**Volume I**

RECEIVED

**Mar 21 2025**

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

---

CERTIORARI TO THE COURT OF APPEALS

---

Appellate Case No. 2021-000754

---

Carrol T. Washington, Respondent

v.

State of South Carolina, Petitioner.

---

# APPENDIX

---

LARA M. CAUDY
Senior Appellate Defender

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

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

D. RUSSELL BARLOW
Senior Assistant Deputy Attorney General

ZACHARY W. JONES
S.C. Bar No. 104174
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3737

ATTORNEYS FOR PETITIONER

# Volume I

INDEX

Appendix Volume I .....1

Appendix Volume II .....503

Petition for Writ of Certiorari .....533

Return to Petition for Writ of Certiorari .....560

Brief of Petitioner .....576

Brief of Respondent .....599

Opinion .....614

Respondent's Petition for Rehearing .....624

Order Denying Petition for Rehearing .....640

# VOLUME I

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Feb 22 2022

S.C. SUPREME COURT

---

Certiorari to Newberry County

Honorable J. Mark Hayes, Circuit Court Judge

---

CARROL T. WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000754

---

APPENDIX

---

VICTOR R SEEGER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MICHAEL J. NEUBAUER
Assistant Attorney General
Robert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29291
(803)734-3737

ATTORNEYS FOR RESPONDENT

**PAGES 1 - 500**

# Volume I



INDEX

INDEX ..... i

TRIAL TRANSCRIPT DATED FEBRUARY 29, MARCH 1, 2, 2016 ..... 1

ANDERS BRIEF OF APPELLANT ..... 381

STATE V. WASHINGTON, 2018-UP-241 (S.C.CT.APP. FILED JUNE 13, 2018) ..... 399

APPLICATION FOR POST-CONVICTION RELIEF ..... 401

RETURN ..... 423

AMENDED POST-CONVICTION RELIEF APPLICATION ..... 431

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 27, 2021 ..... 435

ORDER OF DISMISSAL ..... 505

INDICTMENT AND SENTENCE SHEET ..... 526

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF NEWBERRY

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA, PLAINTIFF, | ) | CASE NO.: 2015-GS-36-0546 |
| -VS- | ) | TRANSCRIPT OF RECORD |
| CARROL TREMAYNE WASHINGTON, | ) | |
| DEFENDANT. | ) | |

FEBRUARY 29, MARCH, 1, 2, 2016
NEWBERRY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE

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

ATTORNEY FOR PLAINTIFF:

DALE SCOTT, DEPUTY SOLICITOR
TAYLOR DANIEL, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT :

CHARLES VERNER, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

IN D E X

WITNESS PAGE NO.

Stephen Epps (In Camera)

Direct Examination.....25

Cross Examination.....39

Ethyl Sims (In Camera)

Direct Examination.....45

Cross Examination.....48

Minor (In Camera)

Direct Examination.....53

Ethyl Sims

Direct Examination.....97

Cross Examination.....106

Nicole Simms

Direct Examination.....114

Cross Examination.....123

Redirect Examination.....129

Brad Epps

Direct Examination.....131

Cross Examination.....144

Redirect Examination.....156

Recross Examination.....157

S.B.

Direct Examination.....158

Cross Examination.....166

Trina Elfering

Direct Examination.....179

Cross Examination.....191

Redirect Examination.....195

Minor

Direct Examination.....196

Cross Examination.....229

Redirect Examination.....238

Candice Hopkins

Direct Examination.....248

Cross Examination.....261

Tonya Dawkins

Direct Examination.....268

Cross Examination.....285

Carroll Washington

Direct Examination.....290

Cross Examination.....318

Certificate of Reporter.....380

EXHIBITS

| NO | DESCRIPTION | ID | EVIDENCE |
|---|---|---|---|
| State's 1 | CD | | X |
| State's 2 | Photo Lineup | | X |
| State's 3 | Anatomical Diagram | | X |

TRIAL DAY 1-02/29/16

THE COURT: Ladies and gentlemen of the jury panel, thank you for your patience. The first case that was going to be called for trial, the Defendant decided to plead guilty, so we had to deal with that process. So thank you for your patience. Now we are going to start the case of the *State of South Carolina vs. Carroll Tremayne Washington*. Mr. Washington, if you would stand just very briefly and face the jury panel. Thank you very much. Have a seat.

Ladies and gentlemen of the jury panel, Mr. Washington has been indicted for one criminal offense. Now, before I read to you the allegations made in the indictment let me explain to you what an indictment is. First of all, it is the charging paper to get the case into trial where we are today. The allegations that the indictment contains sets forth what the State is basing their case on, but they are merely allegations. They are in no way to be considered by you as proof of the charge or proof of the allegations. It's just the formality to get the case into the point of where we are today, the trial of the case. But the fact that Mr. Washington was indicted is absolutely no proof whatsoever that he is guilty of the crime of which the indictment is based on. But let me just read to you the allegations so you'll have some idea of what this case is about. The indictment reads as follows. "That Carroll

Tremayne Washington did on or about May 3rd, 2012 to March 25, 2015 in Newberry County, being older than the victim, willfully and unlawfully committed criminal sexual conduct with a minor in the first degree, to wit, that the said Defendant did engage in a sexual battery upon a person under the age of 11 years, to wit, a one, Minor , date of birth , , in violation of Section 16-3-655, subsection (a), subsection (1), Code of Laws for South Carolina. And again, these are merely allegations and nothing more.

I need to ask you several questions. And again, like we did this morning, if you want to respond to a question but are reluctant to do so in the presence of everyone, just remember what the question and your response is and I'll speak with you privately at the appropriate time.

Anyone on the jury panel related by blood or marriage either now or formerly to either Carroll Tremayne Washington or Minor ? If so, please stand.

(Whereupon, jury panel remains seated.)

THE COURT: Any member of the jury panel have or had in the past a close personal or social relationship with either Carroll Tremayne Washington or Minor ? If so, please stand.

(Whereupon, jury panel remains seated.)

THE COURT: Now, I'm going to publish to you a list of

potential witnesses in this case. It doesn't mean that they will necessarily testify, but they may. And the list is as follows. Stephen Epps with the Newberry County Sheriff's Department, Clayton Babb with the Newberry County Sheriff's Department, Robert Dennis with the Newberry County Sheriff's Department, Ethyl Simms, Nicole Simms, Minor , Trina Elfering. That's E-l-f-e-r-I--g. Alexander Flynn, S.B. , Domicka Jeeter, Tonya Dawkins, Candice Hopkins, Jackie Dominick, Tanika Brooks. Anyone on the jury panel related by blood or marriage either now or formerly to those people I have just listed, or anyone on the jury panel have or have had in the past a close personal or social relationship with any of those individuals? If so, please stand.

(Whereupon, jury panel remains seated.)

THE COURT: Now, the attorneys in this case, I'm going to give them an opportunity to introduce themselves. They've tried many cases in this court. I'm certainly very familiar with their experience. They're all three excellent lawyers, and I'll allow the State to go first and introduce yourself.

MR. SCOTT: Thank you, Your Honor. Good afternoon. I'm Dale Scott, Deputy Solicitor to the Eighth Circuit, the circuit you guys live in, consisting of Newberry, Abbeville, Greenwood and Laurens Counties. I primarily practice in

Laurens and Newberry County. You see on t.v. district attorneys is what they call them for the most part. In South Carolina we're called Solicitors and we are the prosecutors representing the State. With me is my assistant solicitor Taylor Daniel. Helping out is investigator Walter Bentley from my office. Among the witness list, just to put a face to the name, this is Brad Epps right here who is on the witness list.

THE COURT: Thank you, Solicitor. Mr. Verner.

MR. VERNER: My name is Charles Verner. I'm a lawyer here in Newberry. I work with my father, Jay Verner, across the street on Boyce Street.

THE COURT: Thank you very much. Any member of the jury panel ever been represented by any of the attorneys involved in this case or anyone in their respective law firms or offices? If so, please stand.

(Whereupon, jury panel remains seated.)

THE COURT: Anyone on the jury panel related by blood or marriage, either now or formerly, or have had or have currently a close personal or social relationship with any of the attorneys involved in this case or anyone in their respective law firms or offices? If so, please stand.

(Whereupon, jury panel remains seated.)

THE COURT: Any member of the jury panel formed or expressed any opinion about any issue or matter involved in

this case?

(Whereupon, jury panel remains seated.)

THE COURT: Any member of the jury panel aware of any bias or prejudice towards either the State or the Defendant in this case?

(Whereupon, jury panel remains seated.)

THE COURT: Now, this next question I pretty much know the answer but I'm going to have to ask it anyways. Is there any member of the jury panel that was a member of the Grand Jury which issued the one indictment in this case? The indictment that I published a moment ago. If so, please stand.

(Whereupon, jury panel remains seated.)

THE COURT: Is there any member of the jury panel who is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victim's rights? These groups would include, but certainly not limited to, and I'll give you the acronyms, MADD, SADD or CAVE.

(Whereupon, jury panel remains seated.)

THE COURT: Is there any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case with particular emphasis being placed on your ability to be fair and to be impartial to both the State and the Defendant in this case?

(Whereupon, jury panel remains seated.)
THE COURT: Now, is there anyone who would like to speak with me privately? If so, please stand.
(Whereupon, jury panel member stands.)
THE COURT: All right. We've got one. Come around, please, sir.
JUROR Robert Hamilton: I worked with Brad Epps. I worked at the Sheriff's Office for four years.
THE COURT: You were a deputy sheriff?
JUROR Robert Hamilton: Yes. I'm pretty familiar with those guys.
THE COURT: I'm going to excuse you. Excuse him for cause. Thank you. Stay with us. Anybody else?
Ladies and gentlemen of the jury panel -- okay. I've got another question for you. Is there any member of the jury panel either been a victim of an alleged sexual assault, or anyone on the jury panel have a close friend or family member who has been a victim of an alleged sexual assault? If so, please stand.
(Whereupon, jury panel member stands.)
THE COURT: Let's do this. Just come down and speak with me privately.
JUROR Bradley Eckhardt: It was my sister-in-law. She was molested by her uncle.
THE COURT: The fact that your sister-in-law was

molested by her uncle, could you be fair and impartial?

JUROR Bradley Eckhardt: I could not.

THE COURT: I'm going to excuse you. Forty-eight. Now, ladies and gentlemen, the process that we follow in selecting the jury is that if your name is called out, come around and just -- the bailiff will direct you exactly where to stand, probably in this area here, and the lawyers will make a decision whether or not to accept you or not. You may hear words as swear the juror or accept the juror or excuse the juror. And if you're not selected, don't take that personally. Okay? Don't take offense to that. The lawyers have their own reasons for selecting jurors or rejecting jurors. So if you're not -- if you're not accepted, again, don't take that personally or take any offense to that. And we will -- there's 12 people on a jury. We'll have two alternates. And so, if you'll just be patient with us for a few minutes until we can get all that ready to -- ready to go.

Let me ask, does the State have any exceptions to the Court's voir dire or any additional questions?

MR. SCOTT: No, Your Honor.

THE COURT: And likewise for the Defense?

MR. VERNER: No, Your Honor.

THE COURT: Thank you very much. While the Clerk's staff is getting the list together, let me just introduce

you to some folks that play a very vital role in the operation of our court system here in Newberry County. You see we have a couple gentlemen and a young lady who is our bailiffs. They've got the burgundy coats on. And if at any time this week you have any particular problems, concerns, anything that may arise that you need to possibly let the Court know about, you just find one of these bailiffs and they'll certainly be glad to help you. The ladies seated in front of me are with the Clerk of Court. Jackie Bowers who is your elected Clerk of Court. And as I understand, she is going to retire at the end of her term. And Beth Folk, who is seated to my right here, she is running for that particular job. So we wish her well in that endeavor. Beverly Brimmer is seated in between and she's with the Clerk's Office as well. They do an excellent job.

The Circuit Courts in this state are a court of record which means this. We have to maintain a record of everything's that's done in this courtroom. And Tara Scott, who's my court reporter for this week, is just one of the best court reporters in the state. I work with a lot of court reporters. And even though she's a very dear friend of mine, and I'm not saying this because she's a dear friend. I'm saying this because it's a fact, that she's excellent. And so, I'm glad she's with me this week.

Lastly, to my left is Scott Todd. Scott is a lawyer

and my law clerk, and he's been with me since August and he helps me immensely so I can perform my job. And without him then I'd have some -- I'd have some difficulties. I'll be the first to say that.

All right. I'm ready if the Clerk's Office is ready. It's going to be 10 and five. Ten and five. And we're going to go two alternates, gentlemen.

MADAM CLERK: As I call your name please come forward and stop at the end of the jury box for further instructions. Number 125, Jodie Sawyer. What says the State?

MR. SCOTT: Please present the juror.

MADAM CLERK: The Defense?

MR. VERNER: From this case I'm going to excuse Ms. Sawyer.

MADAM CLERK: You may have a seat, Ms. Sawyer. 106, Robert Ott. What says the State?

MR. SCOTT: Present the juror.

MADAM CLERK: The Defense?

MR. VERNER: Please seat Mr. Ott.

MADAM CLERK: Have a seat in the box, please.

(Whereupon, juror takes seat in jury box.)

MADAM CLERK: 24, La'Tisha Chalmers. What says the State?

MR. SCOTT: Please present the juror.

MADAM CLERK: The Defense?
MR. VERNER: Please seat Ms. Thomas.
MADAM CLERK: Have a seat in the box.
(Whereupon, juror takes seat in jury box.)
MADAM CLERK: 12, Shykerra Burnside. What says the State?
MR. SCOTT: Please present the juror.
MADAM CLERK: The Defense?
MR. VERNER: Please seat Ms. Burnside.
MADAM CLERK: Have a seat, please.
(Whereupon, juror takes seat in jury box.)
MADAM CLERK: 137, Kim Summer. What says the State?
MR. SCOTT: Please present the juror.
MADAM CLERK: The Defense?
MR. VERNER: From this case I would excuse Ms. Summer.
MADAM CLERK: 126, Doris Ann Shepard. What says the State?
MR. SCOTT: Please present the juror.
MADAM CLERK: The Defense?
MR. VERNER: Please seat Ms. Shepard.
MADAM CLERK: Have a seat in the box.
(Whereupon, juror takes seat in jury box.)
MADAM CLERK: 118, Ronald Robinson. What says the State?
MR. SCOTT: Please excuse the juror from this trial.

MADAM CLERK: Your excused Mr. Robinson. Please have a seat. 31, Tamela Cohen. What says the State?

MR. SCOTT: Please present the juror.

MADAM CLERK: The Defense?

MR. VERNER: From this case I'm going to excuse Ms. Cohen.

MADAM CLERK: 144, Takiria Walker. What says the State?

MR. SCOTT: Please excuse the juror from this trial.

MADAM CLERK: Your excused. 147, Cory Watson. What says the State?

MR. SCOTT: Please present the juror.

MADAM CLERK: The Defense?

MR. VERNER: From this case I will excuse Mr. Watson.

MADAM CLERK: 51, June Force. What says the State?

MR. SCOTT: Please present the juror.

MADAM CLERK: The Defense?

MR. VERNER: From this case I will excuse Ms. Force.

MADAM CLERK: 76, Timothy Hudson.

MR. VERNER: 76?

MADAM CLERK: 76. What says the State?

MR. SCOTT: Present the juror.

MADAM CLERK: The Defense?

MR. VERNER: Please present Mr. Hudson.

MADAM CLERK: Have a seat, please.

(Whereupon, juror takes seat in jury box.)
MADAM CLERK: 34 Shandon Collins. What says the State?
MR. SCOTT: Please present the juror.
MADAM CLERK: The Defense?
MR. VERNER: From this case I'm going to excuse the juror.
MADAM CLERK: 42, Christine Dezzani. What says the State?
MR. SCOTT: Please present the juror.
MADAM CLERK: The Defense?
MR. VERNER: I'm sorry. What number?
MADAM CLERK: 42.
MR. VERNER: From this case I'll excuse Ms. Dezzani.
MADAM CLERK: Number 4, Lloyd Arrowood. What says the State?
MR. SCOTT: Please present the juror.
MADAM CLERK: The Defense?
MR. SCOTT: Please seat Mr. Arrowood.
(Whereupon, juror takes a seat in jury box.)
MADAM CLERK: 127, Tasha Sim. What says the State?
MR. SCOTT: Please excuse the juror from this trial.
MADAM CLERK: 41, Sharon Derrick. What says the State?
MR. SCOTT: Present the juror.
MADAM CLERK: The Defense?

MR. SCOTT: Please seat Ms. Derrick.

(Whereupon, juror takes seat in jury box.)

MADAM CLERK: 26, Joshua Cheatham. What says the State?

MR. SCOTT: Please present the juror.

MADAM CLERK: The Defense?

MR. VERNER: From this case I'm going to excuse Mr. Cheatham.

MADAM CLERK: 149, Sara Wessinger. What says the State?

MR. SCOTT: Please present the juror 149.

MADAM CLERK: The Defense?

MR. VERNER: Please present the juror.

(Whereupon, juror takes seat in jury box.)

MADAM CLERK: 14, Dianna Bush. What says the State?

MR. SCOTT: Present the juror.

MADAM CLERK: The Defense?

MR. VERNER: From this case I excuse Ms. Bush.

MADAM CLERK: 66, Robert Griffen. What says the State?

MR. SCOTT: Present the juror.

MADAM CLERK: The Defense?

MR. VERNER: Please seat Mr. Griffen.

(Whereupon, juror takes seat in jury box.)

MADAM CLERK: 43, Justin Dickert. What says the State?

MR. SCOTT: Present the juror.

MADAM CLERK: The Defense?
MR. VERNER: What number are we on?
MADAM CLERK: 43.
MR. VERNER: Please seat Mr. Dickert.
MADAM CLERK: Have a seat, please.
(Whereupon, juror takes seat in jury box.)
MADAM CLERK: 148 Norman Way. What says the State?
MR. SCOTT: Present the juror.
MADAM CLERK: The Defense?
MR. VERNER: Please seat Mr. Way.
MADAM CLERK: Have a seat in the box.
(Whereupon, juror takes seat in jury box.)
MADAM CLERK: 110, Troy Pridham. What says the State?
MR. SCOTT: Present the juror.
MADAM CLERK: The Defense?
MR. VERNER: Please have a seat, Mr. Pridham.
(Whereupon, juror takes a seat in jury box.)
MR. VERNER: Is that 12?
THE COURT: That's 12. Two alternates.
MADAM CLERK: 27, Charles Clary. What says the State?
MR. SCOTT: Present the alternate.
MR. VERNER: What's the number again, 27? Please seat Mr. Clary.
MADAM CLERK: Have a seat in the box, please.
(Whereupon, juror takes seat in jury box.)

MADAM CLERK: 136, Stephanie Sullivan. What says the State?

MR. SCOTT: Please present the alternate.

MADAM CLERK: The Defense?

MR. VERNER: From today's case I'm going to excuse Ms. Sullivan.

MADAM CLERK: 52, Wanda Fowler. What says the State?

MR. SCOTT: Present the alternate.

MADAM CLERK: The Defense?

MR. VERNER: Please seat Ms. Fowler.

MADAM CLERK: Have a seat.

(Whereupon, juror takes seat in jury box.)

THE COURT: Okay, Madam Clerk, thank you very much. Ladies and gentlemen, what I'm going to ask that you do is follow the bailiff into the jury room and get kind of -- see where you're going to be spending a little bit of time this week. Also, introduce yourselves to each other and get to know each other, for those who do not know everybody, and we'll bring you back out in just a few minutes with further instructions.

Now, I'm going to go ahead and tell you something now that you'll hear me tell you throughout this entire proceeding. Don't start any discussions among yourselves about anything related to this case. That can't happen until I tell you it's time to deliberate and discuss in

order to reach a verdict in this case. So up until the time I tell you that you can't have any discussions about anything related to this case among yourselves, and then when you go home for the evening or during lunch break. And so, that's something you'll hear me tell you repeatedly throughout this proceeding. But go back to the juror room for just a few moments. Okay?

(Whereupon, the jury exited the courtroom at 2:12 p.m.)

THE COURT: Does the State have any objections or exceptions to jury selection?

MR. SCOTT: No, Your Honor.

THE COURT: Does the Defense have any objections or exceptions to jury selection?

MR. VERNER: No, Your Honor.

THE COURT: Thank you very much gentlemen. Ladies and gentlemen, of the remaining jury panel hopefully some of you were disappointed that you were not selected. But I understand that some of you probably are glad that you were not accepted. I don't anticipate that there being any other trials scheduled for this week, but I don't know that for certain, so I can't release you for the remainder of the week. What you need to do is the card that you got, if you already misplaced it or lost it make sure to get another one, because there's a number on the back that you will need to call after 6:00 this evening and it will give you

instructions on what to do for tomorrow. Chances are it's going to tell you to call back Tuesday after 6:00. But again, we don't know that. So don't forget to call after 6:00 and it'll tell you what to do as concerns tomorrow. Now, if it turns out to where there's no further jury business to conduct this week then I won't have an opportunity to see you folks again. But I hope sincerely that if I don't see you again and you're not selected on another jury this week that sometime in the future, whether it's in Circuit Court or in some other court, Magistrate's Court, City Court, that you'll have an opportunity to be selected, because I think if that happens you'll find the experience to be a very good one. So hopefully that opportunity will come around for you sometime down the road.

But with that said, you are excused for the rest of the day and have a great afternoon.

(Whereupon, remaining jury panel was excused at 2:14)

THE COURT: Let me see the lawyers for just a second.

(Whereupon, a sidebar was held.)

MR. VERNER: Judge, before the panel was excused, just I wanted to caution. When I came in the courtroom today the child victim was playing on the steps of the courthouse going up and down the railing while the jury was coming in, and I would ask that they be cautioned not to do that.

THE COURT: What you have to do, and I'm going to --

and I don't know how many of -- are you with the Defendants? Are you Defendant's family or are you with another case?

MR. SCOTT: Another case, Your Honor. An unrelated case.

THE COURT: Unrelated case. Well, let me just say this. Any family members related to either side, State or the Defendant, you've got to be very careful not to have any contact of any kind with any members of the jury. If you see one coming then you go the other way. And just inadvertent contact needs to try to be avoided if at all possible. So with that said.

All right. If you'll bring the jury out, please.

(Whereupon, the jury entered the courtroom at 2:16 p.m.)

THE COURT: Ladies and gentlemen, we have several pretrial motions, meaning legal issues, that I need to take up with the lawyers, and that will probably take -- plus I have some other matters unrelated to this case that I'll need to deal with this afternoon. So we're not going to start the trial of this case until in the morning. So I'm going to excuse you in just a second.

Again, I'll remind you, don't discuss this matter. And I know you know very little about it. I recognize that. But don't discuss anything related to this case whatsoever with -- between yourself or anybody you come into contact

with this evening.

Also, you've already been told what the charge is. I don't want you going on the Internet or doing any social media communication, anything related to that trying to research what this charge is about and that sort of thing. The law that I will give you is all the law that you need. Your verdict will have to be based 100 percent on the facts and evidence presented in this courtroom and on the law that I instruct you at the end of the case. So don't -- don't get -- do any independent research. And I'm to go back over that again tomorrow and some other remarks to you.

We're going to start back at 9:15, so be back promptly. Allow yourself enough time to take care of anything that may be unexpected, you know, that may happen in the morning. So allow yourself enough time, because if you're not here we can't get started. And the lawyers tell me that we're going to have probably two days for this trial, so we need to utilize all the time available to us.

