Q And you also said difficulty in school.

23 A Yes.

24 Q Is that a symptom?

25 A It can be, yes.

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1 Q Do you know how far she went to school?

2 A I heard her testify that she went through ninth grade,
3 I believe.

4 Q And I think there's also documentation that said that
5 she was -- she had moved from one math class, and then after
6 this happened had to go back to the contained math class
7 because she's having trouble in school. And then, in fact,
8 she dropped out of school in ninth grade. Would that not be
9 a symptom of post traumatic stress disorder?

10 A It could be, yes.

11 Q Could be? So right now the first three that you said
12 she's met all three of the symptoms of post traumatic stress
13 disorder, right?

14 A Okay. Okay.

15 Q The fourth one you said emotional disturbances. You've
16 been watching this trial the whole time, right?

17 A I have.

18 Q Did you witness her up on the stand?

19 A I did.

20 Q Did you see her get teary eyed?

21 A Once I believe, if I recall.

22 Q After she got off the stand did you see her break down?

23 A I did.

24 Q Can you determine whether or not those are crocodile
25 tears or real tears?

1 A Obviously not.

2 Q What does she look like right now?

3 A She's tearful.

4 Q Could that also be an emotional disturbance which would
5 be a symptom of post traumatic stress disorder?

6 A It could be an emotional disturbance, yes.

7 Q The sixth one you said trauma runs her life. That would
8 go back to every time that December 29th comes around she
9 has depression. There's been testimony here that every time
10 that day comes around she sinks down in depression. That
11 trauma, if it happens every year, would that not run her
12 life really, that every time she gets to that time where she
13 remembers back that it took place that she was raped by the
14 Defendant and then seeps down in depression, would that not
15 also be a sign of post traumatic stress disorder?

16 A It could be, yes.

17 Q Could be. Now, you said in your business down in
18 Florence that sometimes you have folks that come in -- they
19 can come in for you, you know, for intensive treatment.
20 They might come in -- how long did you say?

21 A I've seen people who've come in as long as a year and a
22 half to two years.

23 Q Who pays for all of this?

24 A Not weekly obviously.

25 Q Who pays for all that?

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1 A Well, the State Office of Victim's Assistance pays for
2 some of it.

3 Q How much?

4 A Usually it's 40 session they --

5 Q Forty sessions or 14 sessions?

6 A In the past they've done 20 sessions, and then once we
7 finish those 20 we can request 20 more. Most recently
8 they've gotten more stringent with that since they've gotten
9 a new director, but I do tons of billing with them and I do
10 know of children that I have seen for 40 sessions that the
11 State Office of Victim's has paid for -- assistance has paid
12 for. And then typically after that the insurance, Medicaid.
13 And then I have some people who come in and I use a sliding
14 fee scale for.

15 Q A sliding fee scale?

16 A Yes.

17 Q But do you know exactly how many times SOVA would pay
18 for it in 2006?

19 A I started billing SOVA in private practice in 2007, and
20 I will tell you that it was standard operating procedure for
21 me that I could request 20 sessions, and then after that I
22 could request up to 20 more.

23 Q Could you request that -- could you also -- but after
24 those sessions were over do you also take into account --
25 you also said you have some that come see you multiple -- I

1 . guess multiple -- maybe every week, every other week
2 sometimes for a couple of years, right?

3 A No. I want to be clear that it's not weekly or
4 multiple times a week for a year to two years, no.

5 Q Not for everybody. But --

6 A No. And --

7 Q But in cases?

8 A Well, and typically when I'm going to do a child twice
9 a week that's usually the first couple of weeks after
10 they've disclosed and when they may be having the most
11 difficult time. Normally what I do is I contract with that
12 family and that child specifically. You know, if they feel
13 like they need to come back, you know, in six months, if
14 they feel like they need to call me, you know, in three
15 months. It really just varies on how they're doing.

16 Q What do you mean by contract?

17 A Contract verbally. Like we'll say -- I'll say to them,
18 okay, you've been coming weekly. You've been coming weekly
19 for, you know, six months. Do you feel like you're in a
20 place where you can come every other week. And I'll get
21 input from the caregivers, I'll get input from that child,
22 and we'll make a verbal contract that they'll come back now
23 every two weeks, and then we'll move to once a month. It
24 really just varies.

25 Q When you make this verbal contract is money talked

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1 about or how much it's going to cost? I'm sure you don't do
2 this for free.

3 A Of course payment is discussed. And as I've said,
4 there are different options that I use in my practice for
5 that.

6 Q When somebody has no money to be able to drive back and
7 forth almost an hour to go get treatment from the closest
8 place is that -- I mean, is that necessary cause of concern
9 that she's not having post traumatic stress disorder or she
10 doesn't have symptoms just because they can't afford it?

11 A Now, I certainly can't -- can't say that. I mean, I
12 can tell you that, you know, there have been cases where
13 I've had -- you know, where people have only been able to
14 come once a month because of finances, or only been able,
15 you know, to come every couple of weeks but -- because of
16 finances. But the important thing for me is that they come
17 and get the treatment that they need, of course.

18 Q In this case you were in the courtroom with the
19 traumatic services. She said that she did come six times,
20 right?

21 A I recall -- I think that's what she said.

22 Q Now, you said -- I think Mr. Nasrollahi said do
23 different children respond to PTSD symptoms differently and
24 you said typically -- I think you said also something about
25 nightmares. What else you said? Experience trauma. And a

1 lot of times you said it depends on the support system that
2 that child has. What do you mean by that of having a
3 support system for the child in how they respond to PTSD?

4 A Some children sadly don't have anybody in their life
5 that supports them. They don't have anybody in their life
6 that believes them. And so, that's what I mean by support
7 system. Typically children do better, just like all
8 individuals do better, when they have people around them
9 that are -- that are supporting them that are encouraging
10 them to get better. They're encouraging them to work on
11 their, you know, treatment model, their treatment goals.

12 Q Now, we're all here in the courtroom right now and
13 you've heard Ms. Byrum and K.B. She lives with
14 her momma and daddy. Her momma is sitting next to her. Her
15 grandmother is sitting next to her. Her grandfather is
16 sitting next to her. Her dad's been here and her brother
17 and cousin. Would that be a sufficient support group for
18 her? They're here. They believe in -- you said one of them
19 is that they believe in her and want her to get better and
20 they want to overcome this post traumatic stress and what's
21 caused this. Having family members here, would that not be
22 a support group?

23 A Yes. That would be a support system.

24 Q And also to try to get over the trauma, would not
25 possibly trying to get over the trauma would be here facing

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1 the perpetrator? Would that be one step of getting over
2 trauma, of trying to put it behind you?

3 A Sometimes. I mean, there are some children who don't
4 feel that that's a way to get past the trauma but there are
5 others that do. And a lot of that depends on how much, you
6 know, time and effort has been put in to prepare that child
7 to testify.

8 Q Now, if something happened seven and a half, almost
9 eight years ago and the child is here today, I mean,
10 normally (??) experience, or if they were faking post
11 traumatic stress disorder, in your opinion, do you think
12 they would subject themselves to this, as an expert?

13 A I mean, I can tell you that I have seen cases where the
14 child didn't necessarily want, you know, to pursue this but
15 the family pushed it, and so, the child did. I mean, I
16 don't think any child or child victim, or a victim of any
17 age for that matter necessarily would want to come and deal
18 with this process.

19 Q And could underlying reasons why they don't want to
20 come here is that they're afraid they don't want to face the
21 person that's traumatized them, or they don't to have to get
22 up there because they're embarrassed that something like
23 this happened to tell their story of what happened? Could
24 that be an explanation?

25 A I think there are numerous explanations of why people

1 don't -- don't pursue this.

2 Q One thing you did say is the support system would be
3 something that you would look to to -- you know, that the
4 support system is there to valid -- I think you said
5 validate their feelings, ensure treatment. Now, we did hear
6 earlier Ms. Byrum said that -- and I think it was testified
7 to and it's in evidence that when she went down to the
8 sexual trauma that her income range was 9,000 to \$11,000.
9 Somebody can't afford to go get this treatment, wouldn't
10 other best treatment that she could possibly provide is to
11 surround their love with that little girl?

12 A I don't think I could call that treatment, but I
13 certainly would say that -- as I said, a support system
14 would be hugely important.

15 Q When we're dealing with this there's no specific
16 scientific test or any type of specific literature that once
17 size fits all, right?

18 A That's correct.

19 Q It can vary from this child to this child, or this
20 child to this person who comes back from war, right?

21 A Yes.

22 Q Now, in all of this have you ever met with K.B.
23 Byrum?

24 A No.

25 Q Have you ever talked to guidance counselors --

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1 A No.

2 Q -- that's dealt with her? Have you ever talked with
3 teachers that have talked with her?

4 A No.

5 Q Have you ever talked to her medical doctor?

6 A No.

7 Q Have you even said one word to K.B.

8 A No.

9 Q Now, you were here earlier also when Susan Bentley got
10 here and talked about her report that she took the forensic
11 interview, right?

12 A Yes.

13 Q And there was no audio to record what was said in that
14 room, right?

15 A That's what she said, yes.

16 Q There's no video to record mannerisms or anything like
17 that, right?

18 A That's what she said.

19 Q And she also said she can't remember exactly when she
20 wrote the report. It could have been right after or it
21 could have been three days later, right?

22 A I heard her say that, yes.

23 Q So how can you really -- you know, based on stories and
24 all that, that's more of just like a -- that's just a record
25 and that's just -- you just read that to get an idea of what

1 happened, right?

2 A That's correct, because there was no DVD that I could
3 watch.

4 Q Now, one thing that -- one thing Mr. Nasrollahi asked
5 you were symptoms, or another symptom. He was asking about
6 memory loss. And you said -- one was about, you know, they
7 could start on -- and it goes child by child. They could
8 start out -- I think you said you like to do multiple
9 sessions to try to figure out to get a better view, right?
10 Multiple interviews with the child?

11 A Well, no. Not multiple forensic interviews.

12 Q Well, multiple meetings.

13 A Multiple therapy sessions?

14 Q Yes.

15 A Okay, yes.

16 Q All right. You also said on the initial forensic
17 interview that sometimes they can spill -- you know, tell a
18 lot of details but then sometimes afterwards it's not --
19 based on your experience sometimes they can forget the minor
20 details but they remember the major details. The major
21 traumatic events.

22 A Yes.

23 Q You did say that?

24 A Yes.

25 Q So it is normal for a child, once they -- in this case,

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1 eight years later, she could have memory loss on exactly
2 what happened on multiple events. Is that possible?

3 A I'm sorry?

4 Q Couldn't it be an explanation that -- case by case I
5 know you don't know. But couldn't she have memory loss of
6 what happened?

7 A Well, as I said, I mean, it's not atypical to have some
8 -- some detail loss.

9 Q Okay. So it is -- it can happen. And based on your
10 experience that detail loss is -- sometimes happens?

11 A Yes.

12 Q Case by case. You can't say for (??). And I do think
13 you wrote down, or you said, minute details are often
14 forgotten.

15 A Correct.

16 Q And children's disclosure is a process, not a one time
17 pouring out of info really. It's -- is that correct?

18 A Correct.

19 Q In this case, for the most part, it all happened right
20 after it was disclosed that the details came about, and then
21 nothing else until seven and a half years later, based on
22 what you've read?

23 A Just based on what I've read, yes.

24 Q What we've gotten out of this though, what you're
25 saying, it really is based on the individual child?

1. A That's correct.

2. Q And about meeting the child, I understand -- do you
3 know really her socioeconomic background? I mean, you've
4 seen that they make nine -- between nine and \$11,000, but
5 other than that?

6. A No.

7. Q Do you know where they live right now?

8. A I've read that and I've seen obviously the pictures
9 that you guys have put on the screen. Other than that, no.

10. Q Do you know where they live now?

11. A I think I heard someone -- one of the family members
12 said they're living in an apartment, I believe.

13. Q Do you know what kind of car they drive?

14. A I don't.

15. Q Do you know how much food they put on the table?

16. A I don't.

17. Q So when Mr. Nasrollahi asked you if her -- your
18 observations of her on the stand yesterday show any signs of
19 post traumatic -- I can't remember exactly the words what he
20 said. But post traumatic stress disorder or traumatic --
21 that she's had some type of traumatic experience, how can
22 you honestly give that saying no when you've never met her
23 and you don't know her whole (??)?

24. A I mean, I can base that on what I've seen in treating
25 victims. I obviously don't know her specifically.

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1 Q One thing we do know. Are you up here doing this for
2 free?

3 A I'm not.

4 Q Who's paying?

5 A I think it's coming from the State of South Carolina
6 Indigent Fund, I think. I'd have to clarify that with the
7 attorney.

8 MR. NASROLLAHI: I have an objection.

9 THE COURT: All right.

10 MR. BROWN: I'll retract that question.

11 THE COURT: All right. You said you don't have an
12 objection?

13 MR. NASROLLAHI: No. I have an objection.

14 THE COURT: Oh, you do have an objection.

15 MR. NASROLLAHI: Yeah.

16 THE COURT: Okay, all right. Objection sustained.

17 That answer is stricken -- the question and the answer is
18 stricken from the record. The jury is instructed to
19 disregard. That last question was truly immaterial. It's
20 not important. Please disregard it. Go ahead, Mr. Brown.

21 MR. BROWN: Yes, sir.

22 Q In going back over the symptoms of post traumatic
23 stress disorder, you said responses to stimuli, nightmares,
24 difficulty in school, emotional disturbances. After reading
25 through all this and hearing this would you say that she

1 does fall along those patterns and she does have those
2 symptoms, or she has complained about those symptoms?

3 A I would say the file reflects that she's had some of
4 those, yes, from what I've read.

5 Q And after seeing the whole trial, you would say that
6 she does have a support system?

7 A It appears that way, yes.

8 Q And you did say different children respond to PTSD
9 differently and traumatic events differently?

10 A Correct.

11 Q And that different children have different -- they can
12 have memory loss differently than another child? It's not a
13 one shoe fits all, right?

14 A No.

15 Q One size fits all?

16 A Not typically, no.

17 MR. BROWN: No further questions.

18 THE COURT: Anything on redirect briefly?

19 MR. NASROLLAHI: I do. Not briefly though.

20 THE COURT: Not briefly. Ladies and gentlemen, we're
21 at a point where we probably need to go ahead and take a
22 lunch break because I imagine everyone's getting pretty
23 hungry. We're going to break in the middle of this witness.
24 Again, I'm trying to -- I can tell some people up there are
25 hungry. What I am trying to do, ladies and gentlemen, in

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1 all honesty, I'm not trying to rush the trial by any stretch
2 of the imagination but I'm hopeful that we can get this to
3 you today and you can begin your deliberations today. Okay?
4 And so, that's one of the reasons that we started a little
5 bit earlier than we usually would and we went a little bit
6 later into our lunch break. If you could, be back in the
7 jury room at 2:15. That'll give you about an hour for
8 lunch. An hour to grab something to eat. Don't talk about
9 the case and I'll see you back at 2:15. Thank you. You can
10 step down and don't talk about your testimony, please.

11 (Whereupon, the jury exited the courtroom at 1:15 p.m.)

12 THE COURT: One quick housekeeping matter, Mr.
13 Nasrollahi. With Defendant's -- when you introduced the
14 exhibit that you introduced I think the record reflects it's
15 Defendant's Number 1 in evidence. Ms. Scott had to remark
16 that and it's going to be Defendant's Number 2 in evidence.
17 Okay? So the --

18 MR. NASROLLAHI: This one?

19 THE COURT: Yeah. That's the CAD report. So that'll
20 be Defendant's Number 2 in evidence and I just want the
21 record to reflect that. I will see you all at 2:15 please.
22 Thank you.

23 (Whereupon, court was in recess from 1:16 p.m. to 2:30
24 p.m.)

25 THE COURT: We'll go back on the record. Let the

1 record reflect that the Defendant is present with counsel.

2 Ms. Cook, why don't we have you come on back up while the
3 jury is coming out.

4 (Whereupon, the witness returns to the witness stand.)

5 (Whereupon, the jury enters the courtroom at 2:30 p.m.)

6 THE COURT: Okay. The record should reflect that the
7 jury is back and seated. We're still in the examination of
8 Ms. Cook at this point. Redirect.

9 MR. NASROLLAHI: Briefly, Your Honor.

10 THE COURT: Yes, sir.

11 Q Ms. Allen-Cook, you told Mr. Brown that you had gone
12 over the Child's Place forensic interview in this case?

13 A Correct.

14 Q Okay. And he asked you if sleep disturbances would be
15 a symptom of post traumatic stress disorder?

16 A Yes.

17 Q Okay. Now, if a patient told you that they had vivid
18 nightmares and dreams that come true all their life, would
19 you rule that out as a symptom of post traumatic stress
20 disorder?

21 A All their life --

22 Q All their life.

23 A -- would be pre-trauma. So you couldn't consider that
24 post traumatic stress disorder.

25 Q And if a potential patient told you that they had

GAYE ALLEN-COOK-REDIRECT EXAMINATION

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1 experienced episodes of sitting in their room and crying for
2 the past two years would you be able to consider that as a
3 symptom of post traumatic stress disorder?

4 A Not if it's pre-trauma.

5 Q Okay. And the forensic report, child behavioral
6 history reports both vivid nightmares and episodes of crying
7 in her room for two years prior, correct? Do you need to
8 see this?

9 A I recall reading it but I'm not -- I don't recall the
10 specifics of it. I'm sorry.

11 MR. NASROLLAHI: Permission to approach.

12 THE COURT: Please.

13 A Okay.

14 Q Now, were you able to consider the sleep disturbances
15 and the emotional disturbances on there as factors in your
16 determination post traumatic stress disorder?

17 A Well, as I stated, if it's pre-trauma it can't be
18 considered to be with the trauma, hence post traumatic
19 stress disorder.

20 Q Okay. And -- okay. Go back for me. If a patient
21 tells you that prior to the alleged sexual trauma and after
22 the alleged sexual trauma they've had difficulties in
23 school, would you be able to consider that as a symptom of
24 post traumatic stress disorder?

25 A Not if it occurred pre-trauma.

1 MR. NASROLLAHI: Okay. That's all I have.

2 RE-CROSS-EXAMINATION

3 BY MR. BROWN:

4 Q Ms. Allen-Cook, but you can't rule out the fact that if
5 a child is in normal math classes or normal classes and then
6 after the incident takes place is put back in the self-
7 contained classes and then ultimately drops out of school
8 because it's just building on her too much, could that --
9 could that be post traumatic stress disorder.--

10 A I don't think you --

11 Q -- or a symptom?

12 A I don't think you can rule it out either -- either way.
13 I mean, it could be, it could not be. You'd have to have, I
14 think, probably some information from the school as far as
15 how this child had done in all of their life pre-trauma,
16 post-trauma. There are various reasons children have issues
17 in school.

18 Q Were you able to review that --

19 A I didn't review any school records.

20 Q And also, did you have -- again, did you ever talk to
21 the victim in the case --

22 A I haven't --

23 Q -- or K.B. Bryum?

24 A I have not spoken to K.B. Bryum.

25 Q So do you know if there are any nightmares that

GAYE ALLEN-COOK-RECROSS-EXAMINATION

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1 occurred post what she might be having nightmares about?

2 A I don't have any -- any information regarding that.

3 Q So if she was it could be PTSD from a trauma that she
4 received from this sexual assault on December 29th, 2005?

5 A Well, I can tell you it would give me concern if it was
6 pre and post. I mean, I don't think even as a clinician if
7 I were treating her I could say if it were pre and post
8 trauma that the trauma caused this. I mean, I would have to
9 look at maybe other things that could possibly be going on
10 in the child's life.

11 Q You have to dig deeper?

12 A I'm sorry?

13 Q You have to dig deeper?

14 A Yes, definitely.

15 Q See more things out there that could -- you just have
16 to do more investigation, right?

17 A If it's pre and post you would definitely have to do
18 more investigation.

19 Q And you haven't had the occasion to be able to do a
20 post, or a real thorough investigation of Ms. Byrum, right?

21 A I haven't treated Ms. Byrum.

22 Q So really what you just have to go on is a forensic
23 report that the forensic interviewer stated she doesn't know
24 when she wrote it. It may have been right after, it may
25 have been three days later. She doesn't -- she can't say

1 for sure whether it's the exact words of the victim, right?

2 A Well, I -- now, I can tell you that piece of the
3 document that you're looking at, when I worked in the Child
4 Advocacy Center, as I said from 2005 to 2007, that document
5 is the same document that we use, and the part that you're
6 looking at is the part that the parent answers pre-
7 interview, and that's typically noted at that moment.
8 That's not something that's transposed after like the events
9 of the interview are. What you're looking at is what
10 typically is marked yes or no in the interview with the
11 parent which occurs usually just before the child is
12 interviewed.

13 Q Were you in the interview?

14 A No, I was not.

15 Q Do you know if it was checked typically at that time,
16 or do you know if it was checked then?

17 A I was not there. I'm just telling you typical standard
18 protocol for a forensic interview.

19 Q But you don't know if that protocol was followed, do
20 you?

21 A I wasn't there. I'm sorry.

22 MR. BROWN: No further questions.

23 MR. NASROLLAHI: No questions.

24 THE COURT: Thank you, ma'am. You can step down. Mr.

25 Nasrollahi, call your next witness, please.

KIMBERLY CROSS-DIRECT EXAMINATION

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1 MR. NASROLLAHI: I call Kimberly Cross to the stand.

2 KIMBERLY CROSS, having been first

3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. NASROLLAHI:

6 Q Kim, state your full name.

7 A Kimberly Michelle Cross.

8 Q Okay. You're going to have to speak up so that not
9 only, you know, the jury --

10 A I'm sorry.

11 Q -- but we can all hear.

12 A It's Kimberly Michelle Cross.

13 Q Now, how do you know the Defendant, Scott Cross?

14 A He is my husband.

15 Q How long have you guys been married?

16 A Eight years.

17 Q When were you married?

18 A January the 14th, 2006.

19 Q Okay. Do you have any children?

20 A I have two.

21 Q How many children does Scott have?

22 A He has three.

23 Q He has three. Now, I'll ask you a couple of questions
24 about what you recall back on December 29th of 2005. Okay?

25 A Sure.

1 Q Do you remember that far back?

2 A To the best of my knowledge.

3 Q Okay. Do you recall where you were on December 29th,
4 2005?

5 A Not the exact date. No, sir.

6 Q Do you know whether you were at the Byrums' house on
7 that day?

8 A I cannot say that I was, I mean, or that I wasn't. I
9 don't remember exactly the day I was at their home.

10 Q Okay. You were married on January the 14th of 2006?

11 A Yes, sir. I was.

12 Q Were any of the Byrums in your wedding?

13 A Yes, they was. Angie Byrum.

14 Q Prior to your wedding when was the last time you recall
15 going over to the Byrums' home?

16 A We had took them some Christmas presents.

17 Q When was that?

18 A Christmas. Around Christmas.

19 Q Was it Christmas day, was it after Christmas day? When
20 was it?

21 A No. We had our own Christmas on Christmas day. So it
22 may have been the day after or so, but...

23 Q Okay. And you took them presents. And that's the last
24 time you recall seeing the Byrums before your wedding?

25 A Well, I mean, they had come to the house as far as --

KIMBERLY CROSS-DIRECT EXAMINATION

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1 Q Okay. That's the last time you recall being over at
2 the Byrums' home?

3 A Oh, yeah, their home.

4 Q Now, that time of year, the end of December, what was -
5 - was Scott employed?

6 A Yes, he was.

7 Q Where was he employed?

8 A With Eddie McCullough.

9 Q Okay. And in what capacity was he employed? What was
10 he doing?

11 A He drove equipment.

12 Q Okay. What kind of equipment?

13 A Bulldozers. I don't know really.

14 Q That time of year, the end of -- the end of the year
15 2005, how often was Scott working?

16 A All the time.

17 Q What do you mean by all the time?

18 A Because I -- he would come home late. I was pregnant
19 at the time, which, of course, I was pregnant with twins and
20 I had complications.

21 Q Take your time.

22 A I had to deliver both of them, but I lost one.

23 Q Okay.

24 A And I wanted him with me.

25 Q He was working all the time? How many days a week was

KIMBERLY CROSS-DIRECT EXAMINATION

1 he working?

2 A Every day of the week.

3 Q Did he work on Christmas day?

4 A I don't remember. I mean, I don't think so on
5 Christmas. We had our own Christmas. We had his daughter.
6 Because at the time I was pregnant and -- which he has a
7 child by another lady, and which we done a Christmas with
8 her, so...

9 Q And between Christmas and your wedding do you recall
10 him having any time off?

11 A Not that I recall.

12 Q Not that you recall. He was working seven days a week
13 during Christmas?

14 A Pretty much.

15 Q And you were at home pregnant. Did you ever go to his
16 place of employment during that time, that time of year?

17 A I did.

18 Q How often would you go up there?

19 A Pretty much a lot.

20 Q Why? Why would you go up there?

21 A Because I didn't like being by myself. I wanted my
22 husband, pregnant, moody, irritable.

23 Q Now, did he work outside or did he --

24 A He did.

25 Q Okay. So if it was a nice day would he be working?

KIMBERLY CROSS-DIRECT EXAMINATION

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- 1 A Oh, yeah. He'd be working.
- 2 Q Okay. What about if the weather was bad?
- 3 A If it was raining Eddie had him at the shop doing
4 something. And, of course, I would tell him I'm coming down
5 there because I don't believe you're at the shop. So I'd go
6 down there to see if he was there and he would be there
7 working on equipment, or doing whatever Eddie Bo needed him
8 to do. Which, of course, Eddie Bo, he does cooking too. He
9 does barbeque and which, of course, he has a kitchen. And
10 he was like you can go in there and wait on Scott to get off
11 if you like, and being pregnant I'd go in there.
- 12 Q Now, you know doubt know about the charges why we're
13 here today?
- 14 A I do.
- 15 Q How has that affected you?
- 16 A It has messed me up. It's messed me up as a mother.
17 It's messed me up as a wife. It has messed my life up.
18 Mentally it has messed me up.
- 19 Q Do you recall Scott ever playing hide and seek --
- 20 A No, I do not.
- 21 Q -- with the kids? Ever?
- 22 A Ever.
- 23 Q Would that be something that would stick out in your
24 memory if it happened?
- 25 A If you want to know my opinion, as a parent it would,

KIMBERLY CROSS-CROSS-EXAMINATION

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1 for the simple fact of I wouldn't be letting my children run
2 around at night anyway playing hide and go seek. That's
3 just my opinion.

4 Q So you don't recall Scott Cross playing hide and go
5 seek?

6 A I do not.

7 Q You don't recall on December 29th going over to the
8 Byrums' home?

9 A No, sir. I mean, I don't know the exact day.

10 Q The evening that you took Christmas presents over to
11 the Byrums' house, around what time of night was that?

12 A It was dusky, you know. It wasn't dark and it wasn't
13 daylight like. I'd say around 8:00. 7:00 or 8:00, you
14 know, somewhere around in there. I mean, because I don't --
15 you know how it gets dark.

16 Q Right. We've heard a lot about it getting dark. Do you
17 recall that night Scott going outside and playing hide and
18 go seek?

19 A No, I do not.

20 Q Do you recall Scott going outside at all?

21 A No, I do not. Me personally. I mean, I don't if -

22 Q Let me ask the questions here. Okay? I mean, you're -
23 - you're his wife. Would you get on that stand and lie for
24 him?

25 A No, I would not.

KIMBERLY CROSS-CROSS-EXAMINATION

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1 Q Have you ever been the victim of sexual abuse?

2 A Yes, I have.

3 Q If you knew he did things that the State says he did
4 what would you do?

5 A He'd go to prison for it.

6 Q Why?

7 A Because that's where they deserve to be.

8 MR. NASROLLAHI: Please answer any questions Mr. Brown
9 has for you.

10 THE COURT: Mr. Brown.

11 MR. BROWN: Judge, can we have a sidebar?

12 THE COURT: Sure.

13 (Whereupon, a sidebar was held.)

14 THE COURT: Mr. Brown.

15 CROSS EXAMINATION

16 BY MR. BROWN:

17 Q Ms. Cross.

18 A Yes, sir.

19 Q Now, you said you went over to the Byrums' house. Why
20 would you go over to the Byrums' house?

21 A We were friends.

22 Q How long have you all been friends?

23 A As far as I go?

24 Q Ma'am?

25 A Me personally?

KIMBERLY CROSS-CROSS-EXAMINATION

1 Q Yes, ma'am.

2 A We've been friends a long time.

3 Q Who are you friends with?

4 A I was friends with Angie.

5 Q Angie. And you said you all were friends for a long
6 time?

7 A We was.

8 Q And, in fact, in January -- when you and Scott Cross
9 were married on January 14th, '06 she was in your wedding,
10 right?

11 A She was my maid of honor.

12 Q Now, you have two children, right?

13 A Two.

14 Q Scott -- Scott has three?

15 A He has three.

16 Q Two with you and one separate?

17 A Yes, sir.

18 Q Okay. On December 29th, 2005 you told Mr. Nasrollahi
19 you can't say that you were there or you weren't there; is
20 that right?

21 A I don't remember exactly what day I went to their
22 house. I just know I took them some presents. I can't say
23 it was the 29th. I can't say it was 25th. I just know I
24 took them some presents. I got their children.

25 Q And being December 29th, 2005 pretty close in time to

KIMBERLY CROSS-CROSS-EXAMINATION

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1 Christmas time on the 25th, right?

2 A It was.

3 Q So it's possible you were there?

4 A I took them presents.

5 Q And when you went there Scott was with you?

6 A He was.

7 Q And next you said when you did take them presents you
8 got there it was still light outside?

9 A Yes. It was like a dusky dark. I mean, it wasn't dark
10 and it wasn't bright daylight.

11 Q And you were pregnant?

12 A I was.

13 Q And you said you had a high risk pregnancy, right?

14 A I did.

15 Q So you would have -- you would not have gone outside to
16 play hide and seek?

17 A I'm not going outside playing hide and seek. The last
18 time I played that I was a child.

19 Q It's what children do, right, play hide and seek?

20 A Children do play hide and seek. But I'm not playing at
21 dark --

22 Q When you got there --

23 A -- because I'm scared of the dark.

24 Q When you got there you were hanging out with Angie in
25 the house, right?

KIMBERLY CROSS-CROSS-EXAMINATION

1 A We had -- we had took presents, yes.

2 Q And you really can't say for sure whether or not he
3 went in or he went outside playing --

4 A Yes, he was -- he went in with me.

5 Q He went in. But you can't say for sure --

6 A I was pregnant. I wasn't toting all them presents.

7 Q But, I mean, you can't say for sure he stayed inside
8 the whole time you were there?

9 A Yes, he was. He was talking to Tony.

10 Q And Tony was there the whole time you were there?

11 A I mean, yeah. He was there. It was Angie, Tony and
12 the children. I mean, we took the presents. I mean, it was
13 their Christmas.

14 Q Are you 100 percent positive that Tony was there the
15 entire time you were there?

16 A Yes, sir, he was there. I mean, we took them their
17 stuff. The children opened it. Angie and them opened
18 theirs. Yes, sir, they were there.

19 Q I'm not saying that. But are you sure that he was
20 there the entire time you all were there?

21 A Yes, sir. He was there the entire time.

22 Q And you can't say for sure whether or not he stayed in
23 the house the entire time, can you?

24 A Oh, yes, he did.

25 Q Well, how are you so sure about that?

KIMBERLY CROSS-CROSS-EXAMINATION

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1 A Because -- I don't know. I mean, I was attached. I
2 was fixing to get married. I was pregnant. I had all this
3 going on with me and my child. At that time they told me
4 that I was going to have to deliver both of my children and
5 that if the one that was deceased got in my birth canal
6 first I would lose my other child. So my family, you know -
7 - I was raped and it was by my family, so I'm not close with
8 them. He says I was mean, but I called it just love really.

9 Q You love your husband?

10 A I do.

11 Q And you don't want to see anything happen to him?

12 A I do not.

13 Q But you do say that he was over at that house -- you
14 all went to that house sometime after Christmas?

15 A We did, and we took them the presents.

16 Q And you can't say whether or not it was on December
17 29th, if you were there or if you weren't there?

18 A I was there. I mean --

19 Q You were there on the 29th?

20 A -- but I'm saying on the 29th I can't sit here and say
21 that. I don't remember exactly what day.

22 Q But you know you went over there?

23 A But I do know I went over there. There's no denying
24 that. I did go over there. I did take them their stuff.
25 Scott was with me. Took them their presents.

KIMBERLY CROSS-REDIRECT EXAMINATION

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1 Q And the kids were there too?