So with that said, you are free to go. We'll start back at 9:15 in the morning. Okay? And, Mr. Griffen, we're going to take care of your matter, too, that you talked to us about earlier. Okay? Thank you. Have a good evening. Get a good night's rest.

(Whereupon, the jury was excused for the day at 2:18 p.m.)

THE COURT: This case will be -- will be at recess other than pretrial matters until 9:15 in the morning.

(Whereupon, a recess on this case was held until 3:08 p.m.)

THE COURT: We have several pretrial matters. One of which is an issue related to a forensic interview. And at my request you're going to provide the Court with the DVD, and either this evening or early in the morning before we reconvene I'm going to look at this DVD and then we will deal with it at some point in time during the trial. Is that -- is that correct?

MR. SCOTT: Yes, sir.

THE COURT: So just before we finish for the day, if you all just make sure that I've got that. About how long is it?

MR. SCOTT: Between 35 and 40 minutes, I think.

MR. TAYLOR: I think 32 minutes, Your Honor.

THE COURT: Thirty-two minutes?

MR. TAYLOR: Yes, sir.

THE COURT: We have a *Jackson vs. Denno* and a *Neil vs. Biggers* issue. So I'll be glad to -- whichever one you want to go to next.

MR. SCOTT: Yes, and just so I'm clear, we don't need to hear from the -- we've got the forensic interviewer here that we need to –

THE COURT: Let's just wait until the State intends to offer the interview, and then I can deal with whatever objections Mr. Verner has, and it requires me hearing from the interviewer then we can do that, too.

MR. SCOTT: Okay. Well then, Your Honor, we will handle -- I guess pretty much we can do the *Denno* and it'll sort of -- same witness for the *Denno* and the *Biggers*.

THE COURT: Okay.

MR. SCOTT: And so, Your Honor, we would proffer some testimony from Brad Epps. Stephen Epps on the witness list. I know him as Brad.

THE COURT: Is it Epps?

THE WITNESS: Yes, sir.

THE COURT: E-p-p-s?

THE WITNESS: Yes, sir.

THE COURT: Come around, Officer Epps.

STEPHEN EPPS, having first been duly sworn, testified as follows:

In-Camera

DIRECT EXAMINATION

BY MR. SCOTT:

Q Mr. Epps, how did you come to be involved in this investigation involving Carroll Washington and the, I guess, alleged sexual assault on the victim in this case?

A The report was filed on 3/25 of 2015, and depending on

what day of the week that was I would have gotten it sometime that week.

Q And who was the complainant at the time who got in touch with the Sheriff's Department?

A Nicole Simms.

Q And who is she in relation to the victim?

A That's the victim's mother.

Q And the time -- who's the victim?

A Minor .

Q And she was how old?

A Nine at the time the report was taken.

Q The general allegations were what?

A That the mother was setting up some arrangements for her to go stay with her grandmother in Whitmire, the apartments, and Minor told her mother she didn't want to go. That Man's a rapist. And that's how everything came about.

Q Said that Man's a rapist. And then who did you come to learn that Man was?

A Carroll Washington.

Q And did he have a nickname, I guess, that everybody knew him of as?

A Yes. That nickname was Man.

Q Man, M-a-n?

A Yes.

Q In investigating the case who all did you speak with? You said you got involved March 26th, 2015. Who did you speak with about the allegations?
A I spoke with the victim's mother, Nicole. Then I got in touch with Beyond Abuse to set up a forensic interview. Then I got Mr. Washington in. Brought him in for an interview.
Q When was that?
A That was 6/4 of 2015.
Q So you get involved March 26th, and then June 4th is when you first speak with him in person?
A That's correct.
Q So about two months after the complaint; is that right?
A That's correct.
Q What was going on during that two months?
A Setting up forensic interviews. From my understanding the mother was having issues with work, getting to the forensic interview. So I had to make other arrangements at the ARC, or the Dickerson Center, so we could get set up with the forensic interview.
Q So you were wanting to wait until after the forensic interview was completed before you spoke with Mr. Washington?
A Yes, that's correct.
Q Tell me -- and this wasn't -- was there a timeframe you

were looking at that these alleged assaults took place?
A Yes. That would have been May 2012 to the time the victim was nine, probably sometime in 2015.
Q But the child was at least nine or younger during these times in question?
A That's correct.
Q So on the date in June when you first speak with Mr. Washington, where did you speak with him?
A I spoke with him at the Sheriff's Office. I spoke with him by phone first, then told him he needed to come to the Sheriff's Office and speak with me and he came to the Sheriff's Office.
Q He voluntarily came to the Sheriff's Department?
A That's correct.
Q And did you tell him what the allegations were at that time?
A Yes.
Q So was he under arrest when he got there?
A No, he was not.
Q Did -- well, was he read his Miranda warnings?
A He was not.
Q Why not?
A Because he wasn't under arrest.
Q Is it fair to say you were still investigating the validity of these allegations?

A That's correct.
Q And tell me what -- what you talked about the first time he came to the Sheriff's Office?
A More or less he was advised what was going on, what I wanted him there for, and he was told of the allegations. And he made mention that -- he was kind of speechless as to why Minor would say this about him, and all the kids gravitate towards him. And he went further on to say that she was a fast little girl.
Q He said what? She was a fast little girl?
A She was a fast little girl.
Q A nine-year-old?
A That's correct.
Q Did he go into any detail about how she's a fast little girl?
A He did not. No.
Q Well, did you tell him what the allegations were? Specifically, I mean, what the victim said he had done?
A I don't know if it was specifically. He was just more or less advised this is -- this is what was brought to my attention via the forensic interview and this is what the allegations are against you.
Q Well, you did mention the --
A Yes.
Q -- allegations, where there was some digital

penetration maybe?

A Yes.

Q And what did he have to say about that?

A More or less that he didn't do it. That's pretty much it.

Q Did you ask him about his nickname?

A Yes. I did ask him if they refer to him as Man and he said yes.

Q He said yes?

A That's correct.

Q Was that -- did he ask to leave during this interview at any time?

A He did not.

Q Did he ask for a lawyer or anything?

A He did not.

Q Was he free to leave? Had he stood up and said I'm done talking could he have left?

A That's correct.

Q Had you threatened or intimidated him?

A No.

Q In fact, when this conversation was over did you put him under arrest or did he leave?

A He left.

Q Did you have a chance to speak to speak with him again?

A Yes, at a later date.

Q When was that? I'm looking at page four of your supplemental, June 10th. It's at the bottom of the page.
A That is correct. It was on June 10th.
Q What happened on June 10th?
A I picked him up from Caterpillar in Newberry and I took him to SLED for a polygraph.
Q At some point though did you have a chance to speak with him?
A Yes, I did.
Q And was he under arrest at that time?
A During -- on the way back, yes.
Q When you speak with him -- when did you speak with him?
A I spoke with him after the polygraph examiner spoke with him.
Q Was he under arrest at that time?
A No.
Q Did he speak with you voluntarily at that time?
A He did.
Q What did he disclose at that time?
A More or less that -- I mean, he didn't understand why he failed the polygraph. I asked him several questions pertaining to the case, and he never let on anything as incriminating himself as doing anything to the victim.
Q He was not -- could he have left freely at that time if he had chosen to?

A Midway through the interview I did tell him that he was under arrest.
Q Did you ask him any questions after that?
A Not that I can remember. I know we spoke on the way back and I didn't really ask him any questions pertaining to the case.
Q When you put him under arrest would you have read his Miranda warnings to him?
A I would have, but they were already advised to him.
Q Who advised him of them?
A The polygraph examiner.
Q Were you present when that occurred?
A I was looking through the -- there's a double-sided window. I was there observing.
Q So you observed him receive his Miranda warnings?
A Correct.
Q Did he appear to understand them?
A He appeared to. That's correct.
Q Did you observe him, I guess, accept the fact that he understood his Miranda warnings?
A That's correct.
Q How did he do so? Was it verbal?
A I think it was verbal and, if I remember correctly, he signed the rights form. He initialed it.
Q But I guess at that time all he -- he didn't really

make any admissions but just simply stated that he didn't understand where the complaints were coming from?

A That's correct.

MR. SCOTT: Your Honor, I think that's all the questions I have from Mr. Epps.

THE COURT: Let me just ask. From what I'm hearing this Officer say, it was not anything that would hurt the Defendant. Why are we having a *Jackson v. Denno* hearing?

MR. SCOTT: About the only thing I'm going to use is him talking about a small child being fast. That's his explanation as far as --

THE COURT: That was in the first one?

MR. SCOTT: Yes, sir. And I don't need to -- to be honest, I was kind of exploring, too, with him about the second interview. There's absolutely nothing I'm going to be able to use from that.

THE COURT: So basically then what we have is the first one?

MR. SCOTT: Yes, sir. That would be the only one. And again, he was not under arrest, so I don't see a --

THE COURT: Yeah, you want to go ahead and if this officer was involved in some pretrial investigation, just get into that, too.

MR. SCOTT: All right.

Q The victim in the case -- do you have your file up

there?

A I do.

Q Do you have the original?

A I do.

MR. SCOTT: Let me get that marked.

(Whereupon, Photo lineup was marked as State's Exhibit No. 2 for identification.)

MR. SCOTT: I do briefly, You Honor, I want to just backtrack just for a minute.

Q Epps, go to page five of your supplement. Let me explain a little bit better. You didn't Mirandize Mr. Washington after the polygraph; is that correct?

A That's correct.

Q You witnessed his polygraph?

A That's correct.

Q Tell me what he said after you put him under arrest about wanting to go ahead and accept guilt?

A He said he was ready to plea and get it over with so he could move on with his life.

Q And then -- but he wasn't necessarily admitting that he did it? He was just saying he wanted to plead guilty?

A That's correct.

Q What -- did you say something to the effect of why would you do that if you didn't do it?

A That's correct. And he said if he was to take it to

trial he'd get 50 years.
Q At some point did you -- let me show you State's No. 2. At some point did you show the victim in this case a photo lineup?
A That's correct.
Q And when was that?
A That was 6/3/2015.
Q Where was the victim shown the photo lineup?
A At the Sheriff's Office.
Q And was she with anyone?
A She was with her mother and her father.
Q Had you ever shown her any pictures before this?
A I have not.
Q And do you have a -- I guess, a general procedure you do when you show a witness a photo lineup?
A If we had -- a lot of time we'll get them done by SLED and that way nobody at the Sheriff's Office is doing it. So I just got one done by SLED.
Q And how do you do that? Do you --
A Email. Send in a request. You send the person's driver's license information. All their pertinent information. What the charge is. And they send you a photo lineup back with that person's picture on it.
Q What's the idea? To get five other individuals that are similarly --

A That's correct.
Q Similar characteristics, I guess? How did you get the name Carroll Washington? Let me backtrack a little bit again. She mentioned the nickname Man. How did you associate Man with Carroll Washington?
A Well, when I first spoke with the mother she -- I remember her telling me that his last name was Washington and we from Clinton. So I went to the DMV and I searched the last name Washington. And I asked the mother if she could figure out what his first name was. And I want to say she was able to give me a first name, and I got his picture that way from the DMV online.
Q Do you know, there is a -- I guess a -- Carroll Washington, do you know who his girlfriend was at the time?
A I did not.
Q Do you know now?
A I do.
Q And how is she related to the victim's mother?
A That is the victim's mother's cousin.
Q So Carroll Washington at the time was dating the mother's cousin?
A That's correct.
Q So she provided the last name of Washington to you?
A The victim's mother. That's correct.
Q And when you requested this photo lineup, was it before

or after you spoke with Mr. Washington?
A It was the day before.
Q Show us -- what procedure do you use -- I don't know, maybe if I'm the victim, and this is your photo lineup. I've got it marked as State's No. 2. How would you present it to the victim, or the witness?
A Bring the victim in, bring the witness in, and have them to identify the person who they saw or who had done something to them.
Q Well, I mean, do you explain to her -- this is a nine-year-old girl. Tell me what you explained to her. First of all, is it face up like that or do you got it flipped upside down or --
A Well, when I came in I was talking to her and told her I had a photo lineup for her and see if she could identify Man. And I showed it to her. I said, put a check beside the person that -- Man, more or less. Put a check beside his head. And she put a check beside his head.
Q So tell me, you would've said what? If you see Man in this picture, show me, or what do you say to her?
A More or less just, I said, put a check beside Man's head.
Q And how quickly was she able to do that?
A Pretty quickly.
Q Did she seem certain to you?

A Yes.
Q Any suggestion whatsoever on which one she needed to check?
A You mean like me telling her?
Q Or any suggestion?
A No.
Q Did you hold your finger close to the three slide on here?
A I put it on the table and gave her a pen and she checked it.
Q Did you have any follow-up questions after she checked it?
A I did not.
MR. SCOTT: Your Honor, this is State's No. 2 which is the lineup.
Q Did you refer to -- it wasn't -- you didn't have his name beside it or anything. Was that exactly the lineup you showed her?
A Correct.
Q And had she pretty much at that point only refer to him as Man or did she refer to him as Carroll Washington or anything like that?
A It was always Man.
Q So again, you would have -- what would you have said to her when she came in and you presented the lineup to her?

A Put a check beside Man, and that's what she did.
Q And did you tell her that he was definitely one of the people on there?
A I did not. I didn't say anything. She asked -- more or less stated that she didn't want to see him anymore and she didn't want her cousin to get hurt after I showed her the photo lineup.
Q You said she picked the three spot pretty fast. I mean, can you give us an estimate how quick?
A I mean, once I told her who I needed -- who she needed to identify, I put it on the desk and gave her the pen, she put a check right beside his head.
Q Did you ask her how certain she was or anything like that?
A I didn't.
Q That was the end of it right there?
A And like I said, she asked me -- more or less said that she didn't want anybody to get hurt.

MR. SCOTT: Answer any questions Mr. Verner has for you.

CROSS-EXAMINATION

BY MR. VERNER:

Q Investigator Epps, you first met with Carroll Washington on June 4th?
A That's correct.

Q And you met with him because of the investigation of a child, Minor ?

A That's correct.

Q At that time however, you had not read him his Miranda rights?

A That's correct.

Q And you had just a vague allegation from the child that you wanted to double check on?

A That's correct.

Q But at some point about a week later on the 10th you suggested that he take a polygraph?

A I suggested it on the 4th and it was setup --

Q On the 10th?

A -- for the 10th.

Q And he -- in fact, he did -- I think you drove him up to SLED in Columbia?

A That's correct.

Q And your understanding is that he was read his Miranda by the -- do you have a copy of that?

A I may.

Q Now, you didn't sign as a witness that he had read -- been read his Miranda rights, did you?

A I did not.

Q But you observed through a -- I assume through a plate glass window?

A Pretty much, yeah.
Q Can you hear through that window or are you pretty much limited to seeing?
A You can hear. There are speakers set up in there as well, but those didn't work. But you could still hear.
Q And that Miranda was set up part and parcel with him taking the polygraph at SLED?
A That's correct.
Q And, of course, he denied the allegations as part of the polygraph, as a result. The -- but you still made the decision to arrest him --
A That's --
Q -- after the polygraph exam?
A That's correct.
Q But you didn't re-Mirandize -- re-read his Miranda rights to him?
A I did not. That's correct.
Q On the way back?
A That's correct.
Q Where was the conversation, do you recall, that he said he wanted to work out some kind of plea deal?
A That was in my vehicle on the way back.
Q That was on the vehicle on the way back?
A In my vehicle, yes.
Q What were you all talking about on the route on the way

back?
A He was more or less mentioning -- like I said, he was ready to get it over with. Just ready to plea.
Q Was he surprised you arrested him on that same -- following the polygraph?
A I would say so.
Q Had he been told if he passes the polygraph that he would not be charged?
A That is -- no.
Q So you all didn't represent anything.
MR. VERNER: Okay. Thank you.
THE COURT: Solicitor, anything in followup?
MR. SCOTT: Nothing, Your Honor. I think clearly the first thing --
THE COURT: Before you make any argument, I'm going to ask a couple of questions.
MR. SCOTT: Yes, sir.
THE COURT: Officer Epps?
THE WITNESS: Yes, Judge.
THE COURT: How many times did Minor tell you that the Defendant abused her in some fashion?
THE WITNESS: Well, she never disclosed anything to me, Your Honor. It was all to the -- the person who did the forensic interview.
THE COURT: You never asked her?

THE WITNESS: No, Your Honor, I didn't.

THE COURT: And when this photo lineup was done had the forensic interview already been done?

THE WITNESS: That's correct, Your Honor.

THE COURT: And you -- had a report been generated or had you viewed the DVD that I have?

THE WITNESS: That's correct, Your Honor.

THE COURT: Based upon what the interviewer -- let me backup. As far as what you observed on the DVD how many times would you say that she told the forensic interviewer that he had done something to her?

THE WITNESS: It was multiple times. As to a count, I can't tell you right off the top of my head. But it was multiple times.

THE COURT: Did she ever describe length of each time that he allegedly abused her in some fashion?

THE WITNESS: No, Your Honor.

THE COURT: Were you certain that Minor had prior knowledge of the Defendant that she knew by the name Man?

THE WITNESS: Yes, Your Honor.

THE COURT: Now, specifically again, when Minor comes into your office for purposes of this photo lineup, what specifically did you tell her leading up to you showing the six man lineup?

THE WITNESS: I told her that I needed her to pick out

Man.

THE COURT: All right. You didn't say do you see Man on there?

THE WITNESS: No, Your Honor.

THE COURT: Does the State have any questions in connection with the Court's questions of Officer Epps?

MR. SCOTT: No, Your Honor. But I think we might just proffer a couple more witnesses.

THE COURT: Mr. Verner, do you have any other --

MR. VERNER: No, Your Honor.

THE COURT: Thank you, Officer. You can step down.

THE WITNESS: Yes, Your Honor.

(Whereupon, the witness stepped down from the witness stand.)

MR. SCOTT: Judge, I'm going to offer Ethyl Simms, Your Honor.

THE COURT: Who?

MR. SCOTT: Ethyl Simms.

THE COURT: Ethyl Simms. Come around, Ma'am.

ETHYL SIMMS, having first been duly sworn, testified as follows:

THE CLERK: Have a seat and state your name, please.

THE WITNESS: My name is Ethyl Simms.

IN-CAMERA

DIRECT EXAMINATION

BY MR. SCOTT:

Q Ms. Simms, where do you live?

A I stay in Whitmire.

Q And Minor is who to you?

A Minor my granddaughter.

Q And Carroll Washington, do you know him?

A He was a friend.

Q And where did he live?

A He live about three blocks from me. We live in an apartment complex and he lived three apartments down from me.

Q Who's his girlfriend?

A My cousin, Tonya.

Q And where does she live?

A They live together in the same complex.

Q Same complex but three buildings over is what you're saying?

A Yes.

Q Three buildings or three rooms over?

A Three buildings.

Q And when would Minor come to visit you?

A Minor used to come and visit me -- they just all three of them just come visit me often.

Q Often?

A Yep, until I didn't know -- Minor got to a point she

didn't want to come, and I couldn't figure it out.

THE COURT: Sit a little closer to the microphone, please, ma'am.

THE WITNESS: Okay.

A And Minor had got to a point and she wouldn't come to visit me. She'd rather cry than come to visit me, and that was unusual. Minor used to visit usually like every weekend, sometimes they spent the night with me, and they don't want to come no more.

Q Very often she would come up to Whitmire?

A Uh-huh.

Q And she lives where?

A She was staying in -- she was staying in Columbia.

Q But her mother, your daughter, would tote her up to Whitmire to spend weekends with you?

A Yeah.

Q Would she spend the night?

A Yeah, she'd spend the night with me. Yeah.

Q Where there times in your presence that she would go to Carroll Washington's apartment?

A Well, she went to Tonya's apartment. Tonya little boy and Minor were like -- well, they call themselves sisters and brothers. They always go to each other just to play.

Q And that little boy, is that Carroll Washington's son?

A No.

Q Did he live in that apartment with Tonya?
A Who? Carroll?
Q Carroll Washington?
A Yeah, he did. They lived together.
Q Well, let me ask you. Do you see Carroll Washington?
A Well, sure.
Q Somebody you're familiar with?
A Yes.
Q And you say he lives with Tonya?
A Yes.
Q And now, I'm going to ask you again. Did you ever see Minor going over to that apartment that Mr. Washington lived in?
A Yeah, they go back and forth. It's a bunch of kids would go back and forth. It wasn't just Minor .
Q And what would they do over at that apartment? I'm talking about Tonya and Carroll Washington.
A They play games. They watch TV. Sometimes they be dancing.
Q Did Mr. Washington ever come over to your apartment?
A Every once -- he'd come over every once in a while.
Q Would you say in front of you, your observation, did Minor have contact with Mr. Washington more than one occasion?
A Yeah, because all -- all the kids would consider him as

a -- what you say? He plays with them and make them laugh and stuff like that. I think he was somebody they trusted.

Q Okay. I'm speaking specifically about Minor though. Would he -- interacted with Mr. Washington on more than one occasion?

A They talked -- she talked trash to him. She'd call him names and stuff. But other than that, huh-uh. Not like that.

Q Well, I mean interact like you and I are doing. Would they --

A Yeah.

Q -- be face to face sometimes?

A They all did. They all of them, Minor , S.S. , N.T. . All my grands did. And other kids on the block did, too.

MR. SCOTT: Thank you. Answer any question Mr. Verner has for you.

CROSS-EXAMINATION

BY MR. VERNER:

Q Ms. Simms, you said she talked trash to him and called him names?

A Yeah.

Q What kind of names?

A Called him old man and all this. That's all they did. But Minor didn't talk like the youngest does. Like that's

the youngest girl. She really --

Q I take it when you say you're talking trash to somebody you're not calling them by their nickname, you're teasing him or you're calling him --

A They're teasing them. That's my version.

Q What kind of phrases would she call him?

A Oh, man, Man this and Man that. That's all they ever called him.

MR. VERNER: Thank you.

THE COURT: Solicitor?

MR. SCOTT: Nothing further of this witness, Your Honor.

THE COURT: Was the Defendant, or isn't the Defendant's nickname Man?

THE WITNESS: That's -- I just learned lately what his real name was.

THE COURT: No, I'm not talking about his real name.

THE WITNESS: Man. Just Man. That's all --

THE COURT: That's what everybody called him was Man?

THE WITNESS: Everybody called him Man.

THE COURT: Now, how many times -- as I understand it, the allegations are from the period of time to sometime in 2012 to sometime in 2015.

THE WITNESS: Uh-huh.

THE COURT: Over about a three year period. How many

times do you know from your own eyes and ears that the victim and the Defendant had contact? Not thinking that maybe she saw him over at the apartment, because you weren't over there. But how many times have you actually seen the victim and the Defendant together in some fashion from 2012 to 2015?

THE WITNESS: I seen them a lot being around each other.

THE COURT: You'd see them a lot.

MR. VERNER: I couldn't understand that answer, Your Honor.

THE WITNESS: I mean, she --

THE COURT: You've seen them -- she said she's seen them a lot together.

THE WITNESS: Not together, together. I just seen her when she go over there and she be there and play with the son. But I was still -- I don't know what you call it. But not like that.

THE COURT: No. I'm not talking about you seeing anything in connection with the allegation. I'm not talking about that.

THE WITNESS: Okay. They be over there playing a lot.

THE COURT: What I'm trying to get at, Ma'am, is how well did Minor know the Defendant? I'm not talking about the allegations. Forget about the allegations. How many

times have you actually seen the victim at --

THE WITNESS: Well, Minor –

THE COURT: Don't interrupt me, Ma'am.

THE WITNESS: Okay.