2 A Yes, they were.

3 Q What time did you say you got there that night?

4 A I don't know exactly what time.

5 Q It was light outside?

6 A I'd say 6:00 or 7:00. I mean, I don't know.

7 Q But you remember it being light outside?

8 A I'm just being - I mean, as far as --

9 Q Okay. And if you say that he was working nonstop all
10 day long and he was -- he was working all hours of the day,
11 how did you get to their house if it was still light
12 outside? If he was working --

13 A Because whenever he would get off --

14 Q -- as much as you say he was?

15 A I'm sorry.

16 Q Go ahead.

17 A When he would get off, I mean, we would go do things.

18 I'm not saying that he worked 24 hours seven days a week. I
19 mean, I'm not saying that by no means.

20 Q So he would get off early some days?

21 A He would get off normal time for them to get off. It
22 would be about 7:00, 8:00, if that.

23 Q Wouldn't 7:00, 8:00 in December be dark?

24 A I don't know. I couldn't tell you. I don't know.

25 Q But you know you got there at their house and it was

EDDIE MCCULLOUGH-DIRECT EXAMINATION

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1 still light outside?

2 A It was fixing to get dark.

3 Q And Scott was with you?

4 A Because actually, I mean, you know, when we left it was
5 dark. Dark, dark. Because I was fussing about it because I
6 wanted to get me something to eat. I was pregnant and I eat
7 constantly. I mean, I gained like 100 something pounds when
8 I was pregnant.

9 MR. BROWN: No further questions.

10 THE COURT: Anything on redirect?

11 REDIRECT EXAMINATION

12 BY MR. NASROLLAHI:

13 Q Would it have been unusual for Scott to have been off
14 work at 3:00 in the afternoon?

15 A Yeah. If it was daylight. I mean, as far as sunny. If
16 it was raining he was off. But 3:00, yeah. That was
17 unusual.

18 Q Would it have been unusual for him to have gotten off
19 work before 5:30?

20 A Pretty much. I mean, Eddie Bo worked him good. I mean,
21 we lived comfortable and it was all on account of him
22 working. He drove equipment.

23 MR. NASROLLAHI: Nothing further.

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

25 THE WITNESS: Can I stay?

EDDIE MCCULLOUGH-DIRECT EXAMINATION

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1 THE COURT: Sure. Yes, ma'am. You can remain if you
2 wish.

3 (Whereupon, the witness steps down from the witness
4 stand.)

5 THE COURT: Call your next witness, please.

6 MR. NASROLLAHI: The Defense's next witness will be
7 Eddie McCullough.

8 EDDIE MCCULLOUGH, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. NASROLLAHI:

12 Q Mr. McCullough, state your full name for the record.

13 A Edward McCullough.

14 Q And what do you do for a living, Mr. McCullough?

15 A Run heavy equipment, construction.

16 Q Okay. In December of 2005 did you have any employees?

17 A Yes, I did.

18 Q Who was employed with you?

19 A Scott Cross and Mike Page.

20 Q Okay. And what did Scott Cross do for you?

21 A He run my equipment and helped me mechanic.

22 Q Okay. Typically the month of December of 2005 what
23 time would Scott start work?

24 A We started about 8:00.

25 Q Okay. And then what time would you guys work until?

EDDIE MCCULLOUGH-DIRECT EXAMINATION

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1 A Some days five and some days 9:00. It depends on what
2 we had going on.

3 Q Okay. And did the weather affect your -- your work
4 schedule?

5 A Sometime when it was raining. But if it was raining we
6 was working in the shop on equipment.

7 Q Okay. So if it was a clear day you would have been
8 working?

9 A Yes, sir.

10 MR. NASROLLAHI: Judge, at this time I'd ask the court
11 to take judicial notice that December 29th, 2005 was a clear
12 day.

13 THE COURT: All right. We've had that discussion
14 before. Does the State -- or does the State take any issue
15 with that or the --

16 MR. BROWN: Judge, I would also take judicial notice of
17 that and also talk about the temperature. The highs and the
18 lows.

19 THE COURT: All right. Can you all come to an
20 agreement on that based upon available weather data through
21 the National Weather Service? Perhaps you call could look
22 at that and we can have a stipulation.

23 MR. NASROLLAHI: First stipulation. We've agreed that
24 the minimum temperature on December 29th, 2005 was 36
25 degrees Fahrenheit and the maximum temperature was 55

1 degrees Fahrenheit.

2 THE COURT: All right. And it reflects a clear and
3 uneventful day?

4 MR. NASROLLAHI: Yes, sir.

5 THE COURT: Is that correct, Mr. Brown? Do you all
6 agree with that?

7 MR. BROWN: As far as we can tell it was a clear day.
8 There's .01 inch of precipitation that day.

9 THE COURT: And that's dew. All right. Very good.

10 Ladies and gentlemen, the parties have agreed to a
11 stipulation. A stipulation is simply an agreement between
12 the two sides, and you can take it as a fact that on the
13 date in question, December 23rd, the minimum temperature on
14 December 23rd, 2006 was 36 degrees Fahrenheit. The maximum
15 temperature was 55 degrees Fahrenheit and it was a clear
16 day.

17 MR. BROWN: Judge, actually it would be December 29th.

18 THE COURT: I'm sorry. What did I say?

19 MR. BROWN: 23rd.

20 THE COURT: I apologize. December 23rd -- or --
21 December 29th. That day. All right. Go ahead, please.

22 Q Now, Mr. McCullough, you just heard everything we just
23 put on the record? So you just heard that the State and I,
24 we stipulated to that it was essentially a nice clear day?

25 A Yeah.

EDDIE MCCULLOUGH-DIRECT EXAMINATION

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1 Q Would you have been working on a nice clear day like
2 that?

3 A Yes, sir.

4 Q Okay. Now, at the end of the year 2005 were you busy?

5 A Yes, sir. I say that was one of our best we had.

6 Q How busy were you?

7 A Work daylight to dark, and then at night I had a truck
8 I had down that we was trying to get a motor transmission
9 in. It was one of my big dump trucks.

10 Q Okay. Do you recall Scott Cross working with you
11 towards the end of that year?

12 A Yes, sir.

13 Q Okay. Was he working long hours with you?

14 A Yes, sir.

15 Q Okay. And would it have been unusual for him to leave
16 work 4:00, 5:30?

17 A No.

18 Q You would have left work before 5:30?

19 A Because, I mean, he would -- he drove my service truck
20 --

21 Q Right.

22 A -- and he took my truck. I wasn't able to work on
23 equipment and stuff. So he generally stayed there with me
24 until I got ready to quit.

25 Q Okay. So what time would you typically get ready to

1 quit?

2 A Well, like I said, I was trying to get that truck back
3 up and running and some nights we worked until 9:00.

4 Q Okay. So it wasn't very -- it wasn't a usual
5 occurrence for him to get off work before 5:30?

6 A Huh-uh (negative.)

7 Q You've got to answer -- she's got to write down
8 everything you say. So you've got to give a yes or a no.

9 A Oh, no. I mean, he would be there with me.

10 Q Okay. And do you recall whereabouts you were working
11 around the time of December 29th?

12 A No. Well, my truck was in the shop. That's what we
13 was working on in the evenings. But I can't recall
14 definitely where we was working at with the equipment.

15 Q Did you have more than one job with the equipment?

16 A Yes. Sometimes I had one piece of equipment on one job
17 and one on the other job. It seemed to me like I was
18 working for one of my contractors. We was grading for a
19 house.

20 Q And were you working in Abbeville County?

21 A Yes, we do work in Abbeville County.

22 Q Okay. Were you working in Anderson County?

23 A Yes, we do work in Anderson County.

24 Q So were you guys driving a lot?

25 A Yes.

EDDIE MCCULLOUGH-CROSS-EXAMINATION

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1 Q So you guys were all over the place?

2 A Yes, sir.

3 MR. NASROLLAHI: Please answer any questions Mr. Brown
4 has for you.

5 THE COURT: Mr. Brown.

6 CROSS-EXAMINATION

7 BY MR. BROWN:

8 Q Mr. McCullough, do you have employment records that
9 shows the days that Mr. Scott Cross worked for you?

10 A I probably do. I'd have to look them up.

11 Q And do you know exactly where you worked at the end of
12 2005?

13 A Worked for Carl Cheek.

14 Q Sir?

15 A Worked for Carl Cheek, a contractor. He's one of my
16 big contractors building houses. We done a lot of work for
17 him. AB Roberts Construction. We was working for him
18 around Anderson County. And it seems to me like we was
19 working on Liberty Highway on that Yamaha job up there on at
20 85.

21 Q Can you say for certain which one you were working at
22 or where you were working?

23 A No, sir. Not for certain.

24 Q Can you say for exact certainty -- or I know words
25 typically and generally and all that. But can you say for

1 absolute certainty on December 29th that Mr. Scott Cross
2 didn't leave early from work?

3 A No, sir. I can tell you that because -- the reason I
4 know this was because something was said about something
5 happened to that girl and I said, Scott, there ain't no way
6 because you was working with me. We was putting a
7 transmission under a truck. And I remember that just like
8 it was yesterday.

9 Q And how do you remember that?

10 A Because, I mean, I just remember it after they called
11 me about this it brought back to my attention that's what I
12 said when we was laying under that truck, and I got to
13 thinking. I said, me and Scott was working on that truck.

14 Q I mean, could you have been working on that truck in
15 the morning?

16 A No, sir. Because we run equipment during the day and I
17 come back in and work on my truck in the evening and try to
18 get it ready.

19 Q So you can say with absolute --

20 A Because I have another truck.

21 Q You can say with absolute certainty you were working on
22 a truck on the 29th?

23 A Yes, sir. Because I remember it. I mean, it's --

24 Q What were you doing on January 15th of 2006?

25 A Probably running equipment.

EDDIE MCCULLOUGH-CROSS-EXAMINATION

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- 1 Q Probably?
- 2 A Yes, sir.
- 3 Q Do you know for certain?
- 4 A Yes, sir.
- 5 Q How do you know for certain?
- 6 A I worked every day running my equipment because I was
7 trying to pay for my equipment. I had big payments.
- 8 Q On Sunday, too?
- 9 A Yes, sir. A lot of Sundays. You can ask my
10 contractors.
- 11 Q What if I told you it was raining on January 15th.
- 12 A Well, I mean, I was working.
- 13 Q Were you running your equipment that day?
- 14 A If I had clearing I would be.
- 15 Q In the rain?
- 16 A Yes, sir. Because I had a cab on.
- 17 Q In the mud?
- 18 A When you run equipment you got to work.
- 19 Q So you can say with absolute certainty that you know he
20 was up under a truck with you that night?
- 21 A Yes, sir. Because I -- I mean, because Scott come and
22 told me that there was charges coming against him about that
23 and I said there ain't no way. We was working on that truck
24 putting that engine and transmission back in.
- 25 Q What were you doing on the 20th of December 2005?

1 A I can't -- I can't relate to it. You know, I'm just
2 saying -- you know what I'm saying? I work hard all my life
3 and I -- I went out on my own. I had to work.

4 Q I don't doubt that you work hard. But you can say
5 without any documentation remembering back that you were
6 under a truck that day?

7 A Yes, sir. Because I had a truck --

8 Q Do you remember what time you were under a truck that
9 day?

10 A We come in right before -- we knocked off before dark.
11 I remember that. And I asked Scott could he stay over and
12 help me a while on that truck, because I needed to get that
13 truck back up and running. Because New Year's was coming up
14 and I would like to get my full fresh start again in New
15 Years.

16 Q And you know exactly that on December 29th --

17 A I know we was working on that truck.

18 Q Or could it have been a couple of days before that?

19 A We worked on that truck about a week.

20 Q So it could have been a couple other days?

21 A Well, I mean, what I'm saying, we worked on it for
22 about a week before I got it all back together, because it
23 was a lot of trouble for us to work on it.

24 Q Now, with his wife being a high risk pregnancy, would
25 he leave sometime and go home and check on her?

EDDIE MCCULLOUGH-CROSS-EXAMINATION

523

1 A No. Because she -- most the time she'd come to the
2 house.

3 Q Come to the house? Where's your shop?

4 A Right there at my house. Right behind my house.

5 Q Would she come -- what if you all were out working on a
6 site?

7 A Well, she'd come at lunchtime and we'd go eat lunch.

8 Q She'd go out there in the clearing area with you?

9 A Do what now?

10 Q Would she come out there on the lot when you were
11 clearing?

12 A Yeah.

13 Q A woman that's high risk pregnancy --

14 A Well, I mean, she would come out there.

15 Q -- with twins and she says that she had a hard time --
16 you know, she's about to lose a baby. She'd come out there
17 on a worksite?

18 A Well, I mean, I ain't saying that day, you know. But
19 I'm saying she would come out there and eat with us a lot
20 and we'd go to lunch. Because you can look at me. I done
21 lost a lot of weight but I like to eat.

22 Q Would she come out there regularly even though she's a
23 high risk pregnant lady?

24 A She'd come out there a good bit.

25 Q And you know for certain -- 100 percent certain you

EDDIE MCCULLOUGH-CROSS-EXAMINATION

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1 were under a truck that day with Scott Cross?

2 MR. NASROLLAHI: Asked and answered, Your Honor.

3 THE COURT: I'll let him ask it again. Go ahead.

4 A Yes, sir. Because I'm telling you I wanted to get my
5 truck back up and running.

6 Q Are you friends with Mr. Cross?

7 A Say what now?

8 Q Are you friends with Mr. Cross?

9 A We work together.

10 Q How long have you known Mr. Cross?

11 A Ten or 12 years.

12 Q Is he your buddy?

13 A We used to be.

14 Q Why ain't you buddies anymore?

15 A Because I'm working out -- I mean, I don't see him that
16 much. That's what I'm saying. But we still talk. Every
17 time we run into him we sit there and talk for a little bit.

18 Q Isn't it true you wouldn't want to see your buddy
19 getting in trouble?

20 A Do what now?

21 Q Isn't it true -- you wouldn't want to see your buddy
22 get in trouble, would you?

23 A When you all asked me to come down here for a statement
24 that -- I mean, I remembered that I was working on my truck
25 when all this truck place.

MICHAEL PAGE-DIRECT EXAMINATION

525

1 Q But you wouldn't want to see your buddy get into
2 trouble?

3 A No. I wouldn't want to see nobody get in trouble.

4 Q So you'd say anything to make sure he wouldn't get in
5 trouble, right?

6 A Do what now?

7 Q You'd say anything to make sure he wouldn't get in
8 trouble, right?

9 A No, sir. I'm telling you the truth.

10 MR. BROWN: No further questions.

11 THE COURT: Thank you, sir. You can step down.

12 (Whereupon, the witness steps down from the witness
13 stand.)

14 THE COURT: Call your next witness, please.

15 MR. NASROLLAHI: I'm going to call Mike Page to the
16 stand.

17 THE COURT: Page. Mike Page.

18 MR. NASROLLAHI: Can Mr. McCullough be released from
19 his subpoena?

20 THE COURT: Yes. Thank you for coming, Mr. McCullough.

21 MICHAEL PAGE, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. NASROLLAHI:

25 Q Mr. Page, state your name for the record?

MICHAEL PAGE-CROSS-EXAMINATION

526

1 A Michael Keith Page.

2 Q Okay. And what's your current occupation?

3 A Security officer with Duke Energy.

4 Q And prior to that what did you do?

5 A I worked with South Carolina Highway Patrol.

6 Q Say that again?

7 A South Carolina Highway Patrol.

8 Q All right. Did you ever work for Eddie McCullough?

9 A Yes, sir.

10 Q And in what kind of capacity did you work for Eddie
11 McCullough?

12 A Worked on a part-time basis operating equipment.

13 Q Okay. Were you employed with -- for Mr. McCullough
14 around December of 2005?

15 A Yes, sir.

16 Q Do you recall the end of the year for December of 2005,
17 in the end of that month, after Christmas?

18 A Vaguely.

19 Q Vaguely. Do you remember being very busy at that time?

20 A Yes, sir.

21 Q Okay. Tell the jury about how busy you guys were?

22 A Busy with doing construction work for new houses. I
23 don't remember exactly what we were doing at that time, but
24 we had worked until dark.

25 Q Do you recall James -- I mean, Scott Cross working for

MICHAEL PAGE-CROSS-EXAMINATION

527

1 Eddie McCullough at that time?

2 A Yes, sir.

3 Q Okay. Was he employed part-time or full-time?

4 A I believe he was full-time.

5 Q Okay. How much was he working?

6 A Pretty much every day.

7 Q Every day? And what kind of hours was he working?

8 A He worked the same. Worked until about dark.

9 Q Okay. At that time would it have been unusual for Mr.
10 Cross to have been -- have to have gone home before 5:30?

11 A Unless it was raining we didn't get off early.

12 MR. NASROLLAHI: That's all I have of this witness.

13 Please answer any questions that Mr. Brown --

14 CROSS EXAMINATION

15 BY MR. BROWN:

16 Q Mr. Page, you said you worked a part-time basis back in
17 '05?

18 A Yes, sir.

19 Q How long were you working with Mr. McCullough? How
20 long did you work with Mr. McCullough part-time?

21 A Probably four or five years.

22 Q Part-time? When you worked part-time how many hours --
23 I mean, how often would you work?

24 A Oh, I'm sorry. I misunderstood your question. My days
25 off from the patrol. It might be two days. Just depending

1 on what my schedule was and how many days I was off.

2 Q When did you retire from the patrol?

3 A February of 2009.

4 Q February of 2009. Do you remember on December 29th,
5 2005 you were working for the patrol? If you were on?

6 A I don't remember.

7 Q You don't remember?

8 A No, sir.

9 Q So on December 29th, 2005 you can say for certain
10 whether or not he got off work early or not?

11 A No, sir.

12 Q Because you don't know if you were even there?

13 A Correct.

14 MR. BROWN: No further questions.

15 THE COURT: Thank you, sir. You can step down. Call
16 your next witness.

17 MR. NASROLLAHI: Beg the court's indulgence.

18 THE COURT: Yes, sir.

19 MR. NASROLLAHI: Can Mr. Page be released from his
20 subpoena as well?

21 THE COURT: Mr. Page, thank you for coming, sir. Have
22 a good day.

23 (Whereupon, a sidebar was held.)

24 THE COURT: Ladies and gentlemen of the jury, we're
25 going to take a brief five minute break. If you would -- if

JAMES SCOTT CROSS-DIRECT EXAMINATION

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1 MR. NASROLLAHI: All right. At this time the Defense
2 calls James Scott Cross to the stand.

3 JAMES SCOTT CROSS, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. NASROLLAHI:

7 Q James, I know I don't need to do this, but state your
8 full name for the record.

9 A James Scott Cross.

10 Q James, where do you live?

11 A I live at [REDACTED] Road, Starr, South
12 Carolina.

13 Q Are you married?

14 A Yes.

15 Q Who are you married to?

16 A Kimberly Michelle Cross.

17 Q Is she here with you today?

18 A Yes, sir.

19 Q Do you have any children?

20 A Yes, sir.

21 Q How many?

22 A Three.

23 Q How old?

24 A I got a 12-year-old, seven-year-old, and a five-year-
25 old.

JAMES SCOTT CROSS-DIRECT EXAMINATION

531

1 Q James, where you were in December 29th, 2005?

2 A Work.

3 Q Where were you working?

4 A Eddie Bo McCullough.

5 Q What were you doing for Eddie Bo McCullough?

6 A I run equipment for him.

7 Q What does that mean?

8 A Run heavy equipment; bulldoze, track hoe, doing
9 clearing and grading out for houses and for residential
10 and commercial.

11 Q At the time how long had you been working for Eddie
12 McCullough?

13 A I worked for Eddie Bo like four and a half years.

14 Q Okay. And around the time of December 29th, 2005 what
15 was your work schedule like?

16 A Wide open.

17 Q What do you mean by wide open?

18 A Seven days a week. Anywhere from 7:30 to -- sometimes
19 we got off at like 11:30 at night. We had to fix the
20 equipment so we could go back to another job or -- because
21 we had to maintain the maintenance on everything.

22 Q Do you know the Byrums?

23 A Yes, sir.

24 Q How do you know the Byrums?

25 A I met them through my wife.

JAMES SCOTT CROSS-DIRECT EXAMINATION

532

- 1 Q Did you ever go over to their house?
- 2 A A couple of times.
- 3 Q Did you ever have them over at your house?
- 4 A Yes, sir.
- 5 Q Did you ever have the Byrums' children, K.B. and
6 Sam, over at your house?
- 7 A They come over with their momma and daddy.
- 8 Q When were you married?
- 9 A January 14th, 2006.
- 10 Q Okay. And were the Byrums in attendance at your
11 wedding?
- 12 A Yes, sir.
- 13 Q Okay. And prior to that when was the last time you
14 recall seeing the Byrums?
- 15 A Just here and there, because I worked all the time.
16 K.B. come over and helped my wife some while I was at
17 work.
- 18 Q Okay. And prior to your wedding when is the last time
19 you recall going over to the Byrums' house?
- 20 A When we took the Christmas presents over there.
- 21 Q All right. And what time of day was that?
- 22 A It was right at dark.
- 23 Q Had you been working that day?
- 24 A I worked the first part of the morning.
- 25 Q And when was that? When was that day?

JAMES SCOTT CROSS-DIRECT EXAMINATION

- 1 A I believe it was like the day after Christmas.
- 2 Q Okay. The day after Christmas Eve or the day after
- 3 Christmas day?
- 4 A The day after Christmas.
- 5 Q Christmas Eve or Christmas day?
- 6 A Christmas -- I'm talking like on the 26th.
- 7 Q Okay. So you recall going over there to take them
- 8 their presents on the 26th?
- 9 A Yes, sir.
- 10 Q Have you ever played hide and go seek --
- 11 A No, sir.
- 12 Q -- with those three kids?
- 13 A No, sir.
- 14 Q Now, was your wife pregnant at the time?
- 15 A Yes.
- 16 Q How pregnant?
- 17 A Very pregnant and ornery.
- 18 Q Was she manic?
- 19 A Uh-huh (affirmative.)
- 20 Q And would she leave you alone?
- 21 A No, sir.
- 22 Q All right. Now, did she ever come up and see you at
- 23 work?
- 24 A Yes, sir. Quite a bit.
- 25 Q Tell me about that.

JAMES SCOTT CROSS-DIRECT EXAMINATION

534

1 A She would just -- she would call and say I know you
2 ain't at work and I'd say I'm at work, and she'd say where
3 you at and I'd tell her what job we was on and she'd show
4 up, come sneaking in like a -- like she was trying to be an
5 investigator or something. She always found out that's
6 where I was at, wherever I said we was at.

7 Q Now, did you ever have to do work in the shop?

8 A Yes, sir.

9 Q Would she come up there and spend time with you then?

10 A Yes, sir.

11 Q What would she do while you were working?

12 A Sit down in the recliner with her feet up in the air
13 and holler for something to drink or feed me something to
14 eat.

15 Q And around the end of December of 2005 how far along
16 was she in her pregnancy?

17 A She was, I think, seven, eight months.

18 Q Okay. And this is your youngest child?

19 A That's the -- no. The middle.

20 Q The middle one?

21 A The first child me and her had together.

22 Q And prior to December 29th, 2005 had she had
23 complications in her pregnancy?

24 A Yes, sir.

25 Q Tell me about that.

1 A We found out she was pregnant with twins, and one of
2 the sacks was leaking. And where they had picked up two
3 heartbeats, as it progressed on they lost -- they couldn't
4 pick up but one heartbeat. And they said if -- if the one
5 that was leaking come out first it would -- we'd lose the
6 second one, too.

7 Q So at that point she had complications with her
8 pregnancy?

9 A Yes, sir.

10 Q Were these complications -- I mean, would they occur
11 out of nowhere?

12 A One minute she was all right and we was just happy, and
13 I was plum tickled because we was going to have twins,
14 because they say one of this is a little ole boy and one was
15 a girl. Then it goes from a good heartbeat to they can't
16 find one.

17 Q Did Kim require lots of care and assistance?

18 A Oh, yeah.

19 Q Did she need help at a moments notice?

20 A Yeah. I tried to make sure she got everything she
21 wanted. I worked like a dog.

22 Q Now, you've heard the testimony against you in this
23 case.

24 A Yes, sir.

25 Q You heard what K.B. said --

JAMES SCOTT CROSS-CROSS EXAMINATION

536

- 1 A Yes, sir.
- 2 Q -- you did. How do you respond to that?
- 3 A It ain't true.
- 4 Q Did you ever touch K.B. in any sexual way?
- 5 A No, sir.
- 6 Q Did you sexually batter K.B. on December 29th,
7 2005?
- 8 A No, sir.
- 9 Q Have you ever sexually battered K.B.
- 10 A No, sir.
- 11 Q How have these charges affected your life?
- 12 A It's been very stressful mentally and emotionally. My
13 family life, my social life, it's -- it's been a complete
14 disaster.
- 15 Q Now --
- 16 A I'm emotionally just destroyed. It's done made me lose
17 everything I worked for.
- 18 Q I want to talk to you for a second about -- take your
19 time. I want to be absolutely clear. Were you at the
20 Byrums' home on December 29th of 2005?
- 21 A No, sir.
- 22 Q Where were you on December 29th?
- 23 A I was at work with Ed Bo McCullough.
- 24 Q What time did you get off work?
- 25 A Probably about 9:00, 9:30 that night.

1 Q After you got off work did you go over to the Byrums'
2 home?

3 A No, sir. I was tired. I went home.

4 Q Do you remember that with certainty?

5 A Yes, sir.

6 Q I'm going to ask you again. Did you do anything that
7 K.B. said that you did?

8 A No, sir.

9 Q Is there anything else you want to tell this jury?

10 A Just I don't understand a lot of this stuff, you all.

11 MR. BROWN: Judge, he can ask a question.

12 MR. NASROLLAHI: Nothing further. I withdraw that last
13 questions.

14 THE COURT: Very good.

15 MR. NASROLLAHI: Please answer any questions Mr. Brown
16 has.

17 THE COURT: Mr. Brown.

18 CROSS EXAMINATION

19 BY MR. BROWN:

20 Q Mr. Cross, where is Starr located?

21 A Anderson County.

22 Q How far away is that from Iva?

23 A Right beside Iva.

24 Q Right beside Iva. And where do the Byrums live?

25 A Abbeville County.

JAMES SCOTT CROSS-CROSS EXAMINATION

538

- 1 Q They're address is Iva, right?
- 2 A I reckon so.
- 3 Q And is part of Iva in Anderson County?
- 4 A Yes, sir.
- 5 Q And is part of Iva in Abbeville County?
- 6 A I reckon so.
- 7 Q Your wife is Kim, right?
- 8 A Yes, sir.
- 9 Q You have three children; 12, seven and five?
- 10 A Yes, sir.
- 11 Q At that time your wife was, you said, had a high risk
12 pregnancy?
- 13 A Yes, sir.
- 14 Q She was pregnant with twins?
- 15 A Yes, sir.
- 16 Q She was very delicate?
- 17 A Yes, sir.
- 18 Q You said she was needy, demanding.
- 19 A Ornery.
- 20 Q Ornery.
- 21 A Yeah.
- 22 Q She'd come check up on you. Have to come investigate
23 you. Coming to your work because she didn't believe you
24 were there. She doubted you. She had doubts.
- 25 A No. She was wanting -- being pregnant she wanted --

1 wanted me to be there with her, because she was always by
2 herself unless somebody else was around.

3 Q When you all went to the Byrums' house in the afternoon
4 it was daylight -- or it was still daylight outside, Kim was
5 with you, right?

6 A Yes, sir.

7 Q If you work seven days a week all day long, why weren't
8 you working on the 26th? You got an explanation for that?

9 A Because we got off work early from a Christmas thing.
10 I got a -- my oldest little girl, I had -- I had custody of
11 her right then and I had to take care of her, too.

12 Q Isn't it true that you actually got off work on
13 December 29th, 2005 and you got to the Byrums' house while
14 it was still light outside?

15 A No, sir.

16 Q And when you got to the Byrums' house that night your
17 wife Kim, with a high risk pregnancy, she'd been demanding,
18 she'd been ornery, had been harassing you at work, trying to
19 figure out if you were there or not, she was in with one of
20 her best friends. A friend that's going to be in her
21 wedding.

22 A I never left her side.

23 Q She was in there with her friend, Angie, right?

24 A We was all in there.

25 Q K.B. her brother Sam --

JAMES SCOTT CROSS-CROSS EXAMINATION

540

1 A The youngins was not in there. It was the adults.

2 Q Where were the youngins?

3 A Doing whatever the youngins done.

4 Q Were they outside playing hide and go seek?

5 A We brought the presents and give the presents out and
6 they opened the presents. We wasn't there long at all. I
7 was a working person. I had a family to take care of and
8 things to take care of around my house, because I had just
9 bought a house.

10 Q Mr. Cross, with your wife being a high risk pregnancy
11 you weren't having sex at home with her right then?

12 A Yeah, I still had sex with her.

13 Q Even with a high risk pregnancy and she had all this
14 trouble?

15 MR. NASROLLAHI: I'm going to object to this on
16 relevancy grounds.

17 THE COURT: Overruled. You can continue, please.

18 Q I'll make the question again. In a high risk pregnancy
19 and a naggy wife, you weren't -- you weren't able to have
20 sex with her at home, were you? So when you got over to the
21 Cross's house -- or to the Byrums' house --

22 A Wait a minute. Rephrase that again.

23 Q I said with a high risk pregnancy in your wife you
24 weren't able to have sex with her towards the end of her
25 pregnancy, right? Isn't that right?

1 A You have to -- that's right.

2 Q That is right?

3 A Yeah.

4 Q All right. So when you got to the Byrums' house

5 K.B. -- isn't it true that K.B. had been coming to
6 your house in Anderson in Starr and helping your wife clean
7 around the house?

8 A They didn't come to the house in Starr. The house in
9 Starr it belongs to my momma.

10 Q Well, came to your house to help --

11 A What house?

12 Q Wherever you were living in Anderson.

13 A Well, can you tell me where I was living?

14 Q You can't tell me where you were living?

15 A Yeah, I can tell you exactly where I was living.

16 Q Where were you living?

17 A You tell me.

18 Q So you can't tell me where you were living?

19 A Yeah, 111 Cantor Lane, Anderson, South Carolina.

20 Q All right. Did Kim -- or did Kim have K.B. go
21 up there and help her out some since she was a high risk
22 pregnancy?

23 A Some.

24 Q Some. Did she come help your wife out?

25 A Yeah, and I'd be at work.

JAMES SCOTT CROSS-CROSS EXAMINATION

542

1 Q You'd be at work. Well, when you came down there with
2 Kim you all came while it was still light outside, right, to
3 their house --

4 A It was right at dark.

5 Q -- on the 29th?

6 A It was right -- I didn't go down there on the 29th. I
7 was at work.

8 Q You were at work.

9 A Yes, sir.

10 Q But you work seven days a week, but yet you weren't
11 working on the 26th. Why is that?

12 A Because we got off work early because of Christmas.

13 Q Christmas is on the 25th.

14 A I worked on Christmas day. I got to have family time
15 myself.

16 Q Now, your wife got up here and testified a little while
17 ago that you had Christmas day with your family at the
18 house. That you all gave presents out. You all had your
19 family --

20 A I still worked.

21 Q -- you had your family Christmas at your house in
22 Anderson with your wife. She testified to that and you were
23 in the courtroom. Is that not right?

24 A Yeah. But I still worked that first part of the
25 morning. I worked until about 1:00 Christmas day with Eddie

1 Bo McCullough.

2 Q So now you said you worked all day on Christmas but you
3 were off --

4 A I did say all day, now.

5 Q -- the 26th?

6 A I didn't say all day on the 25th.

7 Q You said you worked on the 25th.

8 A I got off at 1:00. That's not all day..

9 Q And then you were off for a part day on the 26th?

10 A Yeah. What's wrong with that?

11 Q But you all were real busy during this time of the year
12 and you worked seven days a week from 8:30 in the morning
13 until 11:30 at night is what you just testified when Mr.
14 Nasrollahi asked you.

15 A Yes, sir.

16 Q Isn't that right?

17 A Yes, sir.

18 Q But yet you were getting two days off back to back
19 working until lunch?

20 A It wasn't two days off. I said I got off at 1:00 on
21 Christmas day. I worked part of the day on the 26th. So
22 how's that all day. Two days. You figure it out.

23 Q But you worked all day? You testified that you worked
24 all day?

25 A I didn't say I worked all day on the 26th. I didn't

JAMES SCOTT CROSS-CROSS EXAMINATION

544

1 say I worked all day on the 25th either.