THE COURT: The victim, Minor , and the Defendant together talking, playing games, cutting up, talking trash, whatever that you've actually seen?

THE WITNESS: I seen she -- every once in a while. I didn't see it that often. But I seen it every once in a while.

THE COURT: You've seen them?

THE WITNESS: Yeah.

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

(Whereupon, the witness stepped down from the witness stand.)

MR. SCOTT: I'll call the victim now, Minor .

THE COURT: How are you, Minor ?

THE WITNESS: Good.

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

THE COURT: Let me just -- let me just ask her a couple of questions before we begin. Minor , how old are you?

THE WITNESS: Ten.

THE COURT: Ten, okay. Where do you go to school?

THE WITNESS: Conder Elementary Integrated Magnet

School.

THE COURT: Okay. Now, I'm an old guy and my hearing's not real good. So you're going to need to sit a little closer to the microphone and speak up for me. Okay? Because you got to make sure I hear you, and everybody else here. Okay? Tell me again where you go to school.

THE WITNESS: Conder Elementary Integrated Magnet School.

THE COURT: Where's that at?

THE WITNESS: Columbia.

THE COURT: Columbia, okay. And you say it's Conder?

THE WITNESS: (Nonverbal response.)

THE COURT: My wife went to Conder a long, long time ago. How about that. Do you know the difference between right and wrong?

THE WITNESS: (Nonverbal response.)

THE COURT: Is that a yes?

THE WITNESS: Yes.

THE COURT: And do you know it is right to tell the truth and wrong to lie and not tell the truth?

THE WITNESS: Yes.

THE COURT: What would happen if someone tells a story or tells a lie? What happens?

THE WITNESS: That person would have to deal with a consequence.

THE COURT: You have to face a consequence? It would be a good consequence or a bad consequence?

THE WITNESS: Bad consequence.

THE COURT: These lawyers, and maybe me, will ask you some questions. Are you going to tell the truth today?

THE WITNESS: Uh-huh.

THE COURT: Is that a yes?

THE WITNESS: Yes.

THE COURT: Okay. I'm not going to make any findings as to competency of this witness at this stage for purposes of the in-camera proceeding, but go ahead, Solicitor.

IN-CAMERA

DIRECT EXAMINATION

BY MR. SCOTT:

Q Minor , do you remember me?

A Uh-huh.

Q We've met before, didn't we?

A Yes.

Q Have you been watching movies?

A Uh-huh.

Q What did you watch?

A Goofy.

Q Goofy? Is that all we had?

A Yeah. I was watching that movie.

Q At least you got to get out of school today, though,

right?

THE COURT: Let me just stop you. I probably do need to make a finding of competency on the record and I find that Minor is competent to testify as a witness in this case.

Q You got to get out of school today?

A I kind of was happy.

Q You were kind of happy?

A No, because I wanted to stay and do some more work.

Q How big this courtroom is I'm having a little bit of trouble hearing you. Just speak loud in the microphone as much as you can.

A Okay.

Q Who are these people sitting back here? Who's that lady in that red shirt?

A My grandma.

Q What do you call her?

A Granny Pooh.

Q Granny Pooh?

A Uh-huh.

Q And then is that your mother there?

A Uh-huh.

Q And who's that guy in the middle?

A My daddy.

Q Did they tell you why we were going to be here? You

and I talked about it before, too. You know why you're here.

A Uh-huh.

Q Where does Granny Pooh live?

A In Whitmire.

Q And did you used to go visit her sometimes?

A A lot.

Q Did you like going to see Granny Pooh?

A Yeah.

Q Did she do fun stuff up there with you?

A Yeah.

Q And who would take you up there?

A My mommy.

Q And do you have any cousins up there?

A (Nonverbal response.)

Q Who are they?

A D.D. , and –

THE COURT: Speak up, please.

A -- and -- there's a lot of people.

Q Just a bunch of them?

A Uh-huh.

Q And some of them your age?

A They're like kind of like lower than me. Like they're like Janiya and D.D. are like one year away from me. But sometimes they like to be the same age as me, but like

always like be one year apart from me.

Q Okay. So sometimes y'all would be the same age but they're a few months younger than you maybe. Is one of the named Tonya or --

A That's my -- one of my aunts.

Q A little bit louder.

A That's one of my aunts.

Q Oh, your aunts. And Tonya, who is her boyfriend? Do you know who Tonya's boyfriend is?

A (Nonverbal response.)

Q Who is that?

A Over there.

Q What do you call him?

A Man.

Q Does Tonya have any little children?

A D.D. .

Q Oh, that's who you mentioned a minute ago. D.D. , or D.D. .

A D.D. .

Q And he's somebody you like to play with?

A Uh-huh.

Q What kind of games do you all play?

A Hide and go seek, or we play on his Wii.

Q Wii and hide and go seek. And where do you all play that?

A Hide and go seek?
Q Yeah, where do you play that?
A Sometimes we go outside and sometimes we stay in the house.
Q Who's house?
A Tonya's.
Q Whose?
A Tonya's.
Q Tonya's. Do you want any water or anything?
A Huh?
Q You want some water or anything like that?
A No. I'm just kind of nervous.
Q That's all right. I am, too. When was the last time you went up there and played hide and go seek with D.D. ?
A It's kind of rusty, but I remember playing with him -- like I remember it was like -- like -- it was like a week ago before I told my mom.
Q You told -- a week before you told your mom the thing about why we're here?
A (Nonverbal response.)
Q Okay. Well, let me backup though. You all played hide and go seek. You said sometimes you all played inside, and you said you all play where?
A We hide a lot and like in Tonya's room. Sometimes we play in like D.D. , like in a different room.

Q Sometimes Tonya's room, sometimes D.D. ' room? And do you know -- did anybody else sleep in Tonya's room?

A (Nonverbal response.)

Q Who was that? What's his name again?

A Man.

Q Man. Did other people call him that?

A Yes.

Q Did you know him by any other name?

A (Nonverbal response.)

Q Just Man?

A (Nonverbal response.)

Q Did you ever pick at him and call him names or anything?

A (Nonverbal response.)

Q Just Man?

A (Nonverbal response.)

Q But you would play hide and go seek in Man's house sometimes? Yes or no? Is that --

A Not like in his house, but in Tonya's house.

Q In Tonya's house. But did you ever see Man in Tonya's house?

A (Nonverbal response.)

Q What does that mean, yes or no?

A Yes.

Q What was he doing over there?

A It's almost like he stays there.
Q So he may have lived there? You just don't know?
A I don't know. I know he like -- I see him every time I go there.
Q You see him every time you go down to Tonya's house? Every time?
A (Nonverbal response.)
Q Is that yes or no?
A Yes.
Q Do you understand if I ask you how often would you go to Granny Pooh's house up in Whitmire?
A It's too much to count.
Q Too much to count?
A Yeah.
Q Because you like to go there so much?
A (Nonverbal response.)
Q And then whenever you would go to Granny Pooh's house did you always try to go over and see D.D. ?
A Yeah. Sometimes I just stay outside. Sometimes I go to other peoples' houses.
Q How many times do you think you've been to D.D. ' house?
A I think -- I've been there a lot and I -- really sometimes just go in there and to play games and --
THE COURT: I can't hear. Minor , it's really

important that you get as close as you can to that microphone. You don't have to touch it, but get as close to it as you can because we have to hear what you have to say. Okay? Okay? So get really close with the microphone.

Q Don't be nervous. Be brave. Speak loud.

A It's like a long time ago. Like I been there before he was there. I know that. But --

Q You used to go there a lot before Man started coming around?

A Yeah.

Q How many times do you think you went to Tonya's apartment when Man was there?

A I'd say about -- I don't know, but I've been there nine times. Nine times --

Q Nine times is what you're saying?

A I think I just -- I just really forgot.

Q That's all right. You think it was more than once?

A Yeah.

Q Do you think it was more than twice?

A Yeah.

Q More than three times?

A Yeah.

Q Do you think you've been in the same room with Man more than 10 times?

A Huh-uh.

Q No? More than five times?
A I think about five.
Q You think about five times you've been in the same apartment with Man?
A I think five. But sometimes I kind of get confused, like if it's four or five.
Q Let me ask you this. You know -- you remember you had to tell your mom some things that happened with Man?
A Yes.
Q Were those good things or bad things to you?
A Like kind of scary.
Q How many different times did scary things happen between you and Man?
A I think like four times.
Q So how many times?
A Four.
Q Four times scary things happened? Four different times?
A (Nonverbal response.)
Q And that was four times with Man?
A Yes.
Q All right. And so you had seen his face a few times; is that right?
A Yeah.
Q At least four times. At least four times?

A Yeah.
Q Was it daytime, or did you have -- you know, like you can see my face pretty good right now. Were you able to see his face as good as you can see my face whenever you'd see him?
A At nighttime it was kind of hard, but in the daytime it would be easy.
Q At nighttime sometimes it's hard but daytime it's easy?
A (Nonverbal response.)
Q Do you have any trouble recognizing Man?
A Yeah, like in the dark. I usually stay there a lot after dark, so it's like every time I walk beside -- it's going to be like --
Q Louder.
A It's like we say shadow. Like the dark, like it wasn't that easy to see him.
Q When the scary things happened could you tell who was doing the scary things to you?
A Yeah. Sometimes the lights was on.
Q Sometimes the lights was on? All right. Do you see -- let me ask somebody else. Do you see Man here? He's not looking right now. Do you see Man here?
A Yeah.
Q Can you point to him?
A Over there.

(Whereupon, witness identified the Defendant.)

Q And do you see that other -- you see that white man over there with the bald head?

A Yes.

Q Do you recognize him?

A Uh-huh.

Q How many times have you seen him?

A I think once, because once I went to the Sheriff's Office.

Q Louder.

A Like I think I saw him once because I went to the Sheriff's Office. He told which one -- did I see him.

Q He told you which one do you see?

A Uh-huh.

Q How did that happen. Tell me what he told you.

A He showed me pictures of different guys and I had to see which one was -- was the one that was abusing me.

MR. VERNER: Your Honor, I apologize. I can't understand this little girl.

THE COURT: Okay. Could you repeat, Solicitor, what you understood her to say?

MR. SCOTT: That he showed her a number of pictures and to -- she was to pick which one was abusing her.

Q Is that right, Minor ?

A Yes.

Q Talk loud so I don't have to repeat you so I don't run out of breath and lose my voice. You talk loud enough for them to hear you. So he showed you a picture, and what did he say to you?
A He said which one do you recognize.
Q And was there one on there that you recognized?
A Yes.
Q And who was it?
A Him.
Q And who is that?
A Man.
Q Did you -- was it kind of -- were you sure that was him in the picture?
A Yes.
Q You didn't just close your eyes and pick one and guess or anything like that?
A No.
Q How sure were you that that was Man in that picture?
A Because I see him a lot, so I know his face.
Q Say that one more time and say it loud. Just what you told me.
A I see him a lot and I recognized him once I just saw the pictures.
Q Okay. You see him a lot so you recognized him when you seen the picture. I'm going to show you something, if I can

find it. Look at this Minor . Have you ever seen that before?

A Yes.

Q What is that?

A The pictures he showed me.

Q And when he showed it to you he said -- what was his instruction to you?

A Which one did you recognize.

Q Which one did you recognize. And show me what you did.

A I pointed at this one.

Q That one right there?

A Yeah.

Q And then what did you do to show that's the one you picked?

A I showed him -- I think I checked it.

Q Is that what you did?

A Yeah.

Q Is that your checkmark? Do you remember putting that there now?

A Yeah.

Q Thanks, Minor . Now, talk loud, okay? Because I'm going to sit down and I'm going to see if I can hear you from over there. And that guy over there's a friend of mine and he's going to ask you a couple questions, too. Okay?

A Okay.

MR. SCOTT: Thank you.

THE COURT: Mr. Verner.

MR. VERNER: I don't have any questions.

THE COURT: Minor , let me ask you this. You said that there were four times that Man did something scary to you, right? Is that correct?

THE WITNESS: Yes.

THE COURT: Were there other times that you saw Man over at Tonya's that he didn't do any scary things to you?

THE WITNESS: Yes.

THE COURT: Thank you, Minor . You can -- she's been in the back?

MR. SCOTT: Yes, sir.

THE COURT: You can just go on back. Thank you. Anything further from the State?

MR. SCOTT: No, Your Honor.

THE COURT: Anything further from the Defense?

MR. VERNER: No witnesses, but argument, Judge.

THE COURT: All right.

MR. VERNER: If the State wants to argue first, that's fine.

THE COURT: Okay. Solicitor, briefly you want to argue on the -- now, as I understand it, the statement is -- that the State is concerned about is the June 4th; is that correct?

MR. SCOTT: Yes, sir. The only thing -- and I would reserve the right. I think that the chances of me using it are fairly slim, to be honest with you. But the statement. I was talking with Taylor about it. About I just want to go ahead and plead guilty to get it over with. I think that Miranda was given. I think he was appraised of his Miranda rights, and Epps witnessed those rights being given. He was not under arrest at that point. Or rather, I guess he was placed under arrest, that he continued to freely, I think, converse with Mr. Epps and at that point stated, well, I just want to get this over. I'm going to plead guilty to it. I would reserve the right to use that. And honestly, though, the chances are slim that I would. But I think that is a freely and voluntarily given statement. The incident prior, the statement prior about the fast little girl and some of that stuff, that, of course, was prior to any arrest and he was not detained. He was free to go at the end of that conversation. He was free to stand up and leave at any point during that conversation. So I think the first interview certainly would be admissible. But I would argue, too, that I believe the second one was as well.

Are you ready for *Biggers*?

THE COURT: Right. On the ID.

MR. SCOTT: The *Biggers*, I think we've established that they've had many interactions, she's had many chances to see

Mr. Washington in person. Admittedly I would like some, I guess, different directions given in showing these photo lineups. But from what I understand, that there was no suggestion whatsoever. The six pack was just kind of laid there, and I think she was just asked to pick who's Man, because all the allegations as that point were Man did this, Man did that. You have six black males all with facial hair to some degree. All short cropped hair cuts. Very similar characteristics. The testimony was there was no suggestion. The testimony was that the victim very quickly and with great certainty picked Mr. Washington out of a lineup. I don't think it was unduly suggested by any means. And so, I think the ID would be admissible as well, Your Honor.

THE COURT: Thank you very much. Mr. Verner?

MR. VERNER: May it please the Court, Your Honor. The -- I don't really challenge -- I agree that there's probably enough evidence to support the *Biggers* identification. The June 4th interview, Your Honor, is clearly without any Miranda. The U.S. Supreme Court recently -- that there is no harmless error. That there either has to be a Miranda once a suspect has been identified. He was clearly interviewed as the result of a criminal allegation. But there's no question that there's no Miranda before the June 4th. That there's no exception. That is a bright line U.S. Supreme Court rule. It has to be Miranda.

THE COURT: What case is that, Mr. Verner, that –

MR. VERNER: I will cite that, Your Honor, before the end. But the U.S. Supreme Court within the last three years has made Miranda a bright line test. There's no harmless error or malice. It's either been given or it hasn't. He's clearly identified as a suspect of a crime. The -- and I will give the Court that citation possibly by 11:00.

THE COURT: Yes. Just when you get it, that'll be fine.

MR. VERNER: The June 10th, Your Honor, I think it's important to remember that that was the -- the Officer had arranged, well, if you want to give your side of it you can do a polygraph test. SLED, as a protocol of issuing the polygraph test, gave the Miranda rights. And I'm going to introduce, Your Honor, for the record, the page four of the investigator's incident report where following the test, as the Officer testified, he asked him -- he advised him that you have flunked and you need to go ahead and come up. I submit that should have been also done by Miranda rights. That the only inculpatory statements tend to be kind of in the -- what I would phrase as kind of pre-negotiations when inmates sometimes talk to the officers and try to negotiate informally the charges. The -- no testimony from the man who actually performed the Miranda rights. The Officer

didn't witness the Miranda rights. I understand he testified he saw them being given through the window. But he certainly didn't give Miranda rights which I think are the separate investigation after the polygraph test which should have been in totality of the circumstances. And particularly with the State having the burden of proving the voluntary waiver of them, should have been issued. I would ask, Your Honor, just so the Court has a clear understanding of it, I would introduce page four and five of the Officer's report where he -- it's clearly not a voluntary conversation initiated by the Defendant towards the Deputy. It's clearly Investigator initiated conversation. And it's likely when the -- Mr. Washington gave his Miranda warnings, a reasonable person would have believed that that was limited to the purpose of the polygraph exam. That was the only purpose of him going up to Columbia. And as the alternative, Your Honor, I would argue under 403 it should be -- it does strike me as in a fairly common, you know, I want to work something out on my charges plea which is fairly preliminary and fairly common pre-negotiations when people get arrested. You know, I want to work something out type. But with those admissions, Your Honor, and then the -- and I'll get the court case on the --

THE COURT: All right. Very good. As concerns the first interview, I'll reserve ruling on that until Mr.

Verner can get me a copy of that Supreme Court case to review. On the second interview or statement on June 10th, in light of the fact that the State is not certain that it's even going to get into that, I'll reserve ruling on that. And if the State does, then we can -- we can revisit that. If the State doesn't then it's a moot issue. Concerning the pretrial identification, of course, it was not -- I didn't hear a whole lot of opposition from Mr. Verner. But just for purposes of the record, of course, the two factors that I have to look at is whether or not the pretrial identification was suggestive in any way and look at the liability factor. I think the actual photograph lineup in and of itself would not be suggestive because of the similarity of the six individuals shown there. I think possibly the Officer Epps' leading question that I need for you to pick out Man, to suggest that Man's photograph was there, probably is borderline suggestive possibly. But I think the reliability factor kicks in the fact that Minor knew the Defendant, had been around the Defendant on multiple occasions at the -- at Tonya's house and even possibly at Grandmother's house. So if there was any suggestiveness in play there, I think that's overcome by the reliability factor vis-a-vis Minor knowing the Defendant. So I will allow the identification to come in.

Concerning the DVD, I'll view that and then we can go

ahead and get started with the case in the morning, and then whenever we reach the stage of the trial concerning that, then we can deal with that.

Anything else we need to take up this afternoon?

MR. SCOTT: Nothing -- beyond this case. No, nothing on -- not from the State.

THE COURT: Mr. Verner, do you want to go ahead and give me those two pages you want me to have if, in fact, we -- or you want to just give it to me if the issue comes up, because the State may not even get into that.

MR. VERNER: If I could, Your Honor, I'll give them to the Court when I give them the citation of the case, and that way I can just have it. But I'll have it prepared where I can hand it up individually.

THE COURT: That would be fine. All right. We're going to be in recess and we'll start back at 9:15 in the morning.

(Whereupon, the proceeding concluded for the evening.)

TRIAL DAY 2-03/01/2016

(Whereupon, State's Exhibit No. 1, 2 and 3 were marked for identification.)

THE COURT: We're on the record. And Solicitor, I think you indicated that Mr. Washington needed to be arraigned?

MR. SCOTT: Yes. Inexplicably he was charged with

adult CSC and we direct indicted for CSC with a minor first degree.

THE COURT: Madam Clerk, would you handle that responsibility, please, ma'am?

THE CLERK: Yes, sir.

MR. VERNER: Your Honor, my preference is that he be arraigned in front of the jury.

THE COURT: Why is that?

MR. VERNER: Just so that the jury can understand what the charge is that's against him.

THE COURT: I've never seen an arraignment done in front of the jury.

MR. VERNER: I've had it done -- I've done it both ways. My preference is when it's arraigned in front of the jury, the jury gets to hear the statute and the crime itself.

THE COURT: I read -- I published the indictment to them and cited the statute number. I'm going to deny your request, Mr. Verner.

MR. VERNER: Thank you.

MADAM CLERK: Carrol Tremayne Washington, if you answer by that name hold up your right hand.

(Whereupon, Defendant's raises right hand.)

MADAM CLERK: You may put it down. You stand indicted by the name of Carrol Tremayne Washington, for that you,

Carrol Tremayne Washington, stand per the indicted. At the Court of General Sessions convened on the 9th day of October, 2015 the grand jurors of Newberry County present upon their oath that Carrol Tremayne Washington did on or about May 3rd, 2012 to March 25th, 2015 in Newberry County, being older than the victim, willfully and unlawfully committed criminal sexual conduct with a minor in the first degree. To wit, that the said Defendant did engage in sexual battery upon a person under the age of 11 years, to wit, one Minor , date of birth , 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. And that's signed Daniel Taylor, Assistant Solicitor.

What say you, Carrol Tremayne Washington? Are you guilty of the felony whereof you stand indicted or not guilty?

THE DEFENDANT: Not guilty.

MADAM CLERK: How will you be tried?

THE DEFENDANT: By a jury.

MADAM CLERK: God send you a good deliverance. Are you ready to come to trial?

THE DEFENDANT: Yes, ma'am.

THE COURT: Thank you very much. Gentlemen, we

adjourned yesterday with some pretrial motions. A *Jackson vs. Denno* hearing was conducted concerning two statements, two interviews, and also in a *Biggers* matter. My rule concerning the photographic -- pretrial photographic lineup, I've ruled that I will allow that in. On the second statement made on June 10th I indicated I would reserve ruling to see if that becomes an issue. The State intends to try to put something in there. And then concerning the first interview on June 4th, Mr. Verner, you had indicated that there was a U.S. Supreme Court case, and you were going to try and find it and give it to me, that essentially said I believe, what you argued, that even if there was no custody situation with respect to the Defendant that Miranda was still required. Were you able to find that case?

MR. VERNER: If it may please the Court, Your Honor. I don't think custody applies for Miranda. I did -- I think the case I was referring to was the *Powell* decision in 2010. The custody is a factor. I think I over argued. I didn't need to go that far. But Miranda itself says that without the Miranda warnings the statements are inadmissible, barring only the good faith exception. The -- I spent about two hours reading State and Federal Miranda decisions. And my thought now is I just -- I completely over argued it. I could have just relied on Miranda. To attach the Miranda itself which says custodial interrogations are inadmissible

without the admonishing of the rights of the Fifth Amendment.

THE COURT: Right. But I believe the Officer indicated that Mr. Washington was not in custody at the time of the first interview. That he was free to leave and, in fact, did leave at the conclusion of the interview.

MR. VERNER: Yes, sir. But it was still a investigatory at the police station. He was alone, investigatory interview where there's no question that the Investigator would have been aware that he was the suspect of a crime. Miranda doesn't require that the complete control of the Defendant is required that this be -- he be identified as a suspect. It is investigatory interview. So I do stand by the terms of Miranda itself. And there are some that I've looked at since then. The -- a lot of my arguments are reserved for the second -- well, really the third interview after the polygraph. I consider there to be three interrogations. One would be the initial meeting with the officer. The second would be the actual polygraph administer. And then the third would be the --

THE COURT: The ride back.

MR. VERNER: -- the ride back. Yes, sir. So I do consider that there are three --

THE COURT: Right. And as I indicated, you know, I'm going to reserve ruling on that because the State may very

well not get into that. You're protected on the record, Mr. Verner. I'm going to find that Miranda was not required concerning the first interview. Find that whatever statements he made were voluntarily made at this -- from a practical standpoint, the only -- only thing he said that I think the State is going to try to rely on is that she is a fast little girl. And I don't really know what that means. But nevertheless, I'm going to allow it in. And you're protected on the record.

MR. VERNER: Thank you, Your Honor.

THE COURT: Now, we need to discuss the forensic interview. I did watch that on Mr. Bentley's laptop with the aid of some ear buds so I could her the little girl. Do we need to discuss any of that at this point?