2 Q But you were able to get a couple hours off each
3 afternoon?

4 A For them two days, because most the time we was
5 hammered down.

6 Q Most of the time. But you're not sure what day you
7 were actually off, were you?

8 A Yes, sir.

9 Q It's convenient that you were off on the 26th instead
10 of the 29th; isn't that right?

11 A Let me tell you something... I had a high risk pregnancy
12 wife. I was fixing to get married. I just bought a new
13 house. I worked like a man should work. I took care of what
14 I had to take care of. Do you hear me? I had a woman that
15 was pregnant. I love my wife. I love my family. Do you
16 understand me? This is all bogus stuff. I ain't did
17 nothing wrong but try to be good to people.

18 Q Try to be good to people. You tried to be good to
19 K.B. that night too, weren't you? You were trying -- you
20 were being good by going out and playing hide and go seek
21 with them?

22 A I ain't never played hide and go seek.

23 Q The fact of the matter is, your wife couldn't remember
24 what day it was you all went over there but you did take
25 Christmas presents over to that house?

JAMES SCOTT CROSS-CROSS EXAMINATION

545

1 A Yeah, I took Christmas presents.

2 Q And it was after Christmas day?

3 A No more, I'd say, on the 26th. No further than that.

4 I was working.

5 Q No further than that? Now you got a little doubt in
6 your mind. You don't know --

7 A I ain't got no doubt in my mind, Cuz.

8 Q The day you went over there your wife was in there with
9 a friend, Angie; isn't that right?

10 A I went in that house toting the presents in with my
11 wife. I stayed right there with my wife waiting on her beck
12 and call, Cuz.

13 Q Even with her friend there that could take care of her
14 and take a naggy woman off your hands?

15 A It didn't matter how bad she nagged. I done it.

16 Q Done what?

17 A I took care of my wife. Everything she wanted I done
18 it. It didn't matter if I was in the bed asleep in the
19 middle of the night. If she needed me I was up and on it.

20 Q Yet if you were up and on it and you had such a concern
21 for your wife you were working from 7:30 in the morning
22 until 11:30 at night?

23 A I had to work. Who else is going to pay my bills.

24 Q And she didn't trust where you were and had to be an
25 investigator to figure out where you were?

JAMES SCOTT CROSS-CROSS EXAMINATION

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1 A It wouldn't -- it wasn't that she didn't trust me, Cuz.
2 It was that she wanted my company. She wanted me to be
3 there with her. Right there with her, because she loved me.
4 That's a good woman sitting right there.

5 Q Loves you so much she'd come in here and say she don't
6 remember when exactly it was but you all did go over that
7 house after Christmas?

8 A She been through a lot. Through all this stuff right
9 here. You need to just quit trying to attack that, because
10 I done been through enough of it, too. This has destroyed
11 my life completely. My children at home. If I was such a
12 problem I wouldn't be allowed to have my own kids, and I got
13 my kids. Do you hear me? I took care of my youngins. My
14 youngins are took care of. They're not abused. There's
15 nothing wrong with my youngins. You can check for yourself.
16 My youngins are healthy. They get what they want. They get
17 more than what they need. They're spoiled. If I was a bad
18 person, why would I be able to take care of my kids. My
19 kids live with me. I do everything that I'm supposed to do
20 and do it right.

21 Q You do everything right?

22 A I do my utmost.

23 Q Again, you said and your employer said at this time of
24 year you were so busy that you were working seven days a
25 week?

JAMES SCOTT CROSS-REDIRECT EXAMINATION

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1 A Pretty much.

2 Q Full days all day long.

3 A Pretty much.

4 Q If it was pretty outside you all were -- he had you at
5 the shop working on the trucks. He had you out bulldozing
6 or clearing on a skid steer.

7 A Pretty much.

8 Q Seven days a week.

9 A Pretty much.

10 Q And you had gotten a couple afternoons off.

11 A Just a few hours.

12 Q And it's convenient that it was actually the 26th --

13 A What's wrong with getting a few hours off of work?

14 Q It's actually convenient that it's actually the 26th
15 instead of the 29th, isn't it?

16 A Let me tell you something.

17 Q I'm asking the question. Answer the question.

18 A Being on the 26th? I told you. I've told you the
19 truth. If you can't believe it, that's you.

20 MR. BROWN: No further questions, Your Honor.

21 THE COURT: Anything on redirect?

22 REDIRECT EXAMINATION

23 BY MR. NASROLLAHI:

24 Q Scott, this entire time this trial has been going on
25 where has your wife been?

1 A Outside, because she --

2 Q Every time we've had a break where have you gone?

3 A Straight to my wife, because she ain't been allowed to
4 come in here and that's my -- that's my whole -- my wife and
5 kids is my life. What I look forward to getting up every
6 day is my wife and children.

7 MR. NASROLLAHI: No further questions.

8 THE COURT: Thank you, sir. You can step down.

9 (Whereupon, witness steps down from the witness stand.)

10 THE COURT: Mr. Nasrollahi, you can call your next
11 witness, please.

12 MR. NASROLLAHI: At this time the Defense rests.

13 THE COURT: All right. Does the State intend to offer
14 any reply testimony?

15 MR. BROWN: No, Your Honor.

16 THE COURT: No?

17 MR. BROWN: No.

18 THE COURT: All right. Ladies and gentlemen, we are
19 going to take a brief five minute break. The law requires
20 that I discuss with the attorneys the charges -- or the
21 instructions that I give to you before they begin their
22 closing arguments. That shouldn't take long. That's what
23 I've been working on up here today. If you've seen me
24 typing, that's what I've been doing. So I just need to
25 brief them on that. I'll have you back out here in about

1 open on the law, to be followed by the Defense, and then the
2 State will have the final argument. So I will tell you what
3 the attorneys say to you during their closing arguments, of
4 course, is not evidence. It's simply their contention as to
5 what has been proven or has not been proven. And for that
6 reason, because you're the sole judges of the facts in this
7 case, if for some reason the lawyers reference a fact, or
8 they say something about the facts that have been presented
9 and what they say differs from what you recall the facts
10 being, you should go with your recollection of the facts.
11 Okay? Because you are ultimately the judges of the facts.
12 They cannot testify as to what the facts are, but it's
13 certainly customary that they argue facts to you or at least
14 point out certain facts to you during the course of their
15 closing arguments. So just understand that, and do realize
16 if their statements about the facts differs from what you
17 recall those facts being, go with your recollection as
18 opposed to what the lawyers say.

19 And with that, Mr. Brown, you are recognized for your
20 closing argument, sir.

21 MR. BROWN: Thank you, Your Honor.

22 CLOSING ARGUMENT

23 MR. BROWN: At this time I'm just going to talk about
24 the law and about the burden of proof the State has in this
25 case, and then after the Defense speaks I'll get back up and

1 talk about what we've heard over the course of two days.

2 Ladies and gentlemen, I stated earlier right when the
3 trial started, Defendant James Scott Cross is charged with
4 criminal sexual conduct with a minor first degree. To be
5 charged with criminal sexual conduct with a minor first
6 degree the State has to show there's a sexual battery with
7 the victim who is less than 16 years of age. And the
8 Defendant has a previous conviction of a crime that's listed
9 in Section 23-3-430 of the South Carolina Statute of Laws.
10 In this case the State introduced State's Exhibit Number 7
11 which is criminal sexual conduct with a minor in the first
12 degree.

13 Ladies and gentlemen, we also -- Mr. Cross is charged
14 with lewd act upon a minor who is under the age of 16 years
15 of age -- or 16 years old.

16 Going back to the criminal sexual conduct with a minor,
17 what is sexual battery the State has to prove. The State
18 has to prove sexual intercourse. It's either cunnilingus,
19 fellatio intercourse, or any intrusion however so slight.

20 Ladies and gentlemen, the charge of lewd act with a
21 minor is a Defendant who is over 14 years of age willfully
22 and lewdly commits or attempts to commit a lewd and
23 lascivious act on the body of a child under the age of 16
24 with the intent of arousing, appealing to or gratifying the
25 lust, passions or sexual desire of himself or the child.

1 reasonable doubt. In all the legal systems in the world
2 this is the highest burden of proof known to man. The
3 reason we have that is so that innocent people don't go to
4 jail on gut feelings. That when the State wants to take
5 somebody's life and liberty away from them their feet get
6 held to the fire. And that requires the State to bring you
7 credible evidence of what they're alleging happened, and
8 that has not happened in this case.

9 You sat here and you heard the complaining witness in
10 this case tell you what happened: She told you that one
11 night on December 29th, 2005 my client followed her behind a
12 tree when it was dusky dark and then pushed her against the
13 tree or backed her up against the tree and then began to
14 molest her, and then he put her down on the ground and
15 shouted -- you know, told her don't say anything, be quiet,
16 and he put his hand over her mouth. Then he pulled her
17 pants halfway down and proceed to have sex with her. I'll
18 get back to her story in just a second.

19 You also heard her talk about how she went to the
20 Child's Place and told a forensic interviewer, the very lady
21 who was supposed to help her, that my client had molested
22 her three other times. Okay? She told her that. And then
23 she also went as far as going to Anderson Law Enforcement
24 and gave them this statement, and I had her read this
25 statement to you while she was on the stand. And I hope you

1 guys remember it because it is vivid, it's specific, it's
2 vulgar and it's a lie. And she admitted that it was a lie.
3 She also admitted that everything that happened in October
4 over in Anderson at my client's house was a complete
5 fabrication. She also said that a lot of the things that
6 she told the forensic interviewer that she said occurred on
7 December 29th, 2005, that she didn't say that. So right now
8 what the State's got going for it is this girl has told five
9 stories, four of them are lies and they want you to believe
10 the last one. They want you to judge her credibility and
11 sit here and say, well, the fifth story has to be the truth.
12 Now, she says that he put her on the ground, pulled her
13 pants halfway down, stuck her legs in the air and proceeded
14 to have sex with her, all the while shouting out to the
15 other kids that are hiding, I'm coming for you, I'm going to
16 come and get you, in order to distract them, and he also has
17 his hand over her mouth. That sounds about as made up to me
18 as it can get. That sounds about as made up as this story.
19 It sounds about as made up as the other three stories that
20 she gave. You have to give her credit. She can tell a good
21 story. She can put in all the little convincing vivid
22 little details that sound like the truth but they're just
23 not the truth. Then we brought the entire family in here to
24 talk about hide and go seek on December 29th. They hit all
25 the high points but nobody could really get any of the other

1 details right. What time did Scott Cross come over. What
2 time did Tony Byrum leave to go get food. How long was Tony
3 gone for. How long was Scott and Kim there. Those parts
4 are blurred, but they all got their story together on what
5 happened during the hide and seek game. And then Jeremy
6 Hanks. I can't even -- I can't even explain his testimony.
7 His testimony was about something on another planet. I
8 mean, whatever he talked about, I don't even know if it was
9 this case, his testimony was so -- and that's the evidence
10 that we're looking at in this case. And the State of South
11 Carolina is asking you to take that evidence and convict
12 somebody. Convict James Scott Cross who sat on this stand
13 and told you he didn't do it. We brought in Eddie
14 McCullough, his boss, who out of the training of witnesses
15 that we have -- I'll be honest with you, even including my
16 own expert witness, that was the best witness. That was the
17 most credible witness. He was telling the truth.

18 Now, these charges have devastated my client and his
19 wife's lives. They both testified to you about that. For
20 what? For a bunch of stories that we couldn't even get
21 straight on the stand. And then there was Angela Byrum.
22 Her actions in this case I can't explain. You would think
23 that -- if you read this diary of your daughter saying that
24 she was sexually assaulted, it doesn't matter what time of
25 night it was. It doesn't matter whether your car was broken

1 down or what. You find your daughter and you take care of
2 her. Your only daughter. You don't wait until the next day
3 to sit around and talk to her about it. And then wait
4 another five days to call the police about it. I just -- I
5 don't think that she believed it the first time she read the
6 diary. I think she started telling stories and it
7 snowballed out of control. And now when she was talking
8 about what happened on December 29th to the forensic
9 interviewer it's completely changed around to this violent
10 traumatic rape that's happened to her. And we brought in
11 our expert on child sexual trauma and post traumatic stress
12 disorder arising out of sexual trauma that she says that she
13 was convinced that it was her opinion that she's not
14 suffering from any kind of PTSD. I don't know how you
15 explain the, you know, she's repressed this or she's -- the
16 details have gotten blurry for her because it was so
17 traumatic.

18 And there's an interesting thing. Mr. Brown asked our
19 witness Gaye Allen-Cook on the stand, did K.B. ever tear
20 up. I hope you guys remember K.B. testimony in this
21 case. Did she tear up? She teared up one time. On cross
22 examination when she said why would I -- why would I waste
23 anybody's time making up these stories, and I said why would
24 you waste your time going to Anderson. That's when she
25 finally shed a tear. More people cried on this stand than

1 the victim did recounting this traumatic experience, and
2 that's because it didn't happen. It was a fantasy. And she
3 got stuck in a situation where she had to keep telling this
4 story over and over again. And now my client is the one
5 standing in the cross hairs because of it. My client who
6 has maintained his innocence the whole time. So with regard
7 to both these charges, with regard to the elements that the
8 State has put forth in front of you there's been no credible
9 evidence. There's been not a shred of credible evidence
10 that there was anything they said. For that reason I
11 believe that when you deliberate this case you will come
12 back and you will say that he is innocent of these charges.

13 Thank you for your time. I know it's been a long two
14 days, but your service here is part of a greater good that
15 you may not understand today and we appreciate everything
16 you've done. Thank you.

17 THE COURT: Thank you, Mr. Nasrollahi. Mr. Brown,
18 you're recognized, sir.

19 MR. BROWN: Thank you, Your Honor.

20 CLOSING ARGUMENT

21 MR. BROWN: Ladies and gentlemen, Mr. Nasrollahi said
22 at the beginning of the trial that his client waited seven
23 almost eight years to have his day in court. I submit to
24 you that the victim, K.B. has waited seven to
25 eight years to have her day in court, too. And it's not

1 because it's her fault. You can blame it on the prior
2 Sheriff's Department regime. You can blame it on the prior
3 Solicitor's Office regime. If you want to you can blame it
4 on me. It's not her fault she's waiting here eight years
5 later to be heard. To tell what happened to her. She felt,
6 and she testified, that the State forgot about her. We're
7 here to correct that today.

8 What did she tell you? She told you that she was 13
9 years old back on December 29th, 2005. The element in this
10 case is that the victim had to be younger than 16. She was
11 13. Everybody that got up on the stand said that she was
12 13. The forensic interviewer, the momma, the officer, Kim
13 Cross, everybody said she was 13. A 13 year old girl. What
14 did she tell you? The night that this happened she was at
15 her house, [REDACTED] Highway 81 North in Iva which is in
16 Abbeville, South Carolina. Who was at her house? K.B.
17 was at her house, her momma Angie was at her house, her
18 daddy Tony was at her house, Brandon and Sam. Brandon being
19 her cousin, Sam being her brother. Jeremy Hanks was a non-
20 relative, just a friend of the family was there. Scott and
21 Kim Cross, they came up there. It's eight years ago.
22 Almost eight years ago. There was some fuzziness about the
23 time they got there. But you know what they all said? They
24 were all there. They all went out around dusky dark when
25 the light's getting dimmer, getting darker outside. A lot

1 of them were afraid of the dark. What did they say? They'd
2 go outside with an adult. Who was the adult? Scott Cross,
3 a 35 year old man. Another element in this case. What did
4 they do? They're being kids. Playing hide and seek. A
5 game that Brandon and Sam said they played and K.B. said
6 they played together a lot. But what did Brandon say and
7 what -- and what did Sam say that stuck out to them? It was
8 the first time that Scott had played with them. What did
9 they do? They played multiple games. K.B. has not
10 changed her story at all these interviews. Said they were
11 down in the field. She said the field encompassed the
12 house. They lived in a hayfield. Where was the tree? It
13 was in the field. You've seen that. She pointed it out to
14 you. A tree in a hayfield. So we've got dusky dark. She
15 went back there to hide. Scott was supposed to be it. Two
16 boys, nine and 10 years old, they go off and hide in another
17 spot. Scott, as you heard from his mouth, heard from his
18 wife's mouth, she was a high risk pregnancy. She was inside
19 with Angie, her friend, who Angie was in her wedding almost
20 two weeks later. She was inside. Scott slipped out to play
21 with the kids. This time was his opportunity. It was
22 getting dark. He goes behind that tree. Starts talking to
23 her in her ear, kissing her on her neck, rubs her on her
24 chest, sticks his hand down her pants. It's a lewd and
25 lascivious act right there. It doesn't stop there. You

1 heard it from her mouth. That time he said be quiet. She
2 said he put her hands over her mouth and pulled her pants
3 down. You know where we also heard that? Heard it from
4 Susan Bentley, the forensic interviewer when she read
5 entirely what that paragraph said, not just bits and pieces
6 the Defense wanted you to hear. She read entirely, she said
7 no. Don't pull my pants down and he pulled them down
8 anyway. He inserted his penis into her vagina, which that
9 would be sexual intercourse. Another element of sexual
10 assault. The sexual battery which is the criminal sexual
11 conduct case -- charge. After that she got up, ran inside,
12 went back to her back bedroom. You know who all said that?
13 Told the same thing? Her momma, her brother, her cousin,
14 everybody was there. What did Brandon and Sam say? They
15 were on the front porch. It was dark at this time. Playing
16 hide and seek. There's no light on that back pole. Brandon
17 and Sam were afraid of the dark. It got dark at that time.
18 They didn't want to run past that window. No lights back
19 there. The lights shined out down the driveway. She ran
20 in. Scott and his wife, he came in sweating. Even Jeremy
21 Hanks, not a family member, why would he come in here and
22 say that and remember that. He remembered him being there,
23 coming in. He said I thought it was weird that he was
24 playing hide and seek with the kids. Then he left shortly
25 thereafter, before Tony got back. Before he was bringing

1 him food. He got out of there. He got the heck out of
2 dodge when he knew Tony was coming home. He didn't know
3 what his little girl was going to say at that point.

4 K.B. said after she got in the house she went to the
5 bathroom, put her clothes in the wash. Took a bath. You
6 heard Leslie Norman the officer, you can't collect forensic
7 evidence after that. Clothes have been washed and taken a
8 bath. No rape kit done. After she got out of the bath she
9 goes back to her bedroom. She writes in her diary.

10 Now, the Defense wants you to think they're making this
11 diary up. Folks, this is a very elaborate story. You're
12 going to bring in a little diary that everybody described.
13 She wrote in her diary that day and told exactly what
14 happened. The Defense wants you then to think that mom is a
15 bad person. Mom didn't go down the road at 12:00 at night
16 to go pick up her daughter and confront her about it right
17 then. You want to know why? You heard from Angie herself.
18 Tony was livid as any father would be. Tony was livid. He
19 was about to bust. The Defense wants you to think this is
20 some unheard of parenting problem because they didn't bring
21 her home. Well, Angie was trying to calm down her husband
22 so K.B. would have a dad after this. She knew where she
23 was. This had happened -- this was disclosed on some month
24 after it happened, or a little over a month after it
25 happened. She can't go check on her and make sure that

1 she's all right at that time. She's seen her the month
2 leading up to when it was disclosed and when they found it.
3 She knew that she was all right physically at that time,
4 what she can see. Angie works at a grocery -- or at the
5 Kate's Café. She knew -- she knew enough to know that right
6 then the best thing that she could do was leave her daughter
7 with her grandparents. She knew where she safe. Calm her
8 husband down. What did they do the next day? They call her
9 home and she talks to her. She finds out everything that's
10 happened and then they call the police. Call the sheriff's
11 department.

12 The Defense wants you to harp on that they waited five
13 days to call the sheriff's department. Folks, you heard
14 Susan Bentley up here, the forensic interviewer. They
15 scheduled -- after she talked to Abbeville County Sheriff's
16 Office they schedule a forensic interview. Susan Bentley
17 came up here and said, well, you know, it was about -- about
18 1/26/2006. She didn't know definitely. She didn't know
19 what question she asked. We don't know what context Angela
20 answered them. It was about two weeks ago, so she wrote
21 down a date. We know that she called on 1/31/2006.
22 Officers came out to her house. There's a CAD report that's
23 also entered into evidence. She came out that day. She
24 went to law enforcement center. Again, she's talking about
25 a diary. That there was a diary. Leslie Norman said she

1 heard about a diary. She never saw it. You know why? She
2 said she didn't -- usually an officer goes out to the house
3 before she did. She didn't go out to the house. An
4 explanation, it could have been handed to another officer.
5 Never entered into evidence. That's strictly on the
6 sheriff's department. They lost that evidence. Wish we had
7 it, we don't.

8 The fact of the matter is, that's how it was disclosed.
9 That's how it got the ball rolling. Where did she go after
10 the forensic interview? She went and got a medical exam.
11 You saw -- you heard about it from Lyle Pritchard. She's a
12 pediatrician and she does these exams. She testified that
13 when young females are going through puberty the hymen
14 changes. It becomes more elastic. She expected the exam to
15 be normal. The exam happened on February 26th, 2006.
16 Folks, that was almost two months after the alleged -- after
17 it happened. It happened on December 29th, '05 and she got
18 examined February 26th, '06. The reason why they did that
19 was to check her out and make sure there were no problems.
20 They did that. If this was some elaborate story and she
21 really went through the ringer to go get an exam, a vaginal
22 exam by a doctor, and go and talk to a forensic interviewer
23 and lay all this out on the line. Folks, after that we
24 heard Ms. Bell come up here from child abuse, or abuse now.
25 It was Traumatic Services at that time. They went to go see

1 them six times in Greenwood. Iva and Greenwood are a long
2 ways away, especially for somebody that says that she makes
3 between nine and \$11,000 a year. She's got to make sure she
4 puts food on the table. She's got to put clothes on her
5 back. Yeah, she took her to go get help. She took her to
6 go get counseling. Sometimes -- you can't just keep driving
7 for an hour visit.

8 What did you hear from the Defense's expert? Ladies
9 and gentlemen, she came up here and told about a whole lot
10 of classes she's taken, the CLE credits she's taken. She
11 talked about different symptoms of post traumatic stress
12 disorder. She made all the responses to stimuli.
13 Nightmares, difficulty in school, emotional disturbances,
14 trauma that runs her life, and then she has the audacity to
15 say she didn't see anything. Well, that wasn't true. She
16 didn't see it in K.B. Ladies and gentlemen, after we --
17 I don't know if you remember, but I talked to her about
18 responsive stimuli. Her mom and K.B. said every year on
19 December 29th she relives it. She gets in a depressed
20 state, nightmares. Folks, she might have had nightmares
21 before, but she also has nightmares after. Talking to
22 counseling happened after this. Difficulty in school.
23 Ladies and gentlemen, she -- when she was in school she was
24 in she ended up having to drop out because she couldn't --
25 couldn't handle it. All this takes a toll on her. Post

1 traumatic stress disorder. His expert said, they were
2 asking -- she said a lot of times you need more and more
3 counseling. But a lot of times if somebody that's
4 experienced trauma has a support system that's good --
5 that's good therapy. Well, mom and dad, they might not much
6 money, but they have a support system; momma, daddy,
7 brother, cousin, grandparents. Support system. It's been
8 almost eight years since this -- since this took place and
9 they're supporting her. If something was fabricated and
10 made up why would they make -- why would they come here, two
11 days, to make it up, as K.B. said on the stand. Anything
12 that doesn't make sense, that would be the one that didn't
13 make sense. You heard the expert the Defense brought up.
14 That a child -- they can have memory loss. It's really --
15 it's an independent child. Each child responds differently
16 to post traumatic stress disorder or trauma. She never
17 talked to her, and she's going to come in here and make an
18 opinion like that.

19 Folks, the Defense wants you to think that Scott Cross
20 was never at that house. They bring in a former -- a former
21 boss that says I don't have any employment records or
22 anything but I was working on my truck then. We worked
23 seven days a week. We worked late at night. Then the next
24 person who comes up here -- or actually before him, you hear
25 Kim Cross. The wife of the Defendant. Yeah, we made it

1 over there to their house. At their house in Iva and took
2 them presents. When we got there it was still light
3 outside, after Christmas, before my wedding. Folks, they
4 went over there. They got there it was light outside. She
5 testified that she had a high risk pregnancy. He testified
6 that she was a badly nagging wife that investigated him all
7 the time to see if he was even at work. So I submit to you,
8 when they got to the house she was in there hanging out with
9 her friend, Angela. They've known each other a long time.
10 You heard that. That's not disputed at all in this case.
11 She says it. Angela says it. They were friends. They hung
12 out. They come to their house. K.B. would go to Kim's
13 house to help her out while she was pregnant. She couldn't
14 move around that well. When they came to that house Kim
15 said dusky dark which matches up with a lot of other
16 testimony we've had. Dusky dark. It might have been four
17 or five people that said dusky dark and one of them was the
18 Defendant's wife, when they got there. They went in the
19 house. She was there. Scott slipped out with the kids.

20 Ladies and gentlemen, it's an elaborate story that was
21 made up. Folks, it's been eight years almost. She's
22 sitting here today. She's waited her eight years to be
23 here, too. I submit to you that he was 35 years told. She
24 was 13 years old. Out behind their house playing hide and
25 seek, dusky dark, no lights back there, puts his hand on her

1 chest, his hands down her pants. He unbuttoned her pants,
2 pulled her pants down to her knees. He had sex with a 13
3 year old child. I ask you to find him guilty on both
4 charges.

5 THE COURT: Thank you, Mr. Brown.

6 Now, ladies and gentlemen of the jury, it now becomes
7 my obligation to instruct you on the law that applies in
8 this particular case. Understand first that at this point
9 the record is closed. So it's not possible to introduce any
10 additional factual evidence. Okay? So if there's some
11 question out there that you have, it's not possible to take
12 additional testimony to answer that factual question. If,
13 however, you have any questions about what the law is or you
14 need further instruction from me on what the law is, simply
15 send me a note telling me what the problem is that you're
16 struggling with and I'll try and answer it for you. Bring
17 you back out here and try and answer it for you.

18 Now, ladies and gentlemen, the way that instructing a
19 jury has traditionally been done, or at least was done when
20 I started practicing almost 20 years ago, was the judge
21 would basically sit up here and read you 17 pages of law and
22 instructions and you're supposed to sit there and be able to
23 absorb all that and then just go back there and apply it.
24 I've always found that to be a little bit unreasonable. So
25 what I'm saying, Madame Forelady, is that you'll have a copy

1 of these instructions to refer to if you need to in the jury
2 room. Of course, don't simply follow some of the
3 instructions and ignore other parts. When you're done with
4 your deliberations I'll also need you to return these
5 instructions to me when you render your verdict. If there -
6 - if you could share this one copy of the instructions among
7 any of the jurors who may want to see it. If you all do
8 need additional copies though let the bailiff know and we'll
9 be more than happy to print you out some more copies of
10 this.

11 Now, ladies and gentlemen, the indictments in this case
12 charge the Defendant, Mr. Cross, with the offenses of
13 criminal sexual conduct with a minor first degree and
14 committing a lewd act upon a minor. I remind you that the
15 fact that Mr. Cross was arrested, charged and indicted in
16 this case is not evidence in this case and cannot be
17 considered by you as evidence of guilt in this case, nor do
18 the indictments create any presumption or inference of
19 guilt. The documents, the indictments, are merely the
20 formal written instruments which contain the charges made
21 against the Defendant. They're the formal documents by
22 which this case was brought into this court. In this case,
23 ladies and gentlemen, the Defendant, Mr. Cross, has pled not
24 guilty to these charges and that plea puts the burden on the
25 State to prove the Defendant guilty. A person charged with

1 committing a criminal offense in South Carolina is never
2 required to prove himself innocent. I charge you that it is
3 an important rule of law that the Defendant in a criminal
4 trial, no matter what the seriousness of the charges may be,
5 will always be presumed to be innocent of the crime for
6 which the indictments were issued unless guilt has been
7 proven by evidence satisfying you of that guilt beyond a
8 reasonable doubt. This presumption of innocence does not
9 end when you begin your deliberations but it accompanies the
10 Defendant throughout the trial until you reach a verdict of
11 guilt based upon evidence satisfying you of that guilt
12 beyond a reasonable doubt. The presumption of innocence,
13 ladies and gentlemen is like a robe of righteousness placed
14 about the shoulders of the Defendant. That robe remains
15 with throughout the trial until it has been stripped from
16 him by evidence satisfying you of his guilt beyond a
17 reasonable doubt.

18 Now, ladies and gentlemen, the presumption of innocence
19 is not merely a legal phrase or theory. It's not just a
20 legal phrase. It is a substantial right to which every
21 defendant is entitled until you, the jury, are satisfied
22 from the evidence of his guilt beyond a reasonable doubt.
23 Well, what is a reasonable doubt in the eyes of the law. A
24 reasonable doubt is the kind of doubt that would cause a
25 reasonable person to hesitate to act. The State has the

1 burden of proving the Defendant guilty beyond a reasonable
2 doubt, and some of you may have served as jurors in civil
3 cases where you were told that it's only necessary to prove
4 that a fact is more likely true than not true, such as by
5 the greater weight or the preponderance of the evidence. In
6 criminal cases the State's proof must be more powerful than
7 that. It must be beyond a reasonable doubt. Proof beyond a
8 reasonable doubt is proof that leaves you firmly convinced
9 of the Defendant's guilt. Now, there are very few things
10 that we know with absolute certainty. And in criminal cases
11 the law does not require proof that it overcomes every
12 possible doubt. If, based upon your consideration of the
13 evidence, you're firmly convinced that the Defendant is
14 guilty of the crime charged, you should find the Defendant
15 not -- or guilty. If, on the other hand, you think there's
16 a real possibility that the Defendant is not guilty, you
17 must give him the benefit of the doubt and find him not
18 guilty.

19 Now, ladies and gentlemen, I remind you that during
20 this trial you and I have certain duties to perform. As the
21 trial judge it's my responsibility to rule on the
22 admissibility of evidence and preside over the trial of this
23 case. You are to consider only the competent evidence which
24 was offered during the trial. If there was any testimony
25 ordered stricken from the record in this case you must

1 disregard that testimony because you're to consider only the
2 testimony which has been presented from the witness stand,
3 as well as any exhibits which have been made a part of the
4 record in this case and any stipulations of the attorneys.
5 Under the law questions of counsel are not evidence.
6 Similarly, statements made by this court or the rulings in
7 ruling on or arguing any evidentiary matter do not
8 constitute evidence in this case and cannot be considered by
9 you in your deliberations.

10 Now, I have the additional duty to charge you the law
11 applicable to this case, and as the presiding judge I'm the
12 sole judge of the law. It's your duty as jurors to accept
13 and apply the law as I state it to you now. If you already
14 have any idea as to what the law is or what the law ought to
15 be and it disagrees with what I now tell you the law is, you
16 must abandon this idea because you're sworn to accept and
17 apply the law exactly as I state it to you. In every case
18 tried in this court before a jury the jury becomes the sole
19 and exclusive judge of the facts in a case. A trial judge
20 cannot intimate, state, comment on or make any statement to
21 a trial jury about the facts in a case. Since you, the
22 jury, are the sole judges of the facts in this case, you're
23 not to infer from what I've said during the progress of this
24 trial in ruling upon the admissibility of evidence or
25 otherwise, or anything that I say now during the course of

1 these instructions that I have any opinion about the facts
2 in this case. Ladies and gentlemen, the law does not permit
3 me to have an opinion about the facts in this case. This is
4 a matter solely for you, the jury to determine. As jurors
5 it's your duty to determine the effect, value, weight and
6 truth of the evidence presented during this trial.

7 Now, ladies and gentlemen, there are two types of
8 evidence generally presented during a trial. Direct
9 evidence and circumstantial evidence. Direct evidence is
10 the testimony of the person who claims to have actual
11 knowledge of a fact such as an eyewitness. It's evidence
12 which immediately establishes the main fact to be proven.
13 Circumstantial evidence is a proof of chain -- of a chain of
14 facts and circumstances indicating the existence of a fact.
15 It's evidence which immediately establishes collateral facts
16 from which the main fact may be inferred. Circumstantial
17 evidence is based on inference and not on personal knowledge
18 of observation.