MR. SCOTT: I don't think so, Your Honor. That will be introduced later on at the trial, and as long as, you know, at the time if it's objected to, if Your Honor would find that it meets the requirements as far as the interviewer isn't leading unnecessarily and that it would be admitted that way.

THE COURT: Are there any particular objections concerning the interview?

MR. VERNER: I reserve the right, Your Honor, if I may answer it that way, to object when it's -- I am likely to object to it coming in. Obviously how the girl testifies as

a live witness I think would be one of the factors the Court would consider, and we saw --

THE COURT: We can get to it at the appropriate time.

MR. VERNER: Thank you.

THE COURT: Anything else we need to cover before we bring the jury out and get started? From the State?

MR. SCOTT: No, Your Honor.

THE COURT: From the Defense?

MR. VERNER: No, Your Honor.

MR. SCOTT: Judge -- I'm sorry. Mr. Daniel will do the opening, just maybe address us.

THE COURT: Do what, Solicitor?

MR. SCOTT: Taylor's going to do opening.

THE COURT: All right. Madam Bailiff, if you'll bring the jury out, please.

(Whereupon, the jury entered the courtroom at 9:50 a.m.)

THE COURT: Good morning, ladies and gentlemen. I hope you had a good restful evening and you're ready to get to work today. Madam Clerk, would you swear the trial jury in, please.

MADAM CLERK: Yes, sir. Please stand and raise your right hand.

(Whereupon, the Jury was sworn.)

MADAM CLERK: Thank you. You may be seated.

THE COURT: Ladies and gentlemen, one matter that we need to cover now is I need to appoint a foreperson of the jury. Now, if it is a male, it is a foreman. If it is a female, it is a forelady. That's just how the terms that we use. Now, let me explain to you the function or the role of a foreperson of the jury. I need to have someone to serve as a spokesperson for the jury. If there needs to be any communication between the jury and the Court then I need to have someone to serve in that capacity. Secondly, I need to have someone to ensure that all instructions that I give the jury are completely followed. Basically though, all of you can serve in that capacity, but primarily the foreperson, to make sure that all my instructions and rules are followed. And lastly, maybe most importantly, I need to have someone to organize the deliberations that you will engage in once I instruct you to start your deliberations. Now, I'm confident that all 14 of you would make excellent forepersons of this jury. However, I can't have but just one. So I have decided Mr. Arrowood, you will serve as the foreman of this jury. Now, when you come back in after a break you will be seated in this very first chair there. You will maintain that seat throughout the trial. Okay? The two alternates, you will maintain those two seats there. Everybody else you can sit wherever you like in the jury box. Now, it's been my experience that more times than not

jurors like to sit in the same seat. Kind of like a church. You sit in the same pew. And so, you can do that if you want, but you don't have to. That's just completely up to you folks. But the foreman and the alternates have to maintain the same seat. Okay?

What I'm going to do now is just give you a little preliminary instruction on what is going to go on in this trial, and then after I do that the lawyers will make brief opening arguments to you.

And before we actually begin this trial I want to tell you that this trial probably will be different from what you might expect. Many people do not have the chance to attend actual court sessions that you are doing now, and you make think from having watched television or movies or read in books that trials are always full of high drama and tense action and riveting circumstances. And while all of these things may be true at times, this trial is not for entertainment. It is a fundamental part of our democracy. A search for the truth in an effort to make sure that justice is done between the parties before the court. Searching for the truth and making sure that justice is done is often slow, deliberate and repetitive. The opposite of what you may have seen on television or movies or read in books.

Ladies and gentlemen, this courtroom is a place of

honor dedicated to the protection and preservation of citizens' rights who many have called to be the greatest justice system ever created. The attorneys appearing before you are advocates for the parties they represent. But first and foremost they are officers of the court sworn to uphold the integrity and fairness of our judicial system and to help you in the search for the truth. You should expect them to be professional, competent and ethical in the representation of their client's interests, which I am sure that they will be. But you are also as jurors are expected to be professional and reasonable and ethical as well.

Let me take this opportunity now to formally thank you for accepting this very important responsibility of jury service and for your contribution today to our justice system.

Now, when I'm telling you, or not, a charge on the law in the case, I think I maybe mentioned to you yesterday the possibility that I will charge you on the law that's applicable to this case at the conclusion of the case prior to you beginning your deliberations. I'm just going to just explain a little procedure that we will follow in this trial so that you may better understand what will be happening. First of all, let me explain to you that you're not permitted to take any notes. And so, that, therefore, requires all of you to be very attentive, to be very alert

throughout this entire proceeding. Don't let your thoughts wonder. Please, do not dose off. Unfortunately I've had jurors who have done that and there are certainly are repercussions for that happening. That's why I told you last night to get a good night's sleep.

Let me explain one thing to you that I failed to do concerning the two alternates. Your role in this case is very important. It's not unusual for one of the 12 to at times to have to be excused because of an emergency at home, an illness or whatever. And so, I need someone to fill their shoes because you'll sit and observe everything that the 12 observes by way of testimony and evidence and argument from the attorneys. So I want you to understand your role is very important. Now, certainly if I don't have to replace any of the 12 and it's time to begin deliberations, you do not participate in those.

As I told you yesterday, the Defendant is charged by an indictment filed in this Court, charged with the crime of criminal sexual conduct with a minor. The alleged victim being under 11 years of age, first degree. The indictment is simply, again, the charge by which the case is brought in the Court and it is not in any sense whatsoever evidence of any of the allegations the indictment contains. The Defendant has pled not guilty to this indictment. The State therefore has the burden of proofing each and every element

of this charge beyond a reasonable doubt. And it will be your duty, Mr. Foreman, ladies and gentlemen of the jury, to decide whether or not the State has met that burden of proof at the conclusion of this case. Your purpose as jurors is to find and determine the facts. You are the sole judge of the facts. If at any time I make any comment regarding the facts you must disregard my comment. You are to determine the facts on the testimony you hear and other evidence introduced in Court. It is up to you to determine the inferences which you feel may probably be drawn from the evidence. It's especially important you perform your duty of determining the facts diligently and conscientiously. Because ordinarily there is no way to correct an erroneous determination of the facts by a jury. Now, on the other hand, and with equal emphasis, the same law that makes you the sole judge of the facts makes me the sole judge of the law in this case. The law as given by the Court is the only law that you may consider. You must accept it and follow it even though you may disagree with it. I can't tell you what the facts are and you can't tell me what the law is. Your job is to take the law as I give it to you and apply it to the facts as you find them from the testimony of the witnesses and any other evidence that is introduced. After doing that, you render your verdict. A verdict under the solemn oath that you just took as jurors.

As I told you yesterday, it is extremely important that you not discuss anything related to this case among yourselves, anybody that you come into contact with during the break or in the lunch break or after we break at the end of the day. And as I also told you yesterday, it's extremely important that you not do any independent research into any aspect of this case through the Internet, through social media and the like, because your verdict, your decision in this case has to be based 100 percent on what is presented in this courtroom by way of the testimony and evidence presented.

Now, ladies and gentlemen, there may be times when one of the lawyers says, Judge, I have an objection, or, Judge, I have a matter of law to take up with the Court, and we will try to take care of that particular objection or matter by way of having a conference to the side with the lawyers. But sometimes it requires that I send you to your jury room so we can discuss that matter on the record. And the reason for that is -- there's several reasons. But the primary reason for that is, is that it may require me to making a ruling on the particular objection or matter of law. It may require me to discuss the facts with the lawyers, and I don't want to discuss the facts in your presence because, again, you are the sole judge of the facts in this case.

It's your solemn responsibility, Mr. Foreman, and

ladies and gentlemen of this jury, to determine the guilt or innocence of the Defendant. Your verdict must be based solely on the evidence as it is presented to you and the law as I instruct you at the conclusion of this trial.

And lastly, it is very important for you not to jump to any conclusions or reach any decisions until everything has been presented to you. All of the evidence, all of the testimony, the law as I instruct it to you and the closing arguments that the lawyers will make at the conclusion of this case. And remember once again, it is the burden of the State, and no one else, to prove each and every element of this crime beyond a reasonable doubt.

Does the State have any exceptions or objections to the Court's preliminary charge?

MR. DANIEL: No, Your Honor.

THE COURT: And from the Defense?

MR. VERNER: None, Your Honor.

THE COURT: All right. Thank you very much. Ladies and gentlemen, the lawyers will make a brief opening statement to you. It's not evidence. It's just their statement of what they believe this case is about, what they believe the evidence will show, and their respective positions in this case.

Solicitor Daniel, are you ready, sir?

MR. DANIEL: Thank you, Your Honor. May it please the

Court.

THE COURT: Yes, sir.

OPENING STATEMENT

BY MR. DANIEL: Good morning, ladies and gentlemen. Our office, the Solicitor's Office, prosecutes everything from murder to bad checks. And I guess our the priority cases are murder -- murder cases that we have to prosecute. Any homicide related crime, and whether it's a felony DUI. Someone's killed in a drunk driving accident. Those are the top priority cases. That's for obvious reason because society puts premium on the value of human life. Preservation of human life. So that's the top cases. But just underneath that, this hierarchy, is child molestation cases. And that's for obvious reasons. Because society puts a premium on protecting children. Their well-being, their safety. All adults, whether you're a parent or not, has a duty to protect children. Not to harm them. Not to take advantage of them. That's -- we're entrusted with that responsibility as adults. Children are vulnerable. They're naive. They can be exploited. And the case before you today is a child molestation case. It's the *State of South Carolina vs. Carrol Washington* who is standing before you on trial. He's charged technically under our code of laws, it's called criminal sexual conduct with a minor in the first degree, because the generally accepted vernacular is

child molestation. That's what the public knows it as. That's a wide range of conduct actually when someone says child molestation. That ranges anywhere from full on sexual intercourse with a child. And adult having sexual intercourse with a child. All the way to touching inappropriately, fondling in the genital area, privates. And that's the allegations in this case. Mr. Washington anally penetrated our child victim. She's not out here right now. She's back in our office, our child victim. She's watching movies. She's doing what kids do. She's missing school. Her mother is sitting right there, Nicole Simms, on the front row, who you'll hear from. She's one of our witnesses. But that's the allegations. And that's what we're going to prove to you happened. Our victim, our child victim, her name is Minor . She's from Columbia. She goes to Conder Elementary School. I might be mispronouncing that. She's 10 now. But this case -- these are multiple incidents of inappropriate touching by Mr. Washington. And this occurs over roughly a two year period when our child victim, Minor , was between seven and nine. And this happens in Newberry because our victim, she has ties in Newberry. She has family. Her grandmother lives in Whitmire in an apartment complex off of . So this is where it takes place. Mr. Washington lives in that same apartment complex, and Mr. Washington dates a relative

of our victim. So that's how he would come into contact with her whenever the victim would come visit her grandmother in Whitmire. You know, school breaks, summer, holidays, periodically on the weekend perhaps. So that's where the opportunity arises for Mr. Washington to betray that trust that adults have. That children entrust adults with their care and well-being and Mr. Washington took advantage of that.

But let me kind of recalibrate your expectations of this case, because I kind of gave you a broad outline of the facts. There's not going to be a CSI type stuff you see on TV. No forensic. No DNA. Because we're not talking about sexual intercourse or anything like that where bodily fluids are exchanged. What we're talking about is someone fondling somebody with their hand, anal penetration with the hand. It's delayed reporting, which is common in these cases. Children, they can't tell you, hey, this happened on Saturday, January 25th. They delay reporting for obvious reasons because they don't understand what's going on a lot of times. They can't comprehend. They know something's wrong. But they can't come out and say it right. So this is why these cases are particularly troubling obviously. And so, you'll see that. They don't happen out in public. They happen behind closed doors under the cover of darkness. So you're not going to have surveillance footage. You're

not going to have -- as I stated you're not going to have DNA. You're not going to have social media content. You're not going to have text messages, phone records, all that. This is a child. She was between seven and nine when this went on. So this was an ongoing thing that happened multiple times. We can't pinpoint an exact date that these things happen. We can only give you kind of the range. We can tell you Mr. Washington was around this child at that apartment complex in Whitmire. But that's the case really. It's built upon the foundation of one girl, Minor Minor . And I submit to you that this is a case -- I hate saying this is a he said, she said case. But this case, by it's very nature, is the victim's word. And that's all we're left with. We really are. As you'll hear from the investigating officer -- Newberry Sheriff's Office investigated this. You'll hear from Investigator Brad Epps. He does interview Mr. Washington. He denies the allegations. But you'll hear some of the statements he does make. And you'll also get to hear -- there was a taped interview. Minor went to see a -- she went to the Children's Advocacy Center in Columbia and a taped interview was done by a woman by the name of Trina Elfering. She specializes in interviewing children. And our Legislature realizes that these type of cases kids needs to be interviewed by somebody who can relate to anybody that's

got specialized training in talking with kids. Because for children, this courtroom setting is not the most friendly environment for kids. So that's why we have a statute that allows these interviews to be taped and allows you to get to see them. So it is admissible to do this in these cases. Otherwise, if it was an adult, we'd just listen to their testimony from this witness box. So you'll get to hear from Minor , because Mr. Washington does have the right to confront all accusers. So you will hear from Minor in person, but you'll also get to see that taped interview in a somewhat conducive environment for talking with victims.

That's the case in a nutshell. My fear in these kind of cases is -- and we're at the point now with technology and media that jurors might be inclined to expect a lot of evidence before their willing to convict. But that's not the case in these type of offenses. Because if we have that expectation, that standard, we could never convict somebody of doing this to a child. People can operate in impunity molesting children if evidence were required beyond just the victim's word. And that's in our law, that the victim's testimony need not be corroborated with anything else. So we'll talk a little bit about that later. So that's the case, ladies and gentlemen. Like I said, recalibrate any expectations you have.

At the conclusion of this case we'll be asking for a

verdict of guilty. And you all are residents in Newberry County, from Prosperity, Pomaria, Whitmire. The city of Newberry, and out in the county. So it's your responsibility. Your summoned for jury duty and only you can determine guilt or innocence. When you're rendering a verdict it has to be unanimous one way or the other. Guilty or not guilty. But you get the last word on this case. No one else. Not me. Not Deputy Solicitor Dale Scott. Not His Honor. It's you. You are the trier or the judge of the facts. You tell us what happened. You tell us that the crime was committed in your community. You get the last word with your verdict. And I mean that because verdict is a word that's rooted in Latin and it means to speak the truth, to say the truth. And that's all we're asking for is the truth. The truth as you know it. The truth in your heart. In your head. In your gut. Because that's all we're left with, what makes sense. And does it make sense for a child to be so conniving, deceptive, maintain this lie back when she reported it and when she comes to court to testify. I submit to you that would not be reasonable to assume a child did that. I submit to you there's no other motive for reporting this other than the fact it happened. No one's getting paid to testify. In fact, it's a financial hardship for our witnesses to be here, because her mother is missing work. Minor is missing school with her friends.

She doesn't want to be here, believe me. But Mr. Washington is entitled to his day in court and we have to honor that. And this is the criminal justice system.

I appreciate your time, and at the conclusion we will be asking for a guilty verdict in this case. Thank you.

THE COURT: Thank you, Solicitor. Mr. Verner, are you ready, sir?

MR. VERNER: May it please the Court.

THE COURT: Certainly.

OPENING STATEMENT.

BY MR. VERNER: Mr. Foreman, members of the jury, I'm telling you at the end of this case it's going to be clear that Carrol Washington has been wrongfully charged. At the end of the case you're to have evidence that satisfies you. That I submit to you we're not talking about -- if we were just voting on what we're going to have for lunch today we could do a majority rule and we would go there. But we're talking about criminal sexual conduct in the first degree. That's rape one. We're talking about consequences. The role of the jury -- we're not here to try to vote for what we're having for lunch. We understand it. This is a rape charge. Your duty, the role of the Constitution, the State is not allowed to deprive somebody of their liberty, their life or their property unless 12 members of his community, or her community, all agree without any reasonable doubt

that he is guilty. We're talking about consequences here. We know that. And I submit to you at the end of the case, I submit to you, it's going to be a total failure for several reasons. Just three of them. You're going to find -- Mr. Washington had a full-time job. He wasn't -- he was working during the day. And the Solicitor says, you know, under cover of darkness. This is a daytime allegation. Mr. Washington ordinarily works. You're going to find that when he had access to the child there were other adults with him. He wasn't alone supervising these children. There were not only other mother's there. There were people coming and going. And I submit to you the other witnesses there are going to testify. It is unlikely that we saw him ever having opportunity to be alone with that girl. And I submit to you -- we'll wait until the evidence comes. But there's going to be a fairly significant -- I don't understand, and I don't know that any motives for anybody testifying anything. We have a very young child victim and I submit to you you're going to hear some disturbing reasons why she might say things happened somewhat in this way. I'm not going to jump the gun. We'll wait until the evidence comes. But there's going to be some discovering evidence that I submit to you might make you think that that child might have some issues not to be believable. But I understand society -- as the Solicitor points out, society protects

children, but you also protect people who might not be guilty of criminal charges unless you just satisfy thoroughly that he is guilty. If he's guilty, you need to convict him. If there is a reasonable likelihood that he is not guilty, you have that same oath responsibility to find him not guilty that the State's case is unproven. But the Solicitor, I think, has conditioned you in the beginning of this case, just several times I thought was interesting where the Solicitor kind of in his opening statement goes out of his way to say, yeah, we've got a pretty weak case. Just they understand that. It is basically this child's allegation alone, with other factors. The Solicitor mentioned what you're -- the evidence you're not going to have because he -- this is a criminal prosecution. The State has the burden of proof, which means they have the burden of producing such witnesses as you need to hear and any evidence you need to hear. And then when they have the witnesses and the evidence they've got the burden of persuading you that we -- if this witness is believable and this evidence is believable, then the only realistic consequence is guilt. That is entirely on the State. It is their part. Burden of proof, consequences. Your duty to protect the individual from the State unless they have overborne your will that there is no other reasonable factor that could be true other than guilt. Yet the Solicitor

said, you know, jurors might be inclined to expect a lot of evidence. Well, you're not going to have that in this case. You're going to have a paucity of evidence. The Solicitor mentions that the witness' testimony does not need to be corroborated. That is true. One person's word is enough to send someone to prison if 12 people agree. That there is no other reasonable way that this story could have happened but this one witness, even if it's he said, she said. It's not just a child who doesn't have to be corroborated. An adult doesn't have to be corroborated. But they have to be completely believed. But if you're going to convict somebody on the basis of just one witness they better be thoroughly believed. And I think the Solicitor -- the interesting thing he said is that I don't know what happened. I promise you I don't know what happened. But I'm an attorney. I get in after the game's already started. You don't know what happened today. Today is March 1st, 2016. These allegations, they're saying, may have occurred anywhere from May 2nd of 2012 to March 25th of 2015. I submit to you that date is completely arbitrary. That's just what the Officer filled in. As we don't know when it happened, but we're just going to put in a large period of time. That's how that date comes in there.

And finally, the Solicitor talks about child molestation. This isn't an allegation of sex with the

child. The allegation that the child made is, well, he put his finger in my butt. That's their rape case. If that's proven, that is CSC with a minor first degree. That is first degree criminal sexual conduct. That's kind of an unusual -- that's a little bit odd thing to do, I would think. But if it's proven that it's true, then he needs to be punished for it. The Solicitor said, well, it's touching and it's fondling. No, no, no. The judge is going to tell you what criminal sexual conduct with a minor first degree is. That is penetration of the female. It can be with the penis. It can be with your fingers. It can be with an object. They have to prove penetration. In this case they're saying that he put his finger in her butt. And I submit to you just based on the witnesses who were there and observed things, they're going to say that's unlikely. The child's story is somewhat unlikely. And I understand a nine-year-old victim, I've got daughters, is a sympathetic witness and she's entitled to be listened to. She's also not a full grown adult where she understands consequences in what she's doing. She's swept up the -- she might be true. But they don't understand the consequences of what happens. And the memories, I submit to you, are not as strong as an adults. But that is what they want you to convict somebody of criminal sexual conduct with a minor. And this is a tough question, because I don't want to let somebody -- I'm

from Newberry. I don't want to let somebody with a CSC with a minor out. I don't want to convict somebody who might not be guilty. And it's a tough, tough situation, granted. But this is how it's done. And it's not anything new we're doing. What you're doing today for 2,000, 3,000 years is basically the same system. With a king or when the state lets the citizens decide that is a jury trial. It goes back to Socrates. It goes back biblically. You all just doing what people have done for 2,000 years. A little bit different setting, but it's the same formula in how you do it. That the only rules we have is all 12 of you have to agree that there is no reasonable probability that it happened any other way than what the State is saying. And I submit to you that this is just a scary case to make a bad decision just based on the allegation itself.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Verner. Is the State ready to call the first witness?

MR. SCOTT: We are, Your Honor. Ethyl Simms.

ETHYL SIMMS, having first been duly sworn, testified as follows:

MADAM CLERK: Please state your name.

THE WITNESS: My name is Ethyl Simms.

DIRECT EXAMINATION

BY MR. SCOTT:

Q Ms. Simms, where do you live?

A Whitmire.

Q And where in Whitmire do you live?

A Apartment.

Q What's it called?

A .

Q Apartments?

A Yes.

Q Who do you live there with?

A With my brother.

Q And what building do you live in?

A I live in building.

Q Building ?

A Uh-huh.

Q That part of Whitmire, is that Newberry County?

A Yes.

Q How many buildings are at Apartments?

A It about seven, eight buildings.

Q How long have you lived there?

A I'd say about 20.

Q Two years?

A Twenty years.

Q Oh, 20 years.

A Uh-huh.

Q Who is Minor ?
A She's my granddaughter.
Q Your granddaughter?
A Yes.
Q And who is Nicole Simms?
A She's my daughter.
Q Scoot a little bit closer.
A Okay.
Q Is this Nicole Simms right here?
A Yes.
Q She's your daughter?
A Yes, she is.
Q And Minor is her daughter?
A Yes.
Q Did Minor ever come up to Whitmire to visit you?
A Oh, she used to come up to visit me all the time.
Q When would that be? Just certain weekends or what?
A Sometimes she come to stay the weekend, when she out of school. Sometime she come to stay in the weekend.
Q So summer break?
A Yes.
Q Maybe Christmas break?
A Yes. I get to see them all the time.
Q What does she call you?
A Granny Pooh.

Q Granny Pooh. How would she come up to Whitmire to visit with you?
A Her parents bring her.
Q Nicole would drive her up from --
A Yeah.
Q Where does she live?
A She stays in Columbia.
Q So Nicole would bring her up from Columbia to stay with you in Whitmire?
A Yes.
Q Did you know -- who's Tonya?
A That's my second cousin.
Q Your second cousin?
A Yes.
Q What's Tonya's last name?
A Dawkins.
Q Dawkins?
A Yes.
Q Tonya Dawkins. Is she in the courtroom?
A Yes, she is.
Q Where is she?
A She's --
Q Raising her hand?
A Yeah, that's her.
Q She's your second cousin.

A Yes.
Q And where does she live?
A I think Tonya stay in building.
Q Building ?
A Yes, I think so.
Q In Apartments?
A Wait a minute. Let me get it straight. She stay in .
She stay in apartment.
Q as in ?
A Yes.
Q So is that the building next to yours?
A No, that's -- like it got a little space between us.
Like a driveway. That's -- that's how far we stay away from
each other.
Q Well, how long would it take you if you walked out of
your apartment and walked over to Tonya's apartment?
A I'd say about less than five minutes.
Q Who does she live there with?
A Her son and her friend.
Q Who's her friend?
A Man.
Q Man?
A Man.
Q Is that a nickname?
A Yes.

Q Do you know Man's real name?
A Well, I just recently learned it was Carrol. I do not know. Only thing I used to call him, Man.
Q That's a nickname that people call him?
A I guess.
Q You heard other people call him that?
A Yes.
Q Do you see Man in the courtroom?
A I sure do.
Q Can you point to him?
A I'm looking at him right now.
(Whereupon, witness identifies the Defendant.)
Q And you know his name to now be what?
A Now I know his name to be Carrol Washington.
Q And how long have you known Carrol Washington?
A Ever since she -- well, I met him first time he was the ice cream man. He used to drive around and sell ice cream to the kids.
Q What now?
A Ice cream man.
Q He drives an ice cream truck?
A He was when I first met Man.
Q And how long ago was that?
A It been several years now.
Q So you've known him for several years?

A Uh-huh.
Q Do you know how many years?
A Oh, I don't know how long and Tonya been talking. About three or four years, I guess.
Q So that's the job he does is a ice cream truck?
A That was one of his jobs.
Q What's his other jobs?
A He had -- he had several other jobs. I couldn't name them all.
Q But you're telling me that he lives over in Building with Tonya Dawkins?
A Yes.
Q How do you -- who told you his name was Man? Did he tell you that?
A That's how I first met Man. He had introduced himself as Man.
Q He said just call me Man?
A No. He just -- they just said Man, so I done call him Man. I didn't ask him what his real name was or otherwise.
Q But you heard other people call him that, too?
A Yeah.
Q What is Tonya's boy's name?
A D.D. .
Q D.D. ?
A Uh-huh.

Q And that's him sitting there with his --
A Yes, that's him.
Q When Minor used to come up to your house -- does she come there anymore?
A Does she come anymore? I see her every so often, but she don't never stays no more.
Q So she doesn't stay up in Whitmire anymore with you?
A She won't stay.
Q Back when she used to go up there and stay what kind of things would she do? Who would she play with?
A She loved to play with D.D. .
Q They were buddies?
A Oh, yeah. They was real close.
Q Are there other little children, neighbors --
A Yes.
Q -- in the apartment complex?
A Yes.
Q And what kind of things did you watch the kids do together?
A Oh, they loved to play. They played tag and all kinds of games. They get out there and play on D.D. ' basketball. They do a lot together.
Q Did they ever come to your apartment and play?
A Sometime they come, unless they want something to drink. I always have snacks for them.

Q To your knowledge, did they go to Tonya's apartment?
A Oh, they loved to go to Tonya. They did. They really did love to go to Tonya's.
Q So they were over there a lot?
A Oh, yeah. They loved to be around Tonya.
Q So Tonya is what to Minor ? Is she kind of like an aunt? I guess she's really a cousin, but --
A I don't know what. But they loved Tonya.
Q And you know what kind of things Minor would do over at Tonya's apartment?
A Yeah, Tonya -- they play games and all that stuff. They play everything. Tonya -- Tonya be dancing with them. They have a good time over at Tonya.
Q And did Tonya and Man come over to your apartment very often?
A Not that often. Every once in a while, but not often at all.
Q Did you ever go over to Tonya's apartment with Minor ?
A I used to go over there. Minor used to stay there while I walk -- since it wasn't full. So I go back home and, you know.
Q You'd walk Minor over there and then leave her?
A Minor used to carry herself. She at the age, and I taught her to watch out for cars. It ain't -- Minor over Tonya. D come and get them, or either they go get D. That

how it used to be.

Q So your testimony is that she would go -- Minor would go over to Tonya's apartment where Man lived and hang out quite often?

A I know every time -- every time they come up they had to go to Tonya house.

Q How old is Minor now?

A Minor be -- Minor 10. She'll be 11 in May.

MR. SCOTT: Answer any questions Mr. Verner has for you, Ms. Simms.

THE WITNESS: Yes.

THE COURT: Cross-examination, Mr. Verner?

MR. VERNER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. VERNER:

Q Buildings, that's kind of an apartment complex, Ms. Ethyl?

A Yes.

Q Do you know how many units or houses or apartment buildings are in that complex?

A Like I told him, it's about seven, I think.

Q Are they multifamily units, or each one would have one --

A They got several groups, like A, B and -- they got A1, A2 and A3. Like C, B1, B2. Like that.

Q Do you know who Josephine is?
A Yeah, that's my sister.
Q She also lives in that community, too, doesn't she?
A She stay right beside Tonya Dawkins.
Q That's right. She actually is a next-door neighbor of Ms. Tonya's?
A Yes, she was.
Q And you would see her sometimes on the porch talking to Tonya?
A I see my sister every day.
Q Do you know the name of -- your daughter, Nicole, lives in Columbia, right?
A Yes, she does.
Q And how many children does Nicole have?
A Nicole got three daughters.
Q Three daughters?
A Yes, she does.
Q Who is the oldest of the three?
A N. .
Q N.T. ?
A Yes.
Q How old is N.T. ?
A N.T. is 15.
Q Fifteen now?
A Yes, she is.

Q Now, who's the middle child?
A Min .
Q Minor ?
A Yes, she is.
Q And that's the Minor involved in this case?
A Yes, she is.
Q And Minor is 10 or 11 now?
A Ten, be 11 next -- in .
Q And then the baby is who?
A S.S. . S.S. .
Q S.S. . How old is S.S. ?
A S.S. is nine.
Q Nine. Would all three of the girls --
A Yes, they do.
Q -- come to see you?
A They do. All three.
Q But they go to school at this time in Columbia?
A Yeah.
Q And that's been that way for the last few years at least?
A Yes.
Q So it's less likely that they would be coming to see you during the school days, right?
A No, they don't come on school day. They come on like weekend or their breaks. School breaks.

Q So I take it when they're in like the spring break and summer break they possibly go spend more time with you?
A Oh, yes. That's what I enjoy.
Q And then on weekends they would spend a little bit less time?
A Yes.
Q Maybe that day and spend the night?
A Yes.
Q Would Nicole with them and spend the night?
A No. Nicole didn't have to spend the night. I'm the grandma. The grandma.
Q Primarily they were left in your control?
A Yes, they was.
Q Now, is it just you? Are you the only adult in your home?
A No.
Q Who else?
A Back then I was.
Q From 2012 to 2015 you were the only adult in your home?
A No, from 2014.
Q Who lived in Ms. Tonya's home with Carrol and Tonya?
A Her son.
Q Just the three of them?
A Yes.
Q Were there other kids in that community?

A It was -- every kid loved Tonya house.
Q Tonya's place was kind of the hangout for the kids on weekends?
A Some -- yes.
Q And Tonya was a stay at home mother, right?
A No, she was working.
Q Was she working at that time?
A She was working.
Q Do you recall where?
A She was working.
Q But you don't remember where at that time?
A No.
Q Do you know if she worked on weekends at that time?
A I never known Tonya do work on the weekend.
Q Usually they'll be an adult in the home?
A What home?
Q With the Dawkins. With Carrol's home, usually there would be an adult there when the kids were there, right?
A I don't deal with Tonya house everyday. I couldn't answer that, no. Because sometime -- most time we be sitting on the front porch talking.
Q That's usually when the kids were playing and the parents would hang out on the front porch and supervise?
A With everybody kids.
Q And sometimes it was you, and sometimes it was your

sister, Josephine?
A Yeah.
Q And Tonya would sit out there?
A We all would sit out there. That was our exciting thing for us to do, sit on the porch and talk.
Q Would some of the other mothers come?
A No. It was just us three.
Q Most of the time it was just the three of you?
A Just about every time it would be just us three. That's how we are.
Q Were there any other fathers who came?
A No.
Q And how often would you -- or how often would the children go to play at Carrol and Tonya's home?
A Just about every time they come they plays.
Q Just every day that they were with you pretty much they'd spend some portion of the day playing outside?
A Yes.
Q Would the kids primarily play out?
A Well, the kids would be in and out, in and out.
Q Is there any kind of like playground set?
A No.
Q No. So there's no central place for them to --
A No. It be in and out or they come over to my house.
Q How long -- over what period of time had they been

coming to see you for the weekend? Was it for more than a year like this?

A Well, they was coming to see me. Then about 2000 and, I think, about '14 Minor didn't want to come to Whitmire no more. She didn't want to come to my house. She didn't want to come to Whitmire, period. I used to beg Minor and them to come on. Minor used to cry before she come to Whitmire. And that wasn't like Minor .

Q What about the other girls?

A The other girls wanted to come. Minor never want to come. So Minor didn't come, the other kids didn't come neither.

Q So you're saying sometime in 2014 Minor didn't --

A Minor -

Q She stopped coming to your house?

A She just had a shell around her and she didn't want to come to Whitmire and I did not understand.

Q Was that the summer of 2014 or --

A Minor didn't want to come to my house, period, at that time.

Q I'm just asking when was --

A I'm telling you it happened in 2014. What day I do not know. But Minor got to a point she did not want --

THE COURT: Let me just stop you. Mr. Verner, this witness, don't talk over each other. Okay? The court

reporter cannot take it down. So you wait for Mr. Verner --

THE WITNESS: Okay.

THE COURT: -- to completely finish his question before you answer. Okay?

THE WITNESS: Okay.

MR. VERNER: Thank you. That's just -- the lady writes down everything that's said and it kind of makes it confusing.

THE WITNESS: Uh-huh.

Q So Minor had stopped coming to your house sometime in 2014?

A Yes.

Q But the other two girls kept coming?

A No.

Q They all stopped coming?

A Yes.

Q And that was in 2014?

A Yes.

Q Do you recall, did they come -- see you at Christmas 2014?

A They used to come every once in a while. But, you know, lately I haven't seen them for Christmas.

Q So sometime after 2014 the regular visits stopped?

A Yeah.

MR. VERNER: Thank you, Ms. Ethyl.

THE WITNESS: You're welcome.

THE COURT: Anything on redirect, Solicitor?

MR. SCOTT: No, Your Honor.

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

THE WITNESS: You're welcome.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Would the State call its next witness.

MR. SCOTT: Nicole Simms.

NICOLE SIMMS, having first been duly sworn, testified as follows:

MADAM CLERK: Please state your name.

THE WITNESS: Nicole Simms.

DIRECT EXAMINATION

BY MR. SCOTT:

Q Nicole, the witness we just heard from, Ethyl, that's your mother?

A Yes, sir.

Q And Minor is your daughter; is that right?

A Yeah, that's my middle daughter.

Q How old is she now?

A She's 10.

Q When's her birthday?

A , .

Q ?
A Yes.
Q You all live in Columbia?
A Yes, sir.
Q We just heard sometimes that -- do you recall it used to be a practice of you taking the girls up to stay with your mother in Whitmire?
A Yes, sir. For holidays or if I had to work over I asked my mom to watch the kids for me, because me and Matthew, we work second shift and we did overtime and everything.
MR. SCOTT: Can the jury hear these answers?
Q Can you speak up? Because I guess this vent is blowing down and it's a little bit hard to hear.
A My mother used to watch the kids on holidays when me and Matt had to work overtime.
Q And what about just weekends?
A Some weekends, because they wanted to come down and play with their cousins.
Q So would the children ask to go see their grandmother?
A Yes, sir.
Q And that was something that they enjoyed doing?
A Yes, sir.
Q Do you recall a time when Minor just didn't want to go anymore?

A Yes, sir. It started 2014. I don't know a particular day. It had to be March or April.

Q March or April of 2014?

A Yes.

Q Or '15?

A 2014. I'm sorry.

Q 2014?

A Yes. Because she started having behavior problems. She would cry. She started acting -- problems at school and everything. Grades started dropping and everything. I really didn't know what was going on with Minor at that time.

Q And did you ask her about it?

A No, sir. I didn't. But I remember it was like in April 2015. I was on the phone talking to my cousin Tonya, because I was getting ready to get married and I wanted her to be one of my maid of honor. While I was in the process talking and everything, Minor came to me and said, momma, I got something --

MR. VERNER: Your Honor, I think the child needs to testify. She's not allowed to testify what somebody else said.

THE COURT: Sustained.

Q Without saying what specifically what she said, Minor said she didn't want to go up to Whitmire anymore?

A She told me the reason why.

MR. VERNER: Your Honor, again, it's an improper question. It's leading. He actually answered his own question up front and said what the child did.

THE COURT: It may have been leading. I don't think it necessarily would be hearsay. It doesn't go to the truth of the matter asserted. It would go more to state of mind. But I will agree that it was leading. So just be careful, Solicitor, if you would, please.

Q Did Minor say she wanted to go to Whitmire or she didn't want to go to Whitmire?

A No, she didn't want to go to Whitmire.

Q She didn't want to go to Whitmire? Was she adamant about not going?

A She was crying.

Q Had you ever seen that behavior before when it was time for her to go to Whitmire to visit her grandmother?

A No. Minor was my laid back daughter. She was always happy, trustworthy and loved everybody. I never had a problem with Minor behavior or anything. She was more -- she was the loveable one.

Q How would you describe -- you said laid back. But describe Minor 's demeanor a little bit more.

A Minor trusted everyone. She loved everyone no matter what. She trusted everybody. She would befriend -- she

would befriend anyone. Doesn't matter if there's a disability, you can't talk, you can't speak. My child would love you and she would get along with you.

Q You kind of described her a sweet nature. But she's kind of a shy little girl, isn't she?

A She's shy when it comes down to --

MR. VERNER: That's another leading.

THE COURT: Sustained. Repeat your question, Solicitor.

Q You're the mother. I can't put words in your mouth. Tell us about Minor Tell the jury what they're going to hear when she comes in here and testifies.

MR. VERNER: I object to that question, Your Honor.

Q Is she going to be loud and --

THE COURT: Wait a minute. Let's not talk over everybody. State your objection.

MR. VERNER: As phrased, what she's going to testify, how is she going to testify, if it's not a fact based question for the witness it can certainly -- I think it's intended maybe her demeanor.

MR. SCOTT: Right.

MR. VERNER: But that's an improperly phrased --

THE COURT: I sustain the objection. Rephrase your question, Solicitor.

Q Explain to this jury your daughter's demeanor. Okay?

I can't ask it any clearer.

MR. VERNER: Your Honor, I ask that his comment be stricken. And I will note that he's just stipulating for the jury, I assume, to express his frustration with my objection, Your Honor. So I object to -- I will ask the Court to admonish the parties to stick with the questions and not answer them for the witness.

THE COURT: I sustain the objection. Solicitor, try to avoid any commentary in addition to your question.

Q Ms. Simms, Minor 's your daughter?

A Yes, sir.

Q Would you please describe her demeanor.

A She's quiet. She's shy. She's an artist. She loves to draw. She plays the violin. She's like the clown of the house. She's always making the jokes, the face expression and everything. There's never a dull moment with Minor .

Q But your testimony is at some point in 2014 that changed?

A Grades and everything. She was running for the Girls On The Run. She was an A student. She used to play the violin. We just -- she just started everything back because she started to build her confidence up. She just quit everything. She isolated herself from everyone. And we really didn't know what was going on. She wouldn't talk.

Q Well, tell us, I mean, this change, was it abrupt or

was it something that gradually happened?
A It gradually happened.
Q And then at some point you said she just said she didn't want to go to Whitmire anymore?
A Yes, sir. She cried.
Q And without saying what she said, did she tell you something?
A Yes, sir.
Q And as a result of her telling you that did you contact law enforcement?
A Yes, sir.
Q Do you remember about when that was that she told you that thing that made you call law enforcement?
A I remember around probably like March, April of 2015.
Q Had she been -- I guess she'd been up to your mother's home in Whitmire.
A We come and stop by, but we don't stay long. But that's every blue moon that we actually stay or stop by.
Q Well, I mean, back when things -- you would go up there more regularly.
A Yes.
Q So you were familiar with your mother's apartment?
A Yes.
Q How many rooms did she have in her apartment?
A She has two bedrooms.

Q And then, I guess, a livingroom and a kitchen?
A Yes, sir.
Q And had you ever -- Tonya, you said you were in the process of asking her to be in your wedding?
A Yes. She was also giving me advice on everything. She was like a sister, best friend.
Q You all were close?
A Yes.
Q Had you ever been to her apartment?
A Yes, sir.
Q Describe her apartment.
A Three bedrooms. Her's was a three bedroom apartment.
Q So hers was a little bit bigger?
A Yes, sir.
Q Who lived there with her?
A Her son. And then she met Mr. Washington and he moved in.
Q How many times have you met Mr. Washington?
A Like every time when I came while I dropped my kids off. Like I said, he was like family, too.
Q You were close with him and Tonya. Is that what you're saying?
A If Tonya loved him, then it was all right with me.
Q You all had never had any disagreements or anything?
A No, sir.

Q Had he ever told you anything that made you concerned?
A No, sir.
Q Did you know him by any nicknames or anything?
A Like I just realized his name was Carrol Washington. I always know him as Man.
Q Man?
A Man. Yes, sir. I first met him when he was driving the ice cream truck.
Q He drove an ice cream truck?
A Yes, sir.
Q Did you know him to have any other jobs?
A He had jobs off and on. But keeping a full-time job, no.
Q And did you -- were you aware of Minor going to their home and playing?
A They always -- that was -- every weekend my daughter was wanting to go there and play video games or dance. It was always something exciting at Tonya's house.

MR. SCOTT: Thank you. Answer any questions Mr. Verner has.

THE COURT: Any cross-examination?

MR. VERNER: Thank you.

CROSS-EXAMINATION

BY MR. VERNER:

Q Ms. Simms, you live in Columbia?

A Yes, sir.
Q And who do you live with?
A I live with my husband and my three daughters.
Q And your three daughters?
A Yes.
Q And was your mother correct in their ages, 15, 10 and nine?
A Nine, yes.
Q Nine months?
A Nine-years-old.
Q Oh, nine is the baby?
A Yes.
Q So Minor is a year older than her baby sister?
A Yes.
Q Now, I thought you had indicated sometime in March or April of 2014 Minor said she didn't want to go back over to see her grandmother.
A She started having behavior problems.
Q Did you make her go? Did you still make her go with her sisters to see her grandmother or did those visitations pretty much stop?
A It wasn't as frequent as usually.
Q So it was a lot less. But they were still going? Would the other two sisters go and you would just leave Minor at home, or pretty much all three of them had to go

together?
A No, sir. See, every other weekend Minor and my oldest daughter had to be with their father. So there was like two months -- two weeks -- two weekends with their father and two weekends with me every month.
Q And in some of these weekends that you would -- who is Minor 's father?
A Christopher Michael Thompson.
Q Christopher Thompson?
A Yes.
Q And he is also the older child's daughter -- father? Sorry.
A Yes.
Q And he's got court ordered visitation every other weekend?
A Yes.
Q So half the time the children were with him on the weekends?
A Yes.
Q And where does he live?
A Columbia.
Q He's also in Columbia?
A Yes, sir.
Q I'm not going to ask you your address. But what part of Columbia? Do you live on the Irmo side or kind of

downtown or --

A The northeast side.

Q The northeast side?

A Yes, sir.

Q And you called police on March 25th of 2015 is when you first called the Sheriff's Department, correct?

A Yes, sir.

Q And that had been about a year after Minor started having issues?

A Yes, sir.

Q When did you notify -- or did you notify Christopher Thompson about the issues?

A Yes, sir.

Q When?

A As soon as I found out. That weekend he was picking them up and I talked to them.

Q Your --

A Christopher Michael knew about what was going on with Minor .

Q Right from the beginning he's one of the first people you spoke to?

A He's not the first person that I talked to.

Q But he's one of the very first people. You would have notified him within a day or so?

A I didn't notify him a day or so. Me and Christopher

don't have that good relationship. You should know.
Q Do you know how he found out?
A Because I told him about it.
Q And Investigator Epps gave you a forensic evaluation of the child, correct?
A Yes, sir.
Q On April 27th?
A Yes, sir. I think so.
Q And you did not go to that one?
A I had just started a job and I couldn't get off.
Q There's an allegation that your child had been molested and you don't take her to a forensic evaluation?
A Mr. Verner.
Q Yes, ma'am.
A I have a daughter that's special needs.
Q I apologize. I don't mean to be mean. I just didn't understand what you were saying.
A And I need a job to support my family at that time and had just start. Trust me, that when I found out that my daughter was molested then it bothered me.
Q I understand that. But you missed the first --
A Not on purpose, because I needed a job.
Q Were you aware that your kids would hide in the closet sometimes before -- not wanting to go see their father?
A My child used to cry all the time. And the reason why

they cried, because they didn't understand what was going on between me and their father. And I never known them hiding in the closet. But I know when I put them in the car they was crying.

Q Did you tell Investigator Epps that they were hiding in the closet because the older child was being molested by someone in that family?

A Mr. Verner.

Q Yes, ma'am. Please answer yes or no and then you can explain however you want to. Did you tell Investigator Epps --

A I did not tell about my older daughter being molested. First of all, my older daughter went to her counselor appointment and told her counselor that something happened to Minor . And you should know, because you was my divorce lawyer and you bringing up something in my divorce.

Q But the --

A You do recall. I got papers.

Q When was that?

A I don't remember the time of it. Why don't you go get --

Q Were you married to Christopher Thompson?

A Yes. You was my divorce lawyer. You was my lawyer. You have everything on file, Mr. Verner.

Q My question for now -- and I guess we'll be heard on

that in minute. Is did you tell Investigator --

A I did not mention anything.

THE COURT: All right. Ms. Witness, Mr. Verner, please, please don't talk over each other. Okay? Mr. Verner, ask your question. Ms. Simms -- Simms, right? Wait for Mr. Verner to completely finish his question before you answer. Okay? Do that for me, please.

Q My question is simply this. Did you tell Investigator Epps, when he asked you about the children hiding in the closet from their father, that the older daughter had been molested by a family member?

A No. I stated that my oldest daughter did make an exaggeration about something happening to her little sister when they was over their house -- father house. My oldest daughter, especially me, no one's not going to mess with her.

MR. VERNER: Thank you, Ms. Simms.

THE COURT: Anything on redirect, Solicitor?

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Mr. Verner was asking you about some exposure of abuse from Minor ? Minor told you she was abused?

A No. My daughter, N.T. , and my mom was there. I was in his office that day because we was going through a custody battle between Minor and N.T. father. And when

-- while N.T. was in her counseling, N.T. stated that something had happened to Minor over her father house.

Q N.T. is the 15-year-old?

A Yes.

Q And if you don't mind my asking, what is her -- she's special needs? What was her diagnosis?

A She's Asperger autistic, ADHD, schizophrenic, have problems with delusions and everything.

Q At some point we were talking about Minor mentioned something to you that made you call the police; is that right?

A Yes. When she told me what happened to her.

Q Did she disclose when this thing and where this thing happened to her?

A She didn't give me a time period, because she just told me that -- when it -- when it was happening she was always in the house by herself with him. Other kids were downstairs. She was upstairs.

Q In whose house with who?

A Tonya.

Q In Tonya's house?

A Yes.

Q With who?

A With Man.

Q So she disclosed that she was in Tonya's house with Man

when these things happened to her?

A Yes.

MR. SCOTT: Thank you.

THE COURT: Recross?

MR. VERNER: No questions, Your Honor.

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

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, I think we need a little short break. No more than 10 minutes. So if you'll go back to the jury room. And again, I'll remind you, don't begin any discussions about this case in any fashion whatsoever, and we'll get you back out and continue.

(Whereupon, the jury exited the courtroom at 10:57 a.m.)

(Whereupon, a recess was held from 10:57 a.m. to 11:07 a.m.)

THE COURT: Madam Bailiff, if you'll bring the jury out, please.

(Whereupon, the jury entered the courtroom at 11:07 a.m.)

THE COURT: Let the record reflect the jury is back in. Solicitor, call your next witness.

MR. DANIEL: Your Honor, the State calls Investigator Brad Epps.

BRAD EPPS, having first been duly sworn, testified as follows:

MADAM CLERK: Please state your name.

THE WITNESS: Brad Epps.

MR. DANIEL: Your Honor, before I begin questioning the Investigator, I would offer State's No. 2 for admission into evidence.

MR. VERNER: Without objection.

THE COURT: All right. Without objection No. 2 into evidence for the State.

(Whereupon, State's Exhibit No. 2 was admitted)

DIRECT EXAMINATION

BY MR. DANIEL:

Q Investigator Epps, you are employed with the Newberry Sheriff's Office?

A That's correct.

Q And you are a detective investigator?

A Yes.

Q And how long have you been with the Sheriff's Office?

A Been with the Sheriff's Office since 2010.

Q On March 25th of 2015 were you acting in the capacity as an investigator with the Sheriff's Office?

A That's correct.

Q Did you receive a report on or about that time regarding an individual by the name of Carrol Washington?
A That's correct.
Q Tell us how that came about.
A The mother, Nicole, of the victim filed a report on 3/25 of '15 saying that her daughter --
Q Speak up a little bit what you just -- we couldn't hear you.
A Nicole Simms, the victim's mother, filed a report on 3/25 --
MR. VERNER: Respectfully, is he testifying what was told to him, or what he told or --
THE COURT: He asked -- yeah. So far it's okay. The filing of the report. Now, I understand where you're coming from if he's going to go further or not. I don't know what's going to be brought out. Thank you.
Q You may continue.
A Filed a report stating that her daughter -- she was making arrangements for her daughter to go stay with her grandmother in Whitmire and her daughter made the statement, "I don't want to go. That man's a rapist."
MR. VERNER: Your Honor, I object to -- it's unclear whether that's a statement to him, or whether he's testifying what he's heard from other people. And then there's the hearsay question. I would ask that that be

stricken.

MR. DANIEL: Your Honor, I'm asking just to -- it's not hearsay, I'm not offering to the truth of the matter. It's to outline his investigation to the effect of the listener.

THE COURT: Well, as far as what the child allegedly said, I think it would be offered for the truth of the matter asserted. I would find that it is hearsay. That last portion of what he just stated will be stricken from the record and the jury is instructed to disregard what the child allegedly said, as conveyed by the mother to this police officer.

Q Investigator, so you receive a report from Nicole Simms?

A That's correct.

Q This is late March of 2015?

A That's correct.

Q And the report did involve her daughter?

A That's correct.

Q Being touched inappropriately in some way?

A That's correct.

MR. VERNER: All of those are pretty much leading questions, Your Honor.

THE COURT: Try and rephrase and not lead, Solicitor.

Q So at that point you initiated an investigation after speaking with Nicole Simms, correct?

A That's correct.
Q And who was the suspect you were investigating?
A The name that I as given was Carrol, but they called him Man and -- or the last name.
Q And what address did you have for this Carrol Washington?
A I didn't get -- well, I didn't get an address right offhand. After the mother provided me with some more information I was able to get an address.
Q And an incident had taken place with Ms. Simms' daughter, correct?
A That's correct.
Q And where did this incident occur?
A .
Q Is that an apartment complex?
A That's correct.
Q That's in Whitmire?
A That's correct.
Q In Newberry County? And this incident, what time did it take place?
MR. VERNER: Your Honor, I object. He's not asking the witness what the witness saw, did, investigated. He's basically asking him -- he's telling the witness to read the report in the record and the witness has to have personal knowledge and testify what I did, what I saw, what I said,

what I investigated, what I found. None of those questions are asking the witness to testify on a matter of fact.

THE COURT: Sustained.

Q And -- all right, Mr. Epps. What did you do next after you received this initial report from Ms. Simms?

A Set up a forensic interview.

Q And tell us the name of Ms. Simms' daughter.

A Minor .

Q And that was the alleged victim?

A That's correct.

Q And how old was her daughter at the time you received the report?

A I believe nine or 10.

Q Tell us -- you said you set up a forensic interview after receiving this report?

A That's correct.

Q Tell us what that is.

A Forensic interview is when they sit down with someone that would be able to solicitor certain answers with someone who has been sexually assaulted or any other type of traumatic event that may have occurred.

Q So you don't go interview the child victim yourself, correct?

A That's correct.

Q And you scheduled a forensic interview that has

specialization in this area?
A That's correct.
Q And, I guess, when was the forensic interview conducted?
A The forensic interview was conducted on 5/27/15.
Q And where was that done?
A That was the Dickerson Center, or the ARC. One of the two.
Q Is that a children's advocacy center?
A That's correct.
Q And that's in Columbia?
A Yes.
Q May 27th, 2015 when that's done? Did you receive the forensic interviewer's report?
A That's correct.
Q Was it a taped interview?
A That's correct.
Q Did you receive a copy of that?
A I did.
Q Tell us what happens next in the course of the investigation.
A I got further information on who Man was. Did a photo lineup with his picture in it and called Ms. Simms and had her to bring Minor to the Sheriff's Office.
Q You said you did a photo -- you generated a photo

lineup?
A I had SLED to do it.
Q SLED, the South Carolina Law Enforcement --
A That's correct.
Q -- State police?
A That's correct.
Q Tell us what a photo lineup is.
A It consists of six pictures. One being the suspect and five others being random pictures that looked similar to the suspect.
Q I'm going to hand you State's No. 2. It's been admitted into evidence. Do you recognize that?
A I do.
Q Go ahead. Tell the jury what that is.
A Nicole brought Minor to the Sheriff's Office with her father --
Q I'm sorry. When was that that this photo lineup occurred with the victim?
A That was on 6/3 of '15.
Q All right. June 3rd, 2015.
A And told Minor , I said, I need you to pick out who Man is, and put the photo lineup in front of her. I said I need you to just put a check beside Man.
Q So she didn't have a legal name for Man? That was just a nickname at that time?

A That's correct.
Q And did Minor identify Man?
A That's correct.
Q And she put a checkmark by which one?
A Picture number three.
Q Is that a checkmark beside kind of near the temple?
A That's correct.
Q Right here, the checkmark?
A That's correct.
Q Minor checked that?
A Yes.
Q So all those men are black males with similar haircuts?
A Yes.
Q Did you make any suggestive remarks to Minor which one she should select?
A No.
Q And how sure was she that that person she identified as Man was the suspect?
A I didn't ask her how sure she was. I just let her check it and didn't say anything else.
Q It's your understanding that the victim was familiar with this individual?
A That's correct.
Q So it's not like an unknown suspect she's identified?
A No.

Q At that point, that's done on June 3rd, you said. This photo lineup. At what point do you make contact with Carrol Washington?

A It was 6/4/15.

Q Tell us how that came about.

A I called him. Told him who I was. First he thought I was, I guess, joking with him. One of his friends joking around. I guess after he called me back again, I believe it was, and I told him again, hey, this is who I was. This is where you need to come to. And he finally came up there and, I guess, realized that I wasn't one of his friends joking with him. And sat down with him with Captain Dennis, and Captain Dennis more or less told him, hey, this is the accusation and --

MR. VERNER: Your Honor, just -- I don't know if the Court has -- I raised my prior objection. I don't know if the Court ever ruled.

THE COURT: As concerns this first interview?

MR. VERNER: Yes, sir.

THE COURT: I thought I had --

MR. VERNER: You did. I apologize. You did rule, and I just renew my objection.

THE COURT: Certainly. You're protected on the record, Mr. Verner. You may proceed.

Q Investigator Epps, so you first call Carrol Washington

on June 4th of 2015, correct?
A That's correct.
Q You called him on the phone?
A That's correct.
Q And you told him the case you were investigating?
A Not over the phone I didn't. I just told him, hey, this is Sergeant Epps. I need you to come to the Sheriff's Office. I need to talk with you.
Q You left it vague?
A I just left it vague.
Q And does Mr. Washington come in that day?
A Yes.
Q Voluntarily came into the Sheriff's Office?
A That's correct.
Q So he wasn't -- he wasn't taken into custody?
A No.
Q Approximately what time did he arrive?
A It was in the afternoon. I don't know the exact time.
Q And he wasn't taken into custody. Did you feel the need to read him his Miranda rights?
A No.
Q Tell us what happened next.
A Captain -- like I said, Captain Dennis more or less advised him, hey, this is the allegation being made. And said he was speechless. Didn't understand why Minor was

saying this about him. I said that's what we're trying to figure out, too.

Q And is it your understanding that Mr. Washington -- did he -- all right. Where did this incident take place?

A At their residence in Whitmire.

Q At Mr. Washington's residence?

A That's it.

Q Go into some more of the details of the questions. The Q and A session. The question and answer session.

A He said he never touched the victim like that. More or less that all the kids gravitate towards him.

Q When he said I never touched the victim like that, what question did you pose to him? You were describing the allegations. In other words, what was the nature of the allegations?

A I told him what was disclosed. Somewhat what was disclosed in the forensic interview.

Q Tell us -- tell us what you actually said so we can understand his answer.

A I don't think I asked him anything during that period of time. The question -- or the answer that he gave, I didn't ask him a question pertaining to that. He stated that he never touched the victim or any kids like that or in that way.

Q Well, what did you tell him the victim had disclosed in

the interview?

A More or less that she had been digitally penetrated or touched.

Q What part -- what part of the body?

A Her butt, or anus area.

Q So he's essentially -- he's outright denying that?

A Yes.

Q Did he give any statements about how familiar he is with this victim?

A Yeah. He said that she was a fast little girl. If we only knew how she was. Everybody in the neighborhood knows how she is.

Q Elaborate on your understanding of fast little girl.

A It was always my understanding that fast means that you're, I guess, sexually active to a degree, or you were around doing stuff with other little boys or little girls that you shouldn't be doing, like touching them, stuff like that.

Q And this -- that's been testified to that Minor Minor 's birthday was of , correct?

A That's correct.

Q So at the time you interviewed him this little girl was -- we're talking about a 10-year-old girl at the time --

A That's correct.

Q -- being a fast little girl? And this interview takes

place in your office?
A No. We have a -- we have an interview room at the Sheriff's Office.
Q And, I guess, any other relevant statements he made during this investigation?
A I asked him if they called him Man and he said yes, which was the nickname that I was given originally.
Q So Carrol Washington is his legal name, correct?
A Yes.
Q And he's saying that he does go by Man?
A That's correct.
Q That's an established nickname for him? How long did this interview last roughly?
A Maybe 30, 45 minutes.
Q And at the conclusion of the interview what happened? Was he free to leave at that point?
A That's correct.
Q Tell us any other things you did in the course of this investigation. You set up the forensic interview, correct?
A That's correct.
Q You interviewed Mr. Washington?
A That's correct.
Q Did you obtain arrest warrants for Mr. Washington?
A I did.
Q And what date did you actually take Mr. Washington into

custody?
A That was 6/10 of '15 when I took him into custody.
Q So about a week after that initial interview?
A That's correct.
Q You served those arrest warrants on him?
A That's correct.
Q Were you able in the course of your investigation to identify any eyewitnesses you may have seen?
A Yes. S.B. .
Q And you did make contact with --
A I spoke with the mother. I never was able to speak with the little girl.
MR. DANIEL: No further questions. Please answer any questions Mr. Verner has.
THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. VERNER:
Q Investigator Epps, is it fair to say that initially you had arranged for the child to be examined within a month of the allegation --
A That's correct.
Q -- being brought to you?
A I'd say it was roughly that timeframe.
Q And I'm sure you actually requested it even sooner than that but it takes a while before the --

A Well, it depends on what appointments they have available, because sometimes they're backed up, sometimes they're not.
Q And is it your recollection that the mother did not attend the first -- or bring the child or attend the first evaluation?
A That's correct. It was my understanding she was having some issues with work as far as getting off.
Q So you rescheduled it for June, correct?
A That's correct.
Q Or late May, June?
A I know I rescheduled it, but I don't remember exactly what month it was.
Q Do you know who Minor 's father is?
A I met him. One day he came to the office. I don't remember his name though.
Q Well, can you tell me about him? So you did meet with him at the Sheriff's Department?
A That's correct.
Q Can you tell me about that meeting? Is it fair to say he was not aware of the allegations until he came to you to confirm the allegations?
A Well, I think he was made aware, like you said. But I think he was just coming to confirm the allegations --
Q Did he -- I'm sorry. I didn't let you finish.

A I'm done.
Q Did he tell you who had told him about the allegations?
MR. DANIEL: Your Honor, I would object to the relevancy and hearsay.
THE COURT: Well, it may be relevant, but it would constitute hearsay. I'll sustain the objection.
Q Did you explain the allegations to the father?
A That's correct.
Q And you made him a copy of the incident report?
A I didn't give him one, no. That's not correct.
Q You don't recall giving him one?
A No, I did not give him one.
Q Did he take any kind of statements or get him to tell you what he knew about the facts?
A No.
Q And when was the -- when did the father come to meet with you? Is it fair to say around June 10th?
A Let me look and see. I don't want to tell you wrong.
Q I did speak with him. As to what time it was I couldn't tell you.
MR. VERNER: May I approach, Your Honor?
THE COURT: Sure can.
Q Because these things take a long time to report sometimes you make notes prior to Court?
A I try to.

Q Is it fair to say on June 12th the father came to the Sheriff's Department to ask about the allegations?
A That's correct.
Q Did he appear to know what was going on at all with the case?
A To a degree. I think he understood what had been -- what the accusations were.
Q Did he -- are you sure you didn't give him a copy of the report?
A He had already had a copy.
Q Is it possible -- it says, "The victim's father got a copy of the report." That was not from you?
A That was not from me.
Q If a parent had come about an allegation with their child, would the Sheriff's Department give them a copy of the --
A He'd have to go pay for it. He'd have to pay --
Q Fill out the paperwork?
A He'd have to pay for it.
Q But they will give it to the parents if they ask for it?
A Yes. Before I got to the front where he was he had already gotten a copy of the report.
Q I'm just curious. On the six -- the photograph that the child identified of Carrol Washington, she checkmarked

his --
A That's correct.
Q She said that was a copy of -- of Carrol's face?
A That's correct.
Q Now, for an adult do they typically checkmark it or do they typically sign their name or initial it?
A Some people don't like signing their name because they feel like if it comes to court whoever identified them we'll know, hey, that's such and such's signature. So I just had her put a checkmark.
Q But you don't typically try to get them to initial so you can corroborate who's --
A Like I said, most people don't feel comfortable doing that, because they feel like whoever the suspect is may know that they circled their picture, wrote their initials inside their picture.
Q Well, I guess the point of my question, do you know whether Minor could write her name?
A I don't.
Q Did you speak to Ms. Simms' the child's mother, about the children hiding in the closet before going to visit the father?
A Yes, that was brought -- that was brought to my attention and I asked her about it.
Q Did she indicate to you that was because that the older

child had been abused by a family member?

MR. DANIEL: Your Honor, I would object to the relevance of the family members.

THE COURT: This is cross-examination. I think it was dealt with at cross with the mother. I'll overrule your objection.

Q Again, I want to just clarify. Did Ms. Nicole Simms indicate -- you asked her about an allegation about the children hiding from -- before going to visit the father and you asked Ms. Nicole Simms about it?

A Yes.

Q And she confirmed that that was --

MR. DANIEL: Objection. It's hearsay, Your Honor.

THE COURT: Nature of your objection?

MR. DANIEL: The hearsay, Your Honor. What Nicole Simms told the Investigator.

THE COURT: Well, I think it was already covered in cross-examination with the mother. I'll allow it. Overruled. You may want to repeat it again.

Q Ms. Nicole Simms said -- confirmed that they were hiding because of prior abuse against the older daughter?

A That is correct.

Q Did you investigate the nature of that abuse?

A I did not, because it was my understanding that this was something that was going on during her divorce.

Q Did she tell you that at the time or is that something you heard today?
A That's something she told me at the time.
Q But you did not put that in your report at the time?
A I did not.
Q Did she give you a timeframe of when that abuse was going on?
A She did not.
Q Did she give you any factual details of what the alleged abuse was?
A Just that it was -- it wasn't any type of sexual abuse. It was more or less the child being picked on by another family member.
Q Are you sure about that?
A That was my understanding.
Q Is it possible that -- you were in court when the mother testified today?
A Yes.
Q She indicated that she was saying that the middle child, Minor , was the one that -- could you have misheard which child was saying --
A All I was told was that one of the children were being -- was being abused or assaulted somehow. I'm not sure which child was being referred to when I was told this information.

Q Now, when you called Carrol Washington to come to the Sheriff's Department to speak with you on June 4th he did come that same day, didn't he?
A That's correct.
Q Did he come with anybody else that you recall?
A He came by himself.
Q At the time you called him and asked him to come you had not told him why? Just we need to speak to you?
A That's correct.
Q And then you gave him the nature of the allegations once he was at the complex?
A That's correct.
Q Is that in the Newberry County Sheriff's Office?
A Yes.
Q And I assume -- were you dressed fairly similar to what you are today?
A Same thing.
Q And I believe you said that it was also Captain Dennis with you?
A That's correct.
Q Anybody else that you remember?
A I want to say that Investigator Womack came in.
Q May have been another investigator?
A Yeah. I think I went out and he came in.
Q Would you call yourself -- but you were the lead

investigator?
A That is correct.
Q As far as the allegations the child made, you never actually spoke with Minor about the allegations? You have relied on the social workers and those people that actually did that part of it?
A That's correct.
Q But the allegations you were trying to rely on were what the other people were telling you had happened?
A From the forensic interview, yes.
Q And from the mother, Nicole?
A No. Just from the forensic interview.
Q At the time you called Carrol Washington to come to the Sheriff's Department you were aware that he was a suspect in a criminal sexual conduct with a child under 10? Ten and under, right?
A That's correct.
Q Is it fair for me to characterize that as a severe or a serious charge?
A I would say so.
Q Why wouldn't you read his Miranda rights advising him that you were investigating him as a suspect in a crime prior to --
A Because he wasn't under arrest.
Q But he was in the Sheriff's Department complex?

A That's correct. Not in custody.
Q And he was the suspect in a rape case?
A That is correct.
Q I'm not at all saying -- you can correct me. But I would assume you would be armed while you were talking to him?
A That's correct.
Q You would have the authority to arrest him at that point?
A That's correct.
Q And you're inside the Sheriff's Department complex?
A Yes.
Q And he denied improperly touching the child?
A That's correct.
Q But he said that he does play with the children?
A That's correct.
Q And he indicated to you that he felt that the child was a fast little girl?
A That is correct.
Q And by fast, it would be fair for a reasonable person to infer that means promiscuous or sexually active?
A That was always the way it was explained to me.
Q Did he indicate to you the child acted inappropriately before? Other instances where the child may have acted inappropriate?

A Yeah. It was -- yes.
Q Who else did you -- who else did you interview? Tonya Dawkins also lived in the home?
A That's correct.
Q And you also interviewed her?
A Yes. She came up to the Sheriff's Office and wanted to speak to me one day. That's correct.
Q Did you contact her or did she contact you?
A I think I originally called her to try to get a phone number for Carrol.
Q Who else did you call? Who else did you speak to in the neighborhood? There was a next-door neighbor named Ms. -- was it Joyce? There was a next-door neighbor named Josephine who's the child's great-aunt. Did you interview her?
A I did not.
Q Did you interview any other -- parents of the other children?
A I did not.
Q Were you aware where Mr. Washington worked at that time?
A Not until the day he came to the Sheriff's Office.
Q But you picked him up from work at Caterpillar?
A I don't think he was working. That's where I met him.
MR. VERNER: One second, Your Honor.

THE COURT: Sure.

Q The dates that the crime is alleged to have happened in the -- I'll backtrack. To get an arrest warrant for somebody the officer has to appear in front of a magistrate?

A That's correct.

Q Or a witness would appear in front of a magistrate and they'd have to swear certain facts happened that would constitute a crime?

A It would be me as the affiant. That's correct.

Q The affiant just means that I'm the one who took the oath or I swear -- swore --

A That's correct.

Q Were you the affiant in this case?

A That's correct.

Q So the date range of the alleged crime, did that come from you?

A That came from the forensic interview.

Q But the mother had told you that it was alleged to have happened within the past two years?

A No. She didn't tell me anything about a timeframe.

Q Did the mother indicate to you that she felt it had been happening for about two years?

A I mean, she may have, but that's not what my warrant was based on.

Q Were you aware that the child had largely stopped going

to Whitmire from Columbia as of March of 2014?

A I was not aware.

MR. VERNER: If Mr. Scott or the prosecutor has any followup questions.

THE COURT: Any redirect, Solicitor?

MR. DANIEL: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q So you said you obtained a warrant based on statements the victim made during the forensic interview?

A That's correct.

Q That's where you got your range --

A That's correct.

Q -- your dates? So these were multiple incidents over a period of time?

A Yes.

MR. DANIEL: Nothing further.

MR. VERNER: Just a recross on that.

THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. VERNER:

Q Other than saying you think it happened within the period -- I understand where you're basing your information from. Are you able to come up with -- were any dates ever given to you or events, like it happened during a holiday or

a birthday or anything like that where you could narrow it down to a date range?

A Date range? I want to say she gave a date in the forensic interview, but I'm not sure what date that was, or what month that was.

Q But did you -- there was no event or date like it happened at a birthday party or --

A You mean like -- you mean like her telling me?

Q Yes, sir.

A No.

MR. VERNER: Okay.

THE COURT: Thank you, Officer, for your testimony. You can step down.

THE WITNESS: Yes, sir.

(Whereupon, the witness stepped down from the witness stand.)

MR. DANIEL: The State calls S.B. .

THE COURT: Solicitor.

(Whereupon, a sidebar was held.)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, we need just a few minutes outside your presence to deal with a legal issue before we take the testimony from the next witness. So if you'll go back to the jury room. Again, don't have any discussions about this case, anything related to the case. We'll bring you back out in just a

moment.

(Whereupon, the jury exited the courtroom at 11:48 a.m.)

S.B. , having first been duly sworn, testified as follows:

THE COURT: Hey, S.B. .

THE WITNESS: Hey.

THE COURT: How are you?

THE WITNESS: Good.

THE COURT: I like your ribbon in your hair. That's pretty.

THE WITNESS: Thank you.

THE COURT: How old are you?

THE WITNESS: Nine. I mean, 10.

THE COURT: Ten?

THE WITNESS: I'm thinking about my birthday.

THE COURT: When is your birthday?

THE WITNESS: .

THE COURT: And where do you go to school?

THE WITNESS: Whitmire.

THE COURT: Whitmire Elementary?

THE WITNESS: (Nonverbal response.)

THE COURT: And who's your teacher?

THE WITNESS: Ms. Martin.

THE COURT: Do you like her?

THE WITNESS: She's nice.

THE COURT: She's nice? Do you make good grades?

THE WITNESS: I make Honor Roll.

THE COURT: You made the Honor Roll? Very good. Congratulations. Let me ask you some questions. Do you know the difference between right and wrong?

THE WITNESS: (Nonverbal response.)

THE COURT: Is that a yes?

THE WITNESS: Yes.

THE COURT: And do you know it is right to tell the truth and wrong to lie and not tell the truth?

THE WITNESS: Yes.

THE COURT: And what would happen to the person if they've told a story or if they told a lie?

THE WITNESS: They would go to jail.

THE COURT: They'd go to jail. Okay. Now, will you tell the truth today in this courtroom?

THE WITNESS: Yes.

THE COURT: Any questions of competency from the State?

MR. SCOTT: No, Your Honor.

THE COURT: From the Defense?

MR. VERNER: Your Honor, not of competency. The -- I did want to double check that she was listed as a -- I know I was handed a --

THE COURT: She was listed. It was -

MR. VERNER: Handwritten --

THE COURT: -- handwritten in, yes. Okay. I find that -- what's your last name, S.B. ?

THE WITNESS: S.B. .

THE COURT: S.B. . I find that S.B. is competent to testify in this case.

THE WITNESS: What does testify mean?

THE COURT: To answer question under oath. You've taken an oath to tell the truth. And so, these lawyers are going to ask you some questions and you'll give -- give some answers, whatever those answers are. And that's what it means to testify. Okay? Is that good?

THE WITNESS: (Nonverbal response.)

THE COURT: We're going to bring the jury out and then the lawyers will start the questions. Okay? Be sure you speak up real loud so we can hear you. Okay? Any time you give a answer it's got to be a verbal answer. Don't just nod your head. Okay?

THE WITNESS: (Nonverbal response.)

THE COURT: All right. You just nodded your head.

THE WITNESS: Yes.

THE COURT: All right. Let's bring the jury back out, Madam Bailiff.

(Whereupon, the jury entered the courtroom at 11:54 a.m.)

THE COURT: Let the record reflect the jury is back in. Ladies and gentlemen of the jury, this witness has already been sworn in. You may proceed, Solicitor.

DIRECT EXAMINATION

BY MR. SCOTT:

Q What is your name?

A S.B. .

Q S.B. . What's your last name?

A S.B. .

Q How old are you S.B. ?

A Ten.

Q You just had a birthday, didn't you?

A Yes.

Q Let me guess. ?

A Yes.

Q And you -- that's when you turned 10?

A Yes.

Q What's the name of those apartments you live in?

A Apartments.

Q And who do you live there with?

A My momma and step-daddy.

Q Is this your mom right here wearing this pink shirt?

A Yes.

Q Do you know a little girl named Minor ?

A Yes.

Q How do you know her?
A She's my friend.
Q Does she live up there in those apartments?
A No.
Q Did she used to come visit you sometimes?
A Her grandma's.
Q Her grandma's? Do you know her grandma?
A Yes.
Q Do you see her here?
A Yes.
Q Where?
A Right there.
Q With the pink shirt here?
A Yes.
Q Do you know -- who is Man? Do you know somebody you call Man?
A Right there.
(Whereupon, witness identified the Defendant.)
Q How do you know him?
A Over Tonya's.
Q From Tonya's?
A Yes.
Q Have you ever been with Man and Minor at the same time?
A Playing at Tonya's.

Q Playing what?
A Playing at Tonya's, hide and seek.
Q Playing at Tonya's house, okay. Have you been with them more than once together?
A Like with Tonya?
Q Or with Man and Minor . Have you been with those two together before more than once?
A Playing, yeah, like games and stuff?
Q Uh-huh.
A Yes.
Q Tell me about what was the time -- explain the time you saw Man and Minor in the bathroom together.
MR. VERNER: Your Honor, that's a leading question on a particularly vulnerable witness.
THE COURT: Right. I sustain. Rephrase your question, Solicitor.
Q Have you ever seen Man and Minor together?
A We were playing hide and seek and I came downstairs and I ran fast and they were both in the bathroom.
Q Tell me if what I heard was correct. You ran fast downstairs and you saw them in the bathroom together?
A Yes.
Q Have you ever seen them in a bathroom together before?
A No. Like what time?
Q Any time?

A Playing a game. Like we was running downstairs to play hide and seek.
Q Did you play hide and go seek a lot of times with Man?
A No.
Q Were there any other men at Apartments that would play hide and go seek with you?
A Like grown men?
Q Yeah.
A No.
Q Just Man?
A (Nonverbal response.)
Q Any other time you saw Minor and Man alone together that you remember?
A Remember what?
Q Do you remember any other time seeing Man and Minor alone together?
A Yes.
Q Would you tell me about that?
A I was downstairs and then I saw them both in the bathroom, because I was counting. I was it.
Q Any other time besides that time? Was that the one time you saw them together in the bathrooms?
A Yes.
MR. SCOTT: Okay. Thank you. Answer any -- wait, you can't get down yet though. Answer any questions this man

has for you. Okay?

THE WITNESS: Okay.

MR. SCOTT: Thank you.

THE COURT: May I see the lawyers for just a second? Let's do this. Ladies and gentlemen of the jury, we're going to take a very, very short break, but I'm going to ask that you go to the jury room. Don't begin any discussions about this case, and we'll get you back out shortly.

(Whereupon, the jury exited the courtroom.)

THE COURT: Ms. Simms, I can understand that this is a difficult time for you and I can appreciate that. However, if you're unable to control your emotions I need for you to not be in the courtroom. Okay? Again, I can understand, and I appreciate it. But I've got to make sure that we have an orderly proceeding. So if you feel like this is just difficult for you to control your emotions then please don't stay -- be in the courtroom.

Secondly, I need to make sure from this side, when the jury is exiting out do not get up and walk along with the jury leaving the jury box into the jury room. Wait for the jury to be completely in the room before anyone exits. And that applies to anybody in the courtroom before anyone exists the courtroom. Okay?

Ms. Simms, do you think you'll be okay?

MS. SIMMS: Yes, sir.

THE COURT: All right. Now, Mr. Verner is going to ask you some questions. Okay? He's a nice guy, too.

Bring the jury out, please.

(Whereupon, the jury entered the courtroom at 12:00.)

THE COURT: Let the record reflect the jury is back in. Mr. Verner, cross-examination.

MR. VERNER: May it please the Court, Your Honor.

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. VERNER:

Q Hello, S.B. .

A Hello.

Q I think you told Mr. Scott your birthday was in ?

A Yes.

Q what?

A .

Q . The day after Valentine's Day?

A Yes.

Q And you had a party last year at HiWire, didn't you?

A Yes.

Q Did you have a lot of your friends --

A Yes.

Q -- with you there?

A Yes.

Q And not everybody's got kids, so not everybody might know what HiWire is, what kind of place is HiWire?
A Trampoline.
Q It's a big indoor facility that's got a bunch of trampolines for kids, right?
A Yes.
Q And probably for your birthday they had a separate area with tables and whatnot that you had your cake and presents?
A Yes.
Q Now, did you live in -- where do you live, S.B. ?
A Apartments.
Q Who do you live near? Do you live near Ms. Tonya?
A I live near Tonya, and this other girl, but I don't know her name.
Q Are there a lot of kids in that area?
A A good bit.
Q There are plenty of kids for you to play with?
A A little bit.
Q Where are some of the houses that you all would play? When you all would get together as a crowd on the weekends where do you all like to play?
A Like outside and over Tonya's.
Q Do you ever play at Tonya's house? Do you know who Tonya Dawkins is?
A Yes.

Q Do you recognize her from your neighborhood?
A Yes.
Q Which lady is she?
A The one beside her.
Q What color is her top?
A White.
Q And who is sitting next to her?
A Her son.
Q I'm sorry?
A Her son.
Q Her son? Is he a friends of yours?
A Yes.
Q What's his name?
A D.D. .
Q D.D. . And he lived with Man -- who you call Man and Tonya, and he lived with them, right?
A Yes.
Q And did you ever go over there and play?
A Yes.
Q Was it just you and D.D. , or how many kids would go over and play with Tonya?
A A good bit. Like Tamara, me, D.D. and some other people.
Q So that -- I guess on some days there would be more kids and on some days there would be fewer kids, right?

A Yes.
Q About how often would you all go and play at Ms. Dawkins and Carrol -- Man's house?
A I play with D all the time.
Q All the time? What are some of the games that -- and by D I'm assuming you mean the kid your age? The boy your age?
A Yes.
Q What are some of the things you all like to play?
A The PS4 and --
Q PS4 is like a video game?
A Yes.
Q Okay. What else do you like to play?
A The Xbox and play other games; basketball, tree house, and Survivor and stuff like that.
Q Now, I think you told Mr. Scott sometimes you all played hide and seek?
A Yes.
Q Was that several of the kids playing or just you and -- who would play hide and seek?
A Sometimes a lot and sometimes not a lot.
Q It just depended on --
A Yeah.
Q -- what the other kids wanted to play?
A Yeah.

Q Now, were you kids left unattended or were there grownups in the house with you?
A Grownups in the house.
Q Now, who were some of the parents and the grownups who would stay there, too?
A Tonya.
Q Let me ask you. I think you identified the lady in the pink shirt?
A Yes.
Q And is she friends with Ms. Nicole?
A Yes.
Q In fact, you were with them when they were talking about these cases in the past, weren't you?
A Yes.
Q And you know what a policeman is, don't you?
A Yes.
Q Have you ever spoken to a policeman about this case?
A Yes, on the phone.
Q On the phone? How long ago was that?
A I can't remember.
Q Was it this week or could it have been a long time ago?
A A long time ago.
Q So you do remember speaking to somebody who said he was a police officer?
A Yeah.

Q And when you would play hide and seek where -- would any of the grownups play hide and seek with you or was that just the kids?
A One grownup.
Q Who was that?
A Man.
Q So Mr. Washington, whose nickname was Man, he'd play sometimes with you kids?
A Yes.
Q Was he the type of grownup that would play with kids?
A Yes.
Q Was he grumpy or was he like enjoyed being with the kids?
A Enjoyed being with the kids.
Q And one of the games he'd play with you is hide and seek?
A Hide and seek and some other games like basketball and stuff, too.
Q Basketball? Did he ever play like tag or chase, anything like that?
A No.
Q Would he ever like roughhouse with the kids?
A Like try to roll over?
Q Like pretend wrestling or anything like that?
A With D. Not me.

Q Okay. More with D. But you've seen him roughhouse more with the boy?
A Yeah.
Q His son, D, but not you?
A Not me.
Q And you are Minor 's -- pretty much are the same age, aren't you?
A Uh-huh. I just turned 10.
Q Ten. And she's 10, too, right?
A Yes.
Q Now, have you all ever lived and gone to the same school together or you just know her from the --
A She used to go to Whitmire. Now she lives somewhere else.
Q So a couple years before she moved away you all were friends in school?
A We still are friends, but she moved away.
Q And she moved to Columbia?
A Yes.
Q And I think you testified to Mr. Scott that when you saw people in the bathroom and you were it. I guess that means that you're the one that has to go find the other kids?
A Yeah. I had to count.
Q And I apologize. I'm going to go back just one more

time. Was Man always there when you all were playing or was he sometimes there?

A Sometimes.

Q Sometimes you would go there and he wouldn't be there?

A Sometimes, yeah.

Q Who were some of the other mothers again? I know you said Ms. Tonya. But if you don't know the names maybe you know the kids that they were -- would other mothers come and stay at that house?

A No.

Q Would any of the ladies like sit on the front porch?

A Yes.

Q Is that typically where the parents stay when the kids are playing around?

A Sometimes. Sometimes we go play the Wii and the Xbox and the PS4.

Q But I'm not -- I'm not asking what the kids would be doing. I'm just asking would the mothers sometimes be like cooking dinner in the kitchen?

A Yeah.

Q Depending on what time of day it is they might be making meals?

A Yes.

Q Sometimes some of the mothers would be sitting out there on the front porch?

A Yes.
Q Did your mom ever come down and sit on the porch or hang out with them?
A No.
Q So she wouldn't come, but some of the other mothers in the neighborhood would come?
A Yes.
Q So it wasn't a situation where the kids were just running around without anybody telling them what to do, was it?
A Always like outside playing game like on the porches.
Q Right. But usually there was a parent?
A Yes.
Q Does this place have a -- where you live is there like a playground or a central area where the kids would play?
A The field.
Q There's a field?
A Yes.
Q Is that like a football field or a baseball field, or is it just like a big open meadow where you all can like run around?
A A big -- a big -- a meadow.
MR. VERNER: Thank you for being here, S.B. . If Mr. Scott or Mr. Daniel have any questions. They get one more chance to ask you some more questions.

THE COURT: Anything on redirect?

MR. SCOTT: No, sir.

THE COURT: Thank you, S.B. . S.B. , you can step down. You can go with your mom.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Okay. Mr. Foreman, ladies and gentlemen of the jury, I think this would be a good time to break for lunch. We'll take an hour break before we start back. So be back here promptly at 1:15. Again, as I think I indicated to you yesterday, when you're out in public during this lunch break keep your juror sticker on so people will know that you are a member of this jury and they won't inadvertently be talking about the case. And no discussions among yourselves or anybody you come into contact about this case. And we'll see you back at 1:15. Have a good lunch.

(Whereupon, the jury exited the courtroom at 12:10 p.m.)

THE COURT: We'll be in recess until 1:15. I want to see the lawyers back in chambers for just a second.

(Whereupon, a lunch recess was held from 12:10 p.m. to 1:17 p.m.)

THE COURT: We're back on the record. Anything we need to cover before we bring the jury out?

MR. SCOTT: No. Judge, I think we're -- in my opinion,

I think we're safe in regards to the Fortia case. It's my understanding that would be kind of along the same lines as Croma. It would preclude the interviewer from vouching for the credibility, or else going back and saying she was told or he was told multiple times to be truthful during the interview, and we would stay away from that as far as live testimony. But I think -- I think we're squared away as far as the recorded forensic interview. My two cents.

THE COURT: What says the Defense?

MR. VERNER: Judge, unfortunately Fortia was actually overruled and reversed.

MR. SCOTT: The affirmative -- vacated --

MR. VERNER: However, it was on technical grounds. It was not reversed on the merits --

THE COURT: Right.

MR. VERNER: --of the case. But it was reversed on technical grounds by the Supreme --

THE COURT: Right.

MR. VERNER: -- for lack of standing or the lack of being raised at the court below. So I do think that is what the Court -- the Court of Appeals indicated -- what they said was not disturbed. But as I read it, I agree with the Solicitor. My understanding of it is the Croma case would be that the witness in court testifies that -- basically vouches for the video.

THE COURT: Yeah. I mean, it's pretty clear that you can't vouch for the believability or credibility of the -- I don't think there's any question about that.

MR. VERNER: I think it could also reach the video itself if it was egregious enough in the video where she's coaching or vouching in the video. But I think they're concern was that the witness would in court vouch that I thought it was a truthful, or I told the witness to be extra truthful. And I think that was their concern.

THE COURT: So if I understand you correctly, Mr. Verner, then, with respect to the video there is no objection, and the issue raised about several times, the interviewer indicating to tell the truth, you don't have an issue with that?

MR. VERNER: Well, I am objecting to the video, but not on the grounds of --

THE COURT: Right. Not on that point.

MR. VERNER: Yes. Just the --

THE COURT: Your objection is based on what?

MR. VERNER: I think the child victim -- my theory is that the child victim should testify first and then the Court would, in the totality of the circumstances, see if a video for a particularly young witness would help explain the child's testimony. I think that's what the video was intended to do was that a very young witness might not be

sufficiently understanding the Court process and that the video would give a better idea of what the child saying happened. I understand the statute has taken that requirement out of it and kind of gives the State a blank card if they want to try to introduce it. But I do object to that, Your Honor. It's cart before the horse. But it would be cumulative to the child's testimony. I will object under 403. I'll object under hearsay. And if the child doesn't testify then I'll object under the hearsay --

THE COURT: Right.

MR. VERNER: -- and the confrontation clause.

THE COURT: Well, what I'll probably need to do is after the foundation is laid with the interviewer then I'll probably need to send the jury out and go on the record and make certain findings as it relates to 17-23-175. So just review your objections when we do that.

MR. VERNER: Yes, sir.

THE COURT: But apart from that, there's no other objections with respect to the video?

MR. VERNER: No, Your Honor.

THE COURT: Okay. Thank you very much. Anything else?

MR. SCOTT: No, Your Honor.

THE COURT: All right. Madam Bailiff, if you will bring the jury out.

(Whereupon, the jury entered the courtroom at 1:33

p.m.)

THE COURT: Let the record reflect the jury is back in. Solicitor, are you ready?

MR. DANIEL: Yes, sir, Your Honor. The State calls Trina Elfering to the stand.

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

TRINA ELFERING, having being first duly sworn, testified as follow:

MADAM CLERK: State your name, please.

THE WITNESS: Trina Elfering.

THE COURT: Spell your last name, please, ma'am.

THE WITNESS: E-l-f-e-r-I--g.

DIRECT EXAMINATION

BY MR. DANIEL:

Q Ms. Elfering, where are you employed?

A At the Dickerson Children's Advocacy Center in West Columbia.

Q Is that a nonprofit, government agency, or what are you --

A It's a nonprofit agency.

Q And what does that agency do? What's the mission statement of that agency?

A We do forensic interviewing and counseling and help children that have been abused.

Q And what specifically -- what specifically is your

role?
A I'm the director of forensic services.
Q And what are your job duties as director of forensic services?
A I do forensic interviewing and I supervise the other forensic interviewers.
Q What is a forensic interview?
A It's a non-biased, unleading investigative tool used for reported child abuse.
Q So you receive referrals from law enforcement agencies to review --
A Correct.
Q And did you have a chance to conduct an interview on May 27th of 2015?
A I did.
Q And who was the subject of that interview?
A Minor .
Q And where did you interview her?
A At our child advocacy center in West Columbia.
Q And was this interview recorded?
A It was. It was recorded on DVD.
Q I'm going to hand you what's been marked for ID purposes State's No. 1. Do you recognize that?
A Yes. That's a copy of the interview.
Q And you've had a chance to view it?

A I have.
Q And you conducted this interview?
A I did.
MR. DANIEL: Your Honor, at this time I'd offer State's No. 1 for admission into evidence.
THE COURT: Okay. Let me see the lawyers for just a second, please.
(Whereupon, a sidebar was held.)
THE COURT: Mr. Foreman, ladies and gentlemen of the jury, before we proceed further there's one brief matter that we need to take up outside your presence. Thank you for your patience and understanding in us having to do this on occasion. But if you'll go back to the jury room. And again, no discussions among yourselves about anything related to this case, and we'll get you back out very shortly.
(Whereupon, the jury exited the courtroom at 1:37 p.m.)
THE COURT: Okay, Solicitor. If you want to cover that area we just discussed at sidebar.

IN-CAMERA

DIRECT EXAMINATION

BY MR. DANIEL:
Q Ms. Elfering, explain some of your credentials, your background. What occupations you've had in the past.
A Okay. I have a Bachelor's degree in criminal justice

and a Master's degree in social work. I'm a licensed social worker at the Master's level. Prior to working at the Dickerson Center I was a Child Protective Services investigator at DSS and then a Child Protective Services supervisor at DSS for about eight years. After that I worked with a South Carolina network of children's advocacy centers and I set up the peer review program for forensic viewers statewide and I implemented that program, and then I went to the Dickerson Center.

Q And how many forensic interviews have you conducted in your career?

A Between 300, 350.

Q Detail the protocol you go through during a forensic interview. What are the rules that you adhere to?

A Starting at the beginning --

Q Yes.

A -- when a parent shows up, or just the interview itself?

Q Everything.

A The parent brings the child to our center and we give them a developmental questionnaire. They fill that out. The interviewer then meets with the parent and gets consent signed to do the interview and goes over the developmental questionnaire to see if the child -- it gives us the child's medical background and their psychosocial background and

some information about school. After we do that we take the child to the interview room and start with a neutral topic so that we can assess -- the interviewer can assess the child for any speech delays or developmental delays and just get an idea about that. The child is then told the rules of the room. Told about the camera and that the DVD is being made, and asked to tell the truth during the interview. Asked to be sure to tell the interviewer that they don't know if they don't know the answer to the question, and to correct the interviewer if the interviewer makes mistakes. We then proceed with the interview.

Q And it's protocol to film, record all these interviews?

A Yes.

Q What professional licenses do you obtain? You may have said it.

A I have a -- I'm a licensed social worker at the Master's level. An LMSW.

Q You obtained a Master's in criminal --

A My Master's in social work and a Bachelor's in criminal justice.

THE COURT: Mr. Verner, any examination of this witness?

CROSS-EXAMINATION

BY MR. VERNER:

Q What college did you attend for undergraduate?

A University of South Carolina.
Q What was your major? Your undergraduate?
A Criminal justice. I think it was liberal arts with an emphasis in criminal justice.
MR. VERNER: No more questions, Your Honor.
THE COURT: Concerning the admissibility of the interview I'm going to find that it is admissible pursuant to Section 17-23-175, based upon this in-camera brief hearing. Also, the Court's already viewing of the video in its entirety I make the following findings for the record. That the child's out of court statement was given in response to certain questions posed to her by this interviewer. That the interview was audio and videoed recorded in its entirety. The fact that the child, as indicated by the State, will testify at this trial and be subject to cross-examination by the Defense. I find that the out of court statement does contain the guarantee of trustworthiness. I further find that the statements made by the child were not elicited by leading questions by this interviewer. That this interviewer has been properly trained and conducted such interviews. That the child's statement does contain an account detailed, at least to the extent or based upon her age of the alleged offense. I find that the statement has internal coherence. I find that the child at the time the interview was given was under the age

of 11, and that this interview took place as a result of an investigation to suspect the child abuse by the Newberry County Sheriff's Department.

Anything further before we bring the jury out? I think you're at the point now of playing the video?

MR. DANIEL: Yes, Your Honor.

THE COURT: If you want to go ahead and get Mr. Bentley to set it up wherever you need to set it up.

MR. DANIEL: And the first two minutes, Your Honor, the camera was turned on but no one's there. So we're going to kind of cue it up right when the interview --

THE COURT: That will be fine. Make sure that volume is turned up.

(Whereupon, a brief pause was held.)

THE COURT: Madam Bailiff, if you'll bring the jury out, please.

(Whereupon, the jury entered the courtroom at 1:48 p.m.)

THE COURT: Let the record reflect the jury is back in. Solicitor, you may proceed, sir.

MR. DANIEL: Thank you, Your Honor.

Q Ms. Elfering, you receive referrals from law enforcement agencies, correct?

A Yes.

Q And what agency referred you to Minor ?

A Newberry County Sheriff's Office.
Q And who brought Ms. Thompson to the interview?
A Her mother did.
Q And what is Minor 's date of birth?
A , .
MR. DANIEL: Your Honor, at this time I offer -- permission to publish?
THE COURT: Okay.
MR. VERNER: Subject to my earlier objection.
THE COURT: Yes, sir.
(Whereupon, State's Exhibit No. 1, videotaped interview, was published for the jury.)
Q Ms. Elfering, that was about a 30 minute video?
A Yes.
Q According to my notes -- according to my notes, about 19 minutes in you had, it looks like, Minor circle something.
A Correct.
Q And what was that?
A I used an anatomical drawing to help identify what the child is talking about. I had her circle privacy for me.
Q I'm going to show you what's been marked for ID purposes as State's No. 3. And do you recognize that?
A I do.
Q Tell us what that is.

A It's a copy of the anatomical drawing from the interview.

Q And Minor circled that?

A She did.

Q And what part of the body was circled?

A The buttocks.

Q And that's indicating what part, where she was touched by Man?

A Yes.

Q Any specific part of the buttocks?

A She circled the buttocks and --

MR. DANIEL: Your Honor, at this time I'd offer State's No. 3 for admission into evidence.

THE COURT: What say the Defense?

MR. VERNER: May I see it?

THE COURT: Sure, yeah.

MR. VERNER: Subject to general objection.

THE COURT: So No. 3 into evidence on behalf of the State.

(Whereupon, State's Exhibit No. 3 was admitted into evidence.)

Q Let me just put it up on the TV. And that's what you just referred to?

A Yes.

Q Ms. Elfering, approximately how many of those

interviews we just watched have you done?

A About -- between 300 and 350.

Q Just like the one we just watched?

A Correct.

Q Interviews of children? And I can't remember. Did I ask you your credentials in front of the jury?

A No.

Q Your background?

A I have a Bachelor's degree in criminal justice from the University of South Carolina and a Master's degree in social work. I'm a licensed social worker. Licensed at the Master's level. So I have an LMSW. I originally worked at DSS as a Child Protective Services investigator, and then as a Child Protective Services supervisor for about eight years. After that I went to work for the South Carolina Network of Children's Advocacy Centers and set up a statewide peer review program for forensic interviewers and implemented that program so that interviewers could be reviewed by their peers. After that I went to work for the Dickerson Children Advocacy Center where I work now.

Q And not talking about the forensic interview we just watched. I'm just going to ask you a general question. Is it common for children to delay reporting of sexual abuse?

MR. VERNER: Your Honor, I would think she would have to be qualified as an expert witness to be able to deal with

child psychology.

THE COURT: Could you repeat the question, and don't answer, Madam Witness. Repeat the question that Mr. Verner has objected to.

MR. DANIEL: Yes, sir. Your Honor.

Q Ms. Elfering, in your experience as a licensed social worker, everything, interviewing children, is it common for children to delay reporting abuse? Sexual abuse specifically?

THE COURT: All right. Mr. Foreman, ladies and gentlemen of the jury, I'm going to have to give this a little consideration just concerning this objection. I'm going to need to do it outside your presence. Again, thank you for your understanding and patience. Go back to the jury room. Hopefully it won't be for too long.

(Whereupon, the jury exited the courtroom at 2:22 p.m.)

THE COURT: Let's be at ease for just a second. I want to -- I think there's some law on that.

MR. DANIEL: Your Honor, I have a recent Supreme Court case.

THE COURT: Okay. I just read something this morning. Just give me the cite and I'll look it up, and Mr. Verner can be looking at that.

MR. DANIEL: South Carolina Supreme Court, State v. Anderson, 413 S.C. 212. It's a 2015 opinion.

THE COURT: Okay.

(Whereupon a brief pause was held.)

THE COURT: Okay. Solicitor, I'm looking at key note five of the opinion. It says that a forensic interviewer cannot testify to issues of delayed reporting. I haven't ready the body of it, I've just read the key note.

MR. VERNER: I just read the key notes and they all seem to be against the State's argument. They say that they reversed the decision allowing the testimony in. They said an independent witness could testify, not the forensic examiner because that would bolster the child's --

MR. DANIEL: Well, Your Honor, I guess that's kind of why I prefaced my question saying I'm not asking about this interview but other interviews -- other interviews in general.

THE COURT: I'm going to sustain the objection and not allow you to examine this witness concerning any aspects of delayed reporting. Anything further before we bring the jury out?

MR. DANIEL: No, sir.

THE COURT: Madam Bailiff, would you bring the jury out, please.

(Whereupon, the jury entered the courtroom at 2:25 p.m.)

THE COURT: Let the record reflect the jury is back in.

Ladies and gentlemen, I often tell juries in Newberry that you've got it lucky because you're so close to the jury room. If you were in Laurens you would probably accuse me of making you all exercise because you have to go down two hallways. It's a nice little trip from the courtroom to the jury room. So you've got it pretty easy being very close to the jury room here.

Solicitor, you may proceed.

MR. DANIEL: No further questions, Your Honor.

THE COURT: Mr. Verner, any cross?

MR. VERNER: Please. May it please the Court, Your Honor.

CROSS-EXAMINATION

BY MR. VERNER:

Q Is it Ms. Elfering or Dr. Elfering?

A Ms.

Q And again, your Bachelor degree was in what?

A In liberal arts with an emphasis on criminal justice.

Q And you work at the Dickerson Center?

A Yes.

Q Who are the common clients at the Dickerson Center?

A Children. We serve children.

Q How do they come to the Dickerson Center? Who refers them?

A Law enforcement.

Q So your primary client, I understand, is the child first. But law enforcement provides the cases or the investigations?
A Correct.
Q I assume you have testified in probably many courthouses before?
A Actually in General Sessions court. This court just two or three times. Family court lots.
Q And that was probably when you were a DSS investigator?
A Correct.
Q Did Minor , when she circled the butt, did she seem to -- it's fair -- I call it butt. Is that fair to say if you circled the butt on the child?
A Yes.
Q And she had the option of circling her breasts or her genital area? By genital I mean the vagina area.
A Yes.
Q And it appears that you were familiar with her general living arrangements prior to the video turning on. So you must have had some kind of pre-discussions with either Minor or with her mother?
A Her mother.
Q And were you privy to any kind of reports or of other documentation, or was just the mother was the first you learned the case?

A No. We're given an intake form from the Sheriff's Department which includes usually the first incident report that law enforcement generates.
Q So you do get some police report, and then you interview the mother and then you interview the child?
A Correct.
Q Did the mother indicate to you prior to your forensic evaluation any other abuse of the child --
A No.
Q -- or other siblings?
A No. And generally we don't ask questions. Our interview with the mother is to get consent to do the interview and to go over the developmental questionnaire about the child.
Q Is it fair to say that there's -- you were able to listen to the video being played for the jury?
A Yes.
Q Were you able to understand the child clearly throughout the tape?
A Throughout -- today when I listened?
Q Today.
A There were some areas that I couldn't.
Q It seemed to me your habit was to repeat certain parts of the allegations that the child made. Was that to make it more audible for someone watching the videotape or --

A To make it more audible and -- yes, to make it more audible.
Q Whenever you came across the child indicated a point that you thought was interesting to you, you would repeat that testimony to either emphasize or make sure it's clearly on the videotape?
A To make sure that I was understanding what the child was saying.
Q Now, my understanding is that you did not do any kind of -- that beyond the forensic interview of the child, that you didn't go interview witnesses or that type of investigation?
A No.
Q Your role in the case is basically just giving the child kind of a neutral place to disclose facts to a neutral party?
A Correct.
Q And you do have some training kind of in helping open up the child to make the child more --
A Yes.
Q Were you aware if there were any kind of medical examinations of the child?
A Not that I'm aware of.
Q You're not aware of whether the child was taken to see a doctor or a gynecologist, OB/GYN?

A I do not know.
Q It wasn't real audible for me, but there was something about the child falling over his knee or getting hit by his knee that she was reluctant to disclose. Was that clear to you what you -- what the nature of that injury was?
A No. She said something about his knee hitting her stomach area.
Q She seemed to think that was important though when she was telling it to you, didn't she?
A Yes.
Q Are you able to -- the nature of the allegation was just that I -- either I fell over his leg while it was out or he hit me in the stomach with the knee?
A I think it -- if I recall correctly, she said during a football game, or they were playing football or something.
Q And, in fact, she said when she got hurt she was scared to go play with him anymore. Is that a fair characterization?
A I did not hear that today. I'm not sure.
MR. VERNER: Thank you, Ms. Elfering. That State has any more followup questions.
THE COURT: Any redirect?
MR. DANIEL: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q You furnished this video and report to the Newberry Sheriff's Office?

A I did.

Q Did you refer Minor for any therapy services?

A I did.

MR. VERNER: Your Honor, that would be beyond the scope of any question I asked and question it's relevance in a criminal case.

MR. DANIEL: That's all the questions I have, Your Honor.

THE COURT: Well, I need to make a ruling on the objection. I'm going to sustain the objection and instruct the jury to disregard that last question and answer based upon lack of relevance and have it stricken from the record.

Thank you, ma'am, for your testimony. You can step down. And you're certainly free to leave the courthouse or you're welcome to remain with us, either way.

THE WITNESS: Thank you.

(Whereupon, the witness stepped down from the witness stand.)

MR. SCOTT: Minor , Your Honor.

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

MADAM CLERK: Give us your name.

THE WITNESS: Minor .

MADAM CLERK: Your full name.

THE WITNESS: Minor .

MADAM CLERK: Thank you.

THE COURT: Ladies and gentlemen of the jury, if at any time you have any difficulties hearing Minor , if you will just raise you hand, because at times she's been soft spoken. Speak up loud into the microphone. Okay, Minor ?

DIRECT EXAMINATION

BY MR. SCOTT:

Q Minor , but we're going to talk loud today, aren't we?

A Yes.

Q Okay. How old are you?

A Ten.

Q When did you turn 10?

A , .

Q What grade are you in?

A Fifth.

Q Fifth grade. What's the school?

A Conder Elementary Integrated Magnet School.

Q Conder Integrated?

A Conder Elementary Integrated Magnet School.

Q Conder Integrated Math Elementary School?

A Magnet School.

Q Where is that?

A In Columbia.

Q And you said Magnet School?
A Yes.
Q Do you see your mom here today?
A Yes.
Q Can you see her?
A (Nonverbal response.)
Q Do you see your grandmother?
A Yes.
Q Do you know where we are?
A Yes.
Q What is this place?
A The courtroom.
Q Who's that guy beside you?
A The judge.
Q And do you know why we're here?
A Yes.
Q Do you remember, when did you used to go see your grandmother?
A Like the week before I told my mom.
Q The week before you told your mom?
A Yes.
Q Do you go see your grandmother very much anymore?
A Sometimes, like one --
Q Louder.
A Just like I stay there for one. Like I go there once a

month, like --

Q Okay, girl. You got to repeat that. You got to say it louder.

A Like I go there once a month.

Q Once a month is when you used to go?

A No. It's just how it is now.

Q Okay. Now you go about once a month. Did it used to be that you would go more than that?

A Yes.

Q And I'm talking about before you told your mom how often would you go to your grandma in Whitmire?

A A lot.

Q A lot. What do you call your grandma?

A Now I just call her grandma.

Q You're too old to call her that old name you used to call her?

A Yes.

Q What did you used to call her?

A Granny Pooh.

Q Granny Pooh? And you love your Granny Pooh?

A Yeah.

Q What kind of stuff did you do when you went to go see Granny Pooh?

A I usually went outside and played, or I stayed inside, or go to D.D. house.

Q Say it louder, girl.
A I used to go outside, and maybe I stay inside. Before this happened I usually go to D.D. house.
Q D.D. ' house?
A Yes.
Q And that was at Whitmire?
A Yes.
Q Tell me about -- first of all, tell me about where your grandma lived in Whitmire.
A It's like -- you'll see a white house when you're in Whitmire. You won't see apartments unless you turn to the left.
Q She lived in apartments?
A Yes.
Q And you just talked about D.D. . Who's he?
A My cousin.
Q He's your cousin? Who's his momma?
A Tonya.
Q Tonya?
A Yeah.
Q Who else lives with D.D. and Tonya?
A Man.
Q Man, okay. Did you know Man? Did you know him pretty well when you used to go see your grandma?
A Yes.

Q Did you ever go to the house where Man, and Tonya, and D.D. lived?

A Yes.

Q Tell me about -- tell me about their apartment. How close was it to your Granny Pooh's?

A Like -- I think it was like five apartments to the left.

Q Five apartments to the left?

A Yes.

Q Could you walk there from your grandma's?

A Yes.

Q Did you do that sometimes?

A A lot.

Q Now, you said you played games when you went to go see your grandma in Whitmire. Besides D.D. who all did you play with?

A S.B. and my little sister, and sometimes McKenzie would be there.

Q Your little sister, S.B. and McKenzie?

A Uh-huh.

Q And S.B. is your cousin, you say?

A Yes.

Q When's the last time you saw her?

A Like -- I guess like two months ago she -- she came over to my grandma's house when I was there.

Q Is that a different S.B. than the one that was here today?
A It was the same person.
Q Oh, that's the same one?
A Yes.
Q And you would play with her in Whitmire?
A Yes.
Q Did all the kids come and play in grandma's apartment sometimes?
A We would like come like a little bit, but mostly at D.D. ' house.
Q Mostly at D.D. ' is what you said?
A House, yeah.
Q What now?
A It's like sometimes they'll be at my grandma's house, but mostly they met at D.D. ' house.
Q Sometimes at grandma's but mostly at D.D. '. Tell me one more time -- I don't know if I asked you. But what kind of stuff did you all do at D.D. ' house? What kind of games?
A Mostly we play hide and go seek and play on his Wii U.
Q Wii U?
A Yeah.
Q That's a video game system?
A Yes.

Q And who would be there when you would be at D.D. ' house?

A S.B. , my little sister, and Man, and Tonya.

Q S.B. , your little sister, Man, and Tonya?

A Yes.

Q What kind of games did Man play with you guys?

A He's mainly just play the Wii U with us.

Q Did he ever play hide and go seek with you?

A I think that was just once.

Q Once, okay. Did something happen that time when you played hide and go seek with him?

A Yes.

Q Will you tell us what happened?

A I guess S.B. was it, so --

Q Do you need a little glass of water or something?

A Yeah.

Q You do?

(Whereupon, witness receives water.)

A S.B. was like down the stairs. She had to pick up a picture that she actually had knocked down. And Man took me to the bathroom.

Q Man took you to the bathroom?

A Yes.

Q Minor can you tell us what happened in the bathroom?

A I'm kind of afraid to.

Q Don't be afraid. You've got to be brave today.
A Okay.
MR. VERNER: Your Honor, I would ask that -- that's a coaching statement and that's kind of corroborating, cheering on the victim to testify.
THE COURT: I agree. But just take your time Minor and just speak up loudly. Okay?
THE WITNESS: Yes, sir.
A He touched me inappropriately.
Q What was inappropriate? Can you tell me why it was inappropriate?
A Because he touched my heinie.
Q He touched your heinie?
A Yes.
Q Would you tell me was it on the outside of your pants or was it under your pants?
A Under my pants.
Q Minor , was it -- do you know the difference between inside and outside of something?
A Yes.
Q You do? Show me the outside of that tissue box. Show that to the jury the outside. What you understand the outside of the tissue box would be.
A The outside (demonstrating).
Q Can you put your hand on the inside of it?

A (Demonstrating).
Q Okay. So that's the difference between the outside and the inside?
A Yes.
Q When he touched your heinie did he touch the outside of it?
A Yes.
Q Did he touch any other part of it?
A Now that I think about it, no.
Q No? Minor what was -- where did he touch your heinie?
A In the -- inside of my pants.
Q Inside of your pants, okay. Once he touched the inside under your pants what part of your heinie did he touch was the question.
A Mostly the outside.
Q Mostly? What was the other part that he touched?
A Once he did it -- I felt pressure on my heinie, so I thought the inside.
Q Did it feel like he touched the inside?
A Yes.
Q What did you say, you felt pressure?
A Yes.
Q Can you help me understand what that meant?
A Like -- I felt like -- like -- I felt like a lot of --

I felt like hard.

Q You felt what?

A Hard. It felt hard.

Q It felt hard?

A Yes.

Q What does that mean? Did it hurt you, or how did it feel?

A Weird.

Q It felt weird. Can I ask you a silly question? Do you know sometimes after you go number two and you have to use toilet paper on the inside of your heinie? Do you know about that?

A Yes.

Q I'm trying to ask, did his hand go where the toilet paper goes on the inside of the heinie?

A It felt like it.

Q That's how it felt to you?

A Yes.

Q And you said it felt like pressure?

A Yes.

Q And what do you mean it felt hard?

A Like I could feel like his --

THE COURT: Speak up, please, Minor .

THE WITNESS: Yes, sir.

A Like I felt like a lot of pressure like -- like it felt

cold.

Q The pressure felt -- did you feel the pressure on the inside of your heinie or the outside?

A Like it felt like the question that you asked me.

Q Yeah. The toilet paper thing?

A Yeah.

Q It felt like what?

A Like when I'm wiping my heinie.

Q If felt like when you wipe your heinie? Okay. How many times did that happen where he put his hand on the inside of your heinie?

A I think twice.

Q I'm sorry.

A Twice.

Q You talked about the one time was in the bathroom?

A Yes.

Q And do you know how old you were when that happened?

A Eight.

Q And do you remember where the other one happened?

A I kind of like forgot.

Q What, girl?

A I kind of forgot.

Q Do you remember about how old you were?

A Yes.

Q How old?

A The second time was like one month before I turned nine.
Q One month before you turned nine was the second time?
A Yes.
Q So you were eight both times it happened?
A Yeah.
Q The first time was in the bathroom at Tonya's house. Where were you the second time it happened?
A It happened in her bedroom.
Q In her bedroom?
A Yes.
Q And who did it that time?
A Man.
Q Was anybody else in the room when this happened?
A It was like kids there, but they was mostly downstairs.
Q So there were kids in the apartment but they were downstairs?
A Yes.
Q But who was in the room when you were in the bedroom with Man? Who else was there?
A I know that Tamara was going to ask me a question, so she came in.
Q So she came in after it happened?
A Before.
Q Before. And what was her name?

A Tamara.
Q Tamara. And then did Tamara leave, or what happened next?
A She left.
Q And then what happened?
A It happened.
Q It happened? What -- I got to -- could you please tell us one more time what happened that second time? Because we haven't heard about that one yet.
A It was --
Q What, Minor ? What did you say?
A It's kind of hard to get it out.
Q It's hard to get it out?
A Yeah.
Q Do you want to take a break?
A Yes.
Q Take a little break?
A Yeah.
THE COURT: Okay. Mr. Foreman, ladies and gentlemen of the jury, we're going to take a -- it's time to take an afternoon break, probably about 10 minutes or so. I think we've got a couple smokers on the jury. I'm not advocating or encouraging you to smoke, but if you want to take a smoke break for those smokers on the jury, feel free to. Madam Bailiff, if you would assist in having someone escort them.

And we'll get you back out shortly after the break. Again, no discussion.

(Whereupon, the jury exited the courtroom at 2:55 p.m.)

THE COURT: Take her out for just a second, please. And, of course, no discussion about her testimony. I know you won't.

(Whereupon, witnessed stepped down from the witness stand.)

THE COURT: Ms. Simms, again, I'm going to say this. I can understand how difficult this is for you and how emotional. But I instructed everyone in this courtroom not to get up until the jury was completely out. Do you remember that instruction, ma'am?

MS. SIMMS: Yes, sir. I apologize.

THE COURT: Again, no one is to move, including lawyers, until the jury is out. If there's any further violations of my order I'm going to hold you in contempt and put you in jail. Because that is a display -- again, I understand you're the mom and this is difficult, but this is a display that can be prejudicial to the Defendant, and I don't want it to happen again.

All right. We'll be in recess about 10 minutes.

(Whereupon, a recess was held from 2:55 p.m. to 3:10 p.m.)

THE COURT: Before we bring the child out let me just

-- you call can have a seat, and let me just kind of offer another explanation to the mother. The reason why I'm so adamant about the conduct, your conduct, or anybody else's conduct for that matter, is that we -- we do not want a verdict based upon emotion. So if we create, either intentionally or otherwise, an emotional situation -- I mean, this is emotional anyway just because of the allegations. But if you do things that we can refrain from then that lessens the emotion, because we want a verdict based upon the facts and evidence and law in this case. We don't want the jury to return a verdict as based solely on emotion. So that's why I'm so adamant about the conduct that must take place in this courtroom. I want a verdict that is fair, just and reasonable to both sides based upon the facts and evidence and law in this case and on nothing else.

Madam Bailiff, if you'll bring the child out first, please.

MR. SCOTT: Judge, we spoke a little bit. I think she was just on autopilot.

THE COURT: I understand. It's not that I don't understand. Okay?

MR. SCOTT: Yes, sir.

THE COURT: I want you to know that.

(Whereupon, witness returns to the witness stand.)

THE COURT: Are you ready to get started?

THE WITNESS: Yes, sir.

THE COURT: Are you going to speak loud?

THE WITNESS: Yes.

THE COURT: Madam Bailiff, if you'd bring the jury out, please.

(Whereupon, the jury entered the courtroom at 3:10 p.m.)

THE COURT: Let the record reflect the jury is back in. Solicitor, are you ready to proceed with your direct examination?

MR. SCOTT: Yes, Your Honor.

Q Minor , we talked about the one time in the bathroom in Whitmire, and then we were talking about another time that happened in Tonya's bedroom. Would you tell us about that time, please?

A He...

Q Let me ask you. Who was in the bedroom?

A Man, me, and before Tamara was there, but she left.

Q You got a little bit more quiet on me. You were louder before. Tell me, you, Man and who?

A Tamara.

Q Tamara. And what happened after Tamara left?

A He forced me to...

Q Minor , I can't hear you, girl. What happened after

Tamara left?

A He forced me to pull my pants down.

Q He forced you to pull your pants down?

A Yes.

Q Minor , did he touch you that time?

A He was just looking at me.

Q Do you know how long he sat there looking at you?

A It was just a couple of minutes and I just left.

Q Did he say anything to you?

A No.

Q Did you say you were going to tell on him?

A I was too afraid to.

Q Did he say anything about telling?

A The first time, yes.

Q The first time in the bathroom?

A Yeah.

Q What did he say?

A If I tell -- if -- he would tell on me.

Q He was going to tell on you?

A Yes.

Q For doing what?

A Like it was a time when I was playing hide and go seek. I was wearing, like, the pants that tied to the back and it got caught in the blanket when we was playing.

Q Wait a minute. I heard part of that. You were playing

hide and go seek with pants that tied in the back?

MR. VERNER: Your Honor, I object. Respectfully, I understand she's a little bit hard to understand, but it's improper for the Solicitor to repeat the comments, and it's getting to be almost every time. And I understand she's hard to understand. But my understanding is it's improper for a lawyer to repeat the answer for the witness.

THE COURT: Well, maybe in some situations. I'm going to allow it. But make sure, Minor , when Solicitor Scott repeats what he thinks that you said, make sure he says it correctly, and if he doesn't, then you tell him. Okay?

THE WITNESS: Yes, sir.

THE COURT: At this point in time I'm going to overrule the objection.

Q And, Minor , if you talk loud enough I don't have to do it. So talk loud. Tell me what happened with the pants.

A They were like pants that can tie to the bed. And then I got down and my pants got caught to the blanket and like got pulled down.

Q They fell off of you?

A Uh-huh.

Q That was an accident that time?

A Yes.

Q And that's what Man said he was going to tell on you about?

A Yes, and I kind of got afraid.
Q You got afraid, you say? Afraid that he would tell on you?
A Yeah.
Q Were there any other times anything happened? Were there any other times when he touched you?
A Yes.
Q When was that?
A It was inside.
Q Inside where?
A Like inside D.D. ' house.
Q D.D. and Tonya and Man's house?
A I think. And once it was like -- we was like -- everybody was outside. We was just having fun and we was listening to music, and then S.B. 's speaker kind of got broke and -- and --
Q Wait a minute. Everybody was outside and S.B. 's speaker got broke? Is that what you said?
A Yeah. It was like it wouldn't work as well as it used to do.
Q What was that last thing you said?
A It wasn't working like it was before. Like last time we was there it was working well, but that time it didn't.
Q What happened after her speaker broke?
A She took it to Man to see if he could fix it. And he

asked if he could like see me because he lied that –

Q S.B. 's speaker broke and she took it to Man for him to fix?

A Yeah. He was like it was not connected to the Bluetooth.

Q He thought what?

A It wasn't connected to the Bluetooth or something. And he asked to see it, and that's when he -- it happened again.

Q Here's what I heard. S.B. 's speaker broke. She took it to Man to fix. He thought it was something with the Bluetooth.

A Yeah. And it was like he called me because he lied and said I was good at technology when I wasn't.

Q So he thought you were good at technology, but you're saying you're not?

A Yeah