19 Now, ladies and gentlemen, the law makes absolutely no
20 distinction between the weight or value to be given to
21 either direct or circumstantial evidence, nor is a greater
22 degree of certainty required of circumstantial evidence than
23 of direct evidence. You should weigh all the evidence in
24 this case, and after weighing all the evidence, if you're
25 not convinced of the Defendant's guilt beyond a reasonable

1 doubt, you must find him not guilty. And necessarily you
2 must determine the credibility of the witnesses who have
3 testified int his case. Credibility simply means
4 believability. It becomes your duty as jurors to analyze
5 and to evaluate the evidence and determine which evidence
6 convinces you of its truth. In determining the
7 believability of a witness who has testified in this case
8 you may believe one witness over several witnesses or
9 several witnesses over one witness. You may believe a part
10 of the testimony of a witness and reject the remaining part
11 of the testimony of that same witness. You may believe the
12 testimony of a witness in it's entirety or reject the
13 testimony of a witness in its entirety. You may consider
14 whether the witness has exhibited any interest, bias,
15 prejudice or other motive in this case, and you may also
16 consider the appearance and manner of a witness while on the
17 witness stand.

18 Now, ladies and gentlemen, in this trial testimony has
19 been elicited other allegations of sexual involvement
20 between the Defendant and Ms. Byrum and between the
21 Defendant's brother and Ms. Byrum. Whether these other
22 allegations of sexual involvement actually occurred is not
23 germane or relevant to the ultimate issue you have to
24 decide, and you do not have to decide whether these
25 incidents, these other collateral incidents did, in fact,

1 occur because the Defendant is not on trial for these other
2 incidents. This testimony was allowed solely for the
3 purpose of permitting you, the jury, to assess the
4 complaining witness's, Ms. Byrum's, credibility. If a
5 witness is shown to have knowingly testified untruthfully
6 concerning any matter -- any material matter, you may
7 consider this in determining whether to trust the witness's
8 testimony as to other matters. You may again -- again, you
9 may reject all the testimony of a witness or give all or
10 part of the testimony the weight you think it deserves.

11 Now, ladies and gentlemen, normally the rules of
12 evidence don't permit a witness to testify as to opinions or
13 conclusions. As I explained earlier, an exception to this
14 rule exists for witnesses who are known as expert witnesses.
15 A witness who by education and experience has become an
16 expert in some art, science, profession or calling may state
17 an opinion as to relevant and material matters in which the
18 witness claims to be an expert and may also state the
19 reasons for that opinion. You should consider any expert
20 opinion received in evidence in this case and, like any
21 other evidence, give it the weight you think it deserves.
22 If you decide the opinion of an expert witness is not based
23 on sufficient education and experience, or if you conclude
24 the reasons given in support of the opinion are not sound,
25 or that the opinion is outweighed by other evidence, you may

1 disregard the opinion entirely. An expert witness's
2 testimony is to be given no greater weight than that of any
3 other witness simply because the witness is an expert.
4 Further, you're not required to accept an expert's opinion
5 even though it is not contradicted.

6 Now, ladies and gentlemen, in this case the Defendant
7 is charged with first degree criminal sexual conduct with a
8 minor. The State, therefore, must prove beyond a reasonable
9 doubt that the Defendant engaged in a sexual battery with
10 the alleged victim on or about December the 29th of 2005. A
11 person is guilty of criminal sexual conduct with a minor in
12 the first degree if the person engages in sexual batter with
13 a person who is less than 16 years of age and the actor has
14 been previously been convicted of or pled guilty to an
15 offense listed in Section 23-3-430©. I instruct you that
16 the crime of criminal sexual conduct with a minor first
17 degree is a crime listed in Section 23-3-439©. Sexual
18 batter is sexual intercourse, cunnilingus, fellatio, anal
19 intercourse or any intrusion, however slight, of any part of
20 a person's body or of any object into the genital or anal
21 openings of another person's body. The State must prove
22 beyond a reasonable doubt that the -- the State must also
23 prove beyond a reasonable doubt that the victim was less
24 than 16 years of age at the time of the battery. Consent,
25 willingness, indifference or ignorance on the part of the

1 minor, if any, as to what was taking place does not in any
2 way affect the charge of criminal sexual conduct with a
3 minor because an unmarried person under the age of 14 --
4 under the age of -- that's supposed to be 16. Wait -- all
5 right. Under the age of 14 cannot legally consent to sexual
6 -- an unmarried individual under the age of 14 cannot
7 legally consent to sexual intercourse.

8 Now, ladies and gentlemen, the fact that the Defendant
9 has previously been convicted of criminal sexual conduct
10 with a minor can only be considered by you as an element of
11 the present charge of criminal sexual conduct with a minor
12 first degree and for no other purpose. You must not
13 consider the Defendant's prior record or his prior
14 convictions as any evidence of guilt with respect to the
15 charges for which the Defendant is currently on trial.

16 Now, ladies and gentlemen, the Defendant is also
17 charged with committing a lewd act on a minor. A minor is a
18 person under the age of 18. The State must prove that the
19 Defendant willfully and lewdly committed or attempted a lewd
20 or lascivious act on or with the body or its parts of a
21 child under the age of 16 years with the intent to arouse,
22 appeal to or gratify the lust, passions or sexual desires of
23 the Defendant or the child. Willfully means voluntarily and
24 intentionally with the specifically intent to do something
25 that the law forbids. Lewd means obscene, lustful, indecent

1 or lecherous. Lascivious means tending to insight lust,
2 lewd -- lewd, indecent, obscene or tending to deprave the
3 morals in respect to sexual relations.

4 Now, ladies and gentlemen, in this case the Defendant
5 has raised the defense of alibi. In order to establish an
6 alibi it must be shown that the Defendant was at another
7 specified place at the time the crime was committed and that
8 it was, therefore, impossible for the Defendant to have been
9 at the scene of the crime. Near denial of presence at the
10 scene of a crime does not constitute an alibi. There's no
11 burden on the Defendant to prove an alibi. The burden is on
12 the State to prove beyond a reasonable doubt that the
13 Defendant was actually present at the scene of the alleged
14 crime and actually participated in it and was not somewhere
15 else. In other words, the State has the burden of
16 disproving the Defendant's alibi defense.

17 Now, Madame Forelady, ladies and gentlemen of the jury,
18 there are several possible verdicts which you may find in
19 this case and I've basically worked up a simple verdict form
20 to help guide your deliberations. Okay? You can find the
21 Defendant guilty or not guilty of criminal sexual conduct
22 with a minor in the first degree or guilty or not guilty of
23 criminal -- or, sorry, of lewd act upon a minor. Understand
24 there's no significance whatsoever to the order in which I
25 cite these verdicts or I announce these verdicts. It's

1 simply that one has to be stated first. And Madame
2 Forelady, this verdict form basically just makes two
3 statements. Okay?

4 The first statement is "We, the jury, in the above
5 captioned case on the charge of criminal sexual conduct with
6 a minor first degree unanimously find James Scott Cross,"
7 and then it has two blanks for you to initial, guilty or not
8 guilty. Okay? If based upon your review of the evidence
9 you find that the State has failed to make -- meet its
10 burden of proving the Defendant's guilt beyond a reasonable
11 doubt you would initial not guilty right there and proceed
12 down to the next statement. If, however, you find that the
13 State has met its burden of proving the Defendant's guilt
14 beyond a reasonable doubt you would initial guilty and then
15 proceed to the next one. Okay? The exact same thing for
16 the second question, "We, the jury, in the above captioned
17 case on the charge of committing a lewd act upon a minor
18 unanimously find James Scott Cross," again, two options, not
19 guilty or guilty. Once you've reached your verdict sign
20 right here as foreperson after you've initialed the
21 appropriate blanks. Sign right here as foreperson, knock on
22 the door, let the bailiff know that you've reached a
23 decision and we'll receive you back here in the courtroom.

24 Now, ladies and gentlemen, your verdict has to be a
25 unanimous one. That means all 12 of you have to agree. We

1 do not have majority verdicts in South Carolina. I hope we
2 never have majority verdicts in South Carolina. So all 12
3 of you must agree on what the ultimate verdict is in this
4 case.

5 I remind you, ladies and gentlemen, that you have been
6 selected as 12 fair and impartial people who have no stake
7 in this dispute. You have no friends to reward. You have
8 no enemies to punish. Your verdict should speak the truth
9 and simply speak the truth.

10 Now, ladies and gentlemen, I'm going to ask that you
11 return to the jury room but don't start your deliberations
12 yet. Okay? You're cue to begin your deliberations will be
13 receipt of these instructions, the verdict form, and all the
14 evidence which has been introduced and my asking for our
15 alternate to step out so that I can release her. Okay? So
16 that's your cue to begin your deliberations.

17 Again, I think I may have mentioned this but it bears
18 repeating. You can discuss this only among the 12 of you.
19 So if somebody has to step outside for a brief smoke break
20 you'll need to stop your deliberating until they return.
21 Okay? Because all discussions have to take place with all
22 12 of you present. All right?

23 With that, adjourn to the jury room. You'll have this
24 case in a few moments. Thank you very much. And I'll let
25 you know when.

1 (Whereupon, the jury exited the courtroom at 5:05 p.m.)

2 THE COURT: The jury is out. Exceptions, additions
3 from the State?

4 MR. BROWN: None from the State.

5 THE COURT: From the Defense?

6 MR. NASROLLAHI: The Defense objects to the last line
7 of the main paragraph on page 12, "I instruct you the crime
8 of criminal sexual conduct with a minor first degree is a
9 crime listed in Section 23-3-430©." The Defense would argue
10 that that's a comment on the facts by the trial court in
11 violation of the South Carolina Constitution.

12 THE COURT: Your objection is noted. It is overruled.
13 I think just as I have to define what constitutes a violent
14 crime for purposes of an armed robbery if they allege
15 possession of a weapon during the commission of a violent
16 crime, I have to define that armed robbery or kidnaping, or
17 some of those other crimes are violent, I think I have to do
18 the same thing here. But I appreciate your position. Your
19 objection is noted.

20 If you all will make sure that we have all of the
21 correct evidence going back, please. And if you want to
22 look at the verdict form that's fine, too, but it's as
23 explained.

24 (Whereupon, jury began deliberations at 5:11 p.m.)

25 THE COURT: Ladies and gentlemen, I've been told that

1 the jury has reached a verdict in this case. Let me just
2 mention -- I'm sure that your attorneys have explained to
3 this to you, but first I do want to compliment everybody on
4 their behavior throughout the trial. I have no idea what
5 the verdict is. We'll find out in a moment. Okay? It's
6 very important though that whatever the verdict is I don't
7 want any reaction. I understand that tensions might be
8 high. But if you find yourself -- if you find yourself
9 unable to contain your emotion, for whatever reason, just
10 feel free to quietly stand and leave the courtroom. Okay?
11 Because I'm not going to have any outbursts. I'm not going
12 to have anybody agreeing or disagreeing vocally with what
13 the jury has decided to do here. Okay? So that's where we
14 are. Send in the jury.

15 (Whereupon, the jury entered the courtroom at 7:20
16 p.m.)

17 THE COURT: Let the record reflect that the jury is
18 back and seated. Madame Forelady, I am told that you have
19 reached a verdict; is that correct?

20 MADAME FORELADY: Yes, we have.

21 THE COURT: All 12 of you agree on the verdict?

22 MADAME FORELADY: Yes, sir. We have.

23 THE COURT: If you would, hand the form, please, to the
24 bailiff. Madame Clerk, if you'll publish, please.

25 MADAME CLERK: State of South Carolina, County of

1 Abbeville, case number 06-GS-01-227. In case number 13-GS-
2 01-255 State of South Carolina versus James Scott Cross, we,
3 the jury, in the above captioned case on the charge of
4 criminal sexual conduct with a minor first degree
5 unanimously find James Scott Cross guilty. We, the jury, in
6 the above captioned case on the charge of committing a lewd
7 act upon the minor, unanimously find James Scott Cross
8 guilty. Melissa Love, Forelady, October 23rd, 2013.

9 Madame Forelady, ladies and gentlemen of the jury, is
10 this your verdict so say you all? Please signify by raising
11 your right hand.

12 (Whereupon, Jury raises their right hand.)

13 THE COURT: Let the record reflect that all 12 jurors
14 did raise their right hand. Anything before discharge of
15 the jury from the State?

16 MR. BROWN: Not from the State, Your Honor.

17 THE COURT: From the Defense?

18 MR. NASROLLAHI: Nothing, Your Honor.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, I want to thank you very much for your service with us
21 this week here in Abbeville. You will receive a letter from
22 me thank you for your jury service and soliciting any
23 feedback. If there is anything that you liked or did not
24 like I want to know about it. It will contain my contact
25 information as well. At this point I'm able to excuse you

1 for the rest of the week. The only thing that remains to be
2 done is for me to sentence the Defendant in this particular
3 case. If you want to stay around for that, that's perfectly
4 fine. I'll need for you to move though from the jury area
5 to one of the rows towards the back. The deputy will show
6 you where you can sit if you want to stick around. If you
7 don't want to stay though, that's perfectly fine. You are
8 free to go. The clerk will be mailing you your checks. You
9 don't need to worry about calling in tonight. But I do want
10 to thank you for your work, for your attention and for your
11 service to everyone here today. Okay? So with that, you
12 are discharged and thank you very much for your work and
13 your help.

14 MADAME FORELADY, I do need you to stick around and
15 actually sign the actual indictment for just a second.

16 (Whereupon, the jury was released.)

17 THE COURT: Post trial motions?

18 MR. NASROLLAHI: Judge, we'll be moving for a judgement
19 not withstanding the verdict. We request time to file such
20 motion.

21 THE COURT: I'll afford you the standard 10 days, if
22 that's okay. That'll give you 10 days to file any post
23 trial motions. With regard to the oral JMOC at this point
24 absent something else I'm prepared to proceed with
25 sentencing, if we could.

1 MR. NASROLLAHI: Thank you, Judge.

2 THE COURT: Do you have sentencing sheets prepared, Mr.
3 Brown?

4 MR. BROWN: Judge, I will actually have to print those
5 up.

6 THE COURT: All right. Very good. We'll be at ease
7 for a few moments while you do that then, please.

8 (Whereupon, a brief recess was held.)

9 THE COURT: Mr. Brown, at this point, I'm certainly
10 happy to entertain anything that you may want to present by
11 way of impact evidence from either the State's perspective,
12 your office's perspective or --

13 MR. BROWN: Judge, our perspective is this is a man
14 that has a prior conviction of 1992, criminal sexual conduct
15 with a minor. Roughly -- getting into what that was, it was
16 actually he received a 10 year sentence on that charge.
17 That sentence was with a 10-year-old girl in Iva at the
18 victim's house. Our position that it was very similar in
19 this case and we believe he needs the maximum penalty in
20 this case.

21 THE COURT: Nothing further from the State then?

22 MR. BROWN: Nothing further from the State.

23 THE COURT: Mr. Nasrollahi, I'd be happy to hear from
24 you and your client on mitigation.

25 MR. NASROLLAHI: May it please the court.

1 THE COURT: Yes, sir.

2 MR. NASROLLAHI: We're deeply saddened by the verdict
3 of the jury in this case. Unfortunately the jury has
4 spoken. At this time we believe that the court should look
5 at the things that James Scott Cross has done with his life.
6 He's the father of three children. He's taken care of his
7 children. As he testified today on the stand, he has done
8 everything he can so that those children want for nothing.
9 He has his wife here who has been his bedrock the entire
10 time. Every time, you know, throughout this -- throughout
11 this entire three days process every time we had a break he
12 was out there with his wife to be with her because he loves
13 her so much. At this time we're -- the maximum sentence in
14 this case is -- I mean, he's in his 40s. This is robbing
15 this man of the rest of his life. He's robbing -- you'll be
16 robbing him of watching his children grow up. Of being
17 there for all the important events in their lives. This
18 court has heard the testimony of this case, and at the
19 appropriate time I believe that Mr. Cross has something he'd
20 like to say to the court. And I don't know if Kim feels up
21 to the task of addressing the court but I think if she has
22 something to say she would like to say it.

23 THE COURT: I can clearly tell that she and your client
24 are upset. Mr. Cross, do you need a moment?

25 MR. CROSS: Sir, I'm going to tell you like this right

1 here. I feel like I'm -- I got -- I got shafted. I don't
2 feel like I was treated fairly throughout the whole time --
3 the whole time. I've done everything I could. I ain't --
4 I've done what the court's asked me to do. I've showed up
5 when I've been told to show up. I've done everything to the
6 best of my knowledge and ain't told the first lie, and I
7 don't feel like I was -- everything come out like it was
8 supposed to have come out when I stated this stuff. It
9 wasn't none of it brought up. I don't feel like -- this is
10 all wrong and I was unfairly treated. How you say it? I
11 don't feel like I was represented to the fullest, because
12 one minute I was told one thing, and then when I've asked
13 for them things to be brought out there was nothing brought
14 out like I asked for it to be brought out, and it was
15 crucial points of my trial. The --

16 THE COURT: Mr. Cross, you seem to have difficulty
17 standing. If you need to sit down to address --

18 MR. CROSS: Yeah, I got a messed up leg.

19 THE COURT: If you need to sit down to address me I
20 will not take offense of that, sir.

21 MR. CROSS: These handcuffs is too tight. Can you --
22 I'm not going to -- you ain't got to worry about me. He's
23 coming over here like I'm going to do something. I ain't
24 going to do nothing.

25 I don't feel like I was represented right like I should

1 have been. I've been kept in the shadows not knowing
2 nothing. I ain't got to see everything that was against me.
3 My wife got -- they kept her out of the courtroom. It's
4 wrong and I don't understand it not one bit. And my wife
5 had called and talked to more legal counsel and they said it
6 wasn't right either, and I just don't understand how you all
7 can find me guilty of something that I didn't do when they
8 showed that they lied. And that not first bit of mine --
9 none of mine has showed no lying or nothing, what little bit
10 I do got. This has caused my life to just spiral out of
11 control and I've lost everything I own. Now I'm losing my
12 family. And I feel like I've been completely misguided and
13 not -- how you say it? I'm lost and I don't understand. It
14 hurts. And I don't understand. Everybody's standing here
15 looking at me. My wife's sitting here crying. My two
16 children, I talked to them on the phone a while ago down
17 there in daycare. They don't understand this. This is my
18 life everybody is playing with and I feel like this is
19 unfair.

20 THE COURT: I understand, Mr. Cross. Anything further?

21 MR. CROSS: What do I do? I feel like I'm --

22 THE COURT: All right.

23 MR. CROSS: I don't feel like I got represented like I
24 was supposed to been.

25 THE COURT: I can address that in a moment if you'll

1 allow me to, Mr. Cross.

2 MR. CROSS: This is -- this is very painful and very
3 hurtful for something I ain't do. I'm telling you. And I
4 feel like if I could -- if I hadn't had to lose everything
5 in my life I feel like I could have got a better
6 representation. I don't feel like I was represented right
7 because there's stuff that wasn't brought out like I asked
8 it to be brought out. I feel like I was let down. And I
9 don't understand it, when it's supposed to be somebody
10 that's supposed to be helping you, I don't understand it.

11 THE COURT: Thank you very much, sir.

12 MR. CROSS: The whole -- can I say something else?

13 THE COURT: Yes, sir.

14 MR. CROSS: Like through the whole trial so far there
15 ain't nobody asked me have I been getting represented right,
16 was I getting treated right. Ain't nothing been brought up.
17 And I don't understand that when -- courtrooms that I've
18 been in and I seen people, they ask them, do you feel like
19 you're getting treated right or -- there's people saying
20 they wasn't getting treated right they try to fix the
21 problem. There ain't nobody asked me nothing. I ain't been
22 allowed to open my mouth for nothing until they put me on
23 the stand a while ago at all. I've had to torture -- be
24 tortured because my wife had to be left outside, not knowing
25 what's going on. It's took this long. It took -- I don't -

1

2 THE COURT: All right. Mr. Cross, I've taken a number
3 of things into consideration in this particular sentence,
4 and I've heard what you've had to say. One of the hardest
5 things that this court has to do is inflict collateral
6 damage on innocent people, and in your -- or at least by
7 your view, sir, clearly your children and your family are
8 innocent people. And I wish that there were some way to
9 avoid that. Unfortunately, there simply is not.

10

MR. CROSS: Ain't there some way I can't fire the
11 lawyer I got.

12

THE COURT: Mr. Cross, I'll address that in a moment.

13

MR. CROSS: I need to --

14

THE COURT: I'll address it right now, Mr. Cross. I've
15 presided -- have been involved with hundreds of trials, sir,
16 and in my estimation you did receive a fair trial.

17

MR. CROSS: I don't feel like that.

18

THE COURT: I certainly appreciate your position but
19 I'm forced to disagree with you. Obviously there are
20 appellate issues that can be addressed. Notice of intent to
21 appeal would have to be filed within 10 days of this
22 sentencing, and within one year of any remand from the
23 Supreme Court or the Court of Appeals you would need to file
24 an action for post conviction relief if you feel that in
25 some ways your representation was insufficient. I've seen

1 this trial though, Mr. Cross, and I've seen the manner in
2 which the attorneys have conducted themselves, and I'll
3 simply restate again what I said earlier, that if I felt
4 like you were not receiving adequate representation I
5 probably would have stopped this before it ever began. So
6 I'm very confident --

7 MR. CROSS: Nobody ever asked me.

8 THE COURT: -- in the capability and the presentation
9 that your attorney did. And, in fact, I feel like he did a
10 fine job. Regrettably though, Mr. Cross, what you have to
11 understand is that it's very hard to get 12 people to agree
12 on anything, and any time you can get 12 people to agree on
13 something that's got to be the truth and that's got to be a
14 pretty good result.

15 The sentence of the court, sir, on indictment 255 --
16 and the reason I'm doing this, Mr. Cross, I am not giving
17 you the maximum because I do believe that this is a case
18 where certainly there were good issues that could be brought
19 to the court's attention and brought to the attention of the
20 appellate courts on down the road, and so, I feel like this
21 is a proper sentence, especially in light of the 10 year
22 sentence that you've previously served. So if 10 years
23 didn't teach you to stay away from small girls, hopefully 25
24 will. So that's the sentence on indictment 255 that you're
25 committed to the Department of Corrections for 25 years.

1 This sentence will be concurrent with the sentence on
2 indictment 227. You'll receive the credit for the time that
3 you served. Of course, you'll be placed on the registry of
4 abuse and neglect.

5 On the lewd act charge 227 sentence is 15 years. You
6 get credit for the time that you have previously served in
7 jail. And, Mr. Cross, I, again, feel like that this was an
8 appropriate case to be tried. I do not hold in any way it
9 against you that you decided to take this case to trial.
10 What I have to hold against you, however, sir, is the fact
11 that in all candor you have previously been convicted of
12 doing this exact same sort of thing and that's the reason
13 you're going to have to serve 25 years. It will be under 85
14 percent, and I wish you luck, sir.

15 MR. NASROLLAHI: So 25 for the -- 15 on the lewd act
16 concurrent with the 25?

17 THE COURT: Concurrent. Sentences are to run
18 concurrent with each other. Good luck to you, Mr. Cross.

19 MR. BROWN: Thank you, Your Honor.

20 THE COURT: The record is closed. If we could,
21 Solicitor, let me ask that your people -- if you'll escort
22 them out first --

23 MR. BROWN: Yes, sir.

24 THE COURT: -- and then I'll ask Mr. Powers to make
25 sure that Ms. Cross gets out. We are at ease until 10:30

DOCKET NO. 92-6504-19

The State of South Carolina,

County of ANDERSON

EX-22-01
PLG
STATES EXHIBIT
7
PENDING 800-521-6989

COURT OF GENERAL SESSIONS

JAN 6 1992
TERM

Now comes the defendant James A. Cross
who in open Court pleads guilty to the charge in the
within indictment and consents to sentence.

DDW THE STATE

This 9 day of March 19 92

vs.

Signed James Scott Cross

JAMES S. CROSS

AS

ARREST WARRANT NO. D095933

ACTION OF GRAND JURY

TRUE BILL
DATE

1-6-92

[Signature]
Foreman of Grand Jury

VERDICT

Indictment for
CRIMINAL SEXUAL CONDUCT WITH A
MINOR, 1ST DEGREE

16-3-652

comm
3-9-92
emph

A TRUE COPY
OCT 10 2013
[Signature]
CLERK OF COURT

GEORGE M. DUCWORTH, SOL.

430

Foreman of Petit Jury

Date:

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
1ST DEGREE 16-3-652

At a Court of General Sessions, convened on JAN 6 1992,
the Grand Jurors of ANDERSON County present upon their oath:

THAT JAMES S. CROSS DID IN ANDERSON COUNTY ON OR BETWEEN OCTOBER
31, 1991, AND NOVEMBER 28, 1991, ENGAGE IN SEXUAL BATTERY WITH
A ~~minor~~ YEAR OLD FEMALE CHILD,

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

George M. Duworth
TENTH CIRCUIT

SOLICITOR

A TRUE COPY
OCT 10 2013
Robert King
CLERK OF COURT

SENTENCE

STATE OF SOUTH CAROLINA

CASE NO. 92-MS-04-19

ANDERSON COUNTY

The defendant James A. Cross is committed to the State Department of Corrections/County for a term of 10 months/years and/or to pay a fine of \$; provided upon the service of months/years and/or payment of \$, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for months/years.

Restitution

For physical injury \$

Yes/No

property damage \$

to be paid

to clerk for

Other conditions Defendant shall report to the Anderson County Detention Center, Anderson, South Carolina, NO LATER THAN Thursday, March 12, 1992, 4:00 o'clock P.M. to commence service of this sentence.

Date March 9, 1992

[Signature] Presiding Judge

*Costs and Assessments

Non-waivable \$

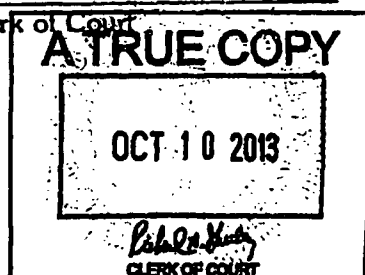
Not waived \$

Total \$

Craft Court Reporter

[Signature] Clerk of Court

** Pay to Victim's Compensation Fund if subrogated.



433

WITNESSES

Marion T. Johnson, Jr.

WARRANT NUMBERS

J09323

True Bill

Carla A. Cozart

Foreman of the Grand Jury

Date:

APR 21 2006

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

April Term, 2006

Indictment # 06GS01- *226*

THE STATE

vs.

SCOTT JAMES CROSS

B/W 4-28-06

B/W 01-07-08

Restored 2-7-13

Fail to Appear 9/12/08

Benjamin L. Sherry
Deputy Solicitor

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH A
MINOR-SECOND DEGREE

*Nolle Prosequi due to guilty
plea of *Clyde R. [unclear]* conviction on
10/28/13*

✓ ✓

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

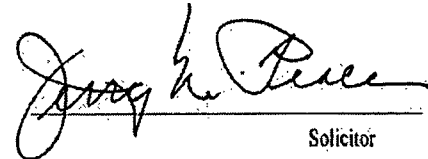
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR-SECOND
DEGREE

At a Court of General Sessions, convened on the 21st day of April, 2006, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That SCOTT JAMES CROSS, did in Abbeville County, state aforesaid, on or about the 29th day of December, 2005, 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 [REDACTED] date of birth: [REDACTED] [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

Marion T. Johnson, Jr.

WARRANT NUMBERS

INFO

True Bill

Carla A. Cozart

Foreman of the Grand Jury

Date: APR 21 2006

VERDICT

Guilty

Michelle J. Lane
Oct. 23, 2013
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

April Term, 2006

Indictment # 06GS01-227

THE STATE

Jones vs.
SCOTT JAMES CROSS

BlW 4-28-06

BlW 01-07-08

Fail to Appear 9/12/08

Restored 9/11/13

Benjamin L. Shady
Deputy Solicitor

INDICTMENT FOR

COMMITTING OR ATTEMPTING LEWD ACT UPON A CHILD UNDER SIXTEEN YEARS OF AGE (24-65)

✓ ✓

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

INDICTMENT FOR
COMMITTING OR ATTEMPTING LEWD ACT UPON A
CHILD UNDER SIXTEEN YEARS OF AGE

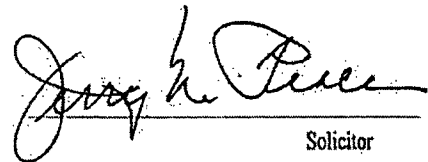
At a Court of General Sessions, convened on the 21st day of April, 2006, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

James Scott

That ~~SCOTT JAMES~~ CROSS, did in Abbeville County, state aforesaid, on or about the 29th day of December, 2005, being over the age of fourteen (14) years, the said defendant did unlawfully, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: [REDACTED] date of birth: [REDACTED], with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the said defendant, or of the said child, [REDACTED] in violation of Section 16-15-140 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

Leslie Norman
Abbeville County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2013

Indictment # 13GS01-0255

WARRANT NUMBER

2013D0100100081

THE STATE

vs.

~~Scott James Cross~~
James Scott

William A. ...

Foreman of the Grand Jury

Date: **SEP 06 2013**

TRUE BILL

VERDICT

Gilty

Melissa J. Love
Foreman
Oct. 23 2013

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT
16-03-0655

CDR: 3022

THE STATE OF SOUTH CAROLINA

COUNTY OF ARBEVILLE

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT

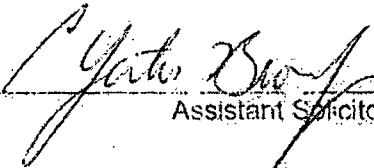
16-03-0655

At a Court of General Sessions, convened on the 6th day of September, 2013, the Grand Jurors of Abbeville County present upon their oath:

James Scott

That ~~Scott James~~ Cross, in Abbeville County, on or about December 29, 2005 did willfully and unlawfully commit criminal sexual conduct with a minor in the first degree, in that the said defendant did engage in sexual battery upon a person under the age of sixteen (16) years of age, to-wit: J.B. a minor with date of birth of [REDACTED] and the defendant has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D), in violation of Section 16-3-655(A) (1) 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.


Assistant Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Abbeville
STATE VS. James Scott Cross
AKA:
Race: CAU Sex: M Age: 43
DOB: SS#:
Address:
City, State, Zip: Iva, SC 29655
DL#: SID#:

INDICTMENT/CASE#: 06GS01-0227
A/W#: 06-000186301
Date of Offense: 12/29/2005
S.C. Code §: 16-15-0140
CDR Code #: 2468

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1 0-15 yrs)

in violation of § 16-15-0140 of the S.C. Code of Laws; bearing CDR Code # 2468
NON-VIOLENT VIOLENT SERIOUS MOST-SERIOUS Mandatory GPS(CSC w/minor: 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Brown, C. Yates SC Bar# 78607 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 15 days/months/years 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: 13-65-01-255
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.
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 PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:
*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), 3% to County (if paid in installments), TOTAL \$133.90

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 Shandal B. Boyer
Court Reporter: Tara Scott
SCCA/217 (03/2011)

Presiding Judge Judge Code: 2154 Sentence Date: 10/23/2013

440

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Abbeville
STATE VS. James Scott Cross

INDICTMENT/CASE#: 13GS01-0255
A/W#: 2013D0100100081
Date of Offense: 12/29/2005
S.C. Code §: 16-03-0655
CDR Code #: 3022

AKA:
Race: CAU Sex: M Age: 43
DOB: SS#:
Address:
City, State, Zip: Starr, SC 29684
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Sex / Criminal sexual conduct with minor - victim under 16 years of age and offe 10-3040

in violation of § 16-03-0655 of the S.C. Code of Laws, bearing CDR Code # 3022
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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: Brown, C. Yates 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 25 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: 06-65-01-227
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.
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 SCDPPS

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

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), 3% to County (if paid in installments), TOTAL \$133.90

Other: To remain on the sex offender registry

Appointed PD or appointed other counsel, 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Shandal B. Boggs
Court Reporter: Tara Scott
SCCA/217 (03/2011)

Presiding Judge: Judge Code: 8159 Sentence Date: 10/23/2013

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this amended 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."

July 28, 2015



Robert M. Dudek
Chief Appellate Defender

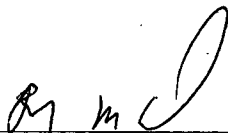
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this amended 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."

July 28, 2015



Robert M. Dudek
Chief 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

JUL 28 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Frank R. Addy, Circuit Court Judge

 ORIGINAL
RECEIVED

JUL 28 2015

SC Court of Appeals
RESPONDENT,

THE STATE,

V.

JAMES SCOTT CROSS,

APPELLANT

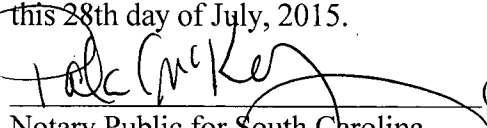
APPELLATE CASE NO. 2013-002596

CERTIFICATE OF SERVICE

I certify that a true copy of the Amended Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of July, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of July, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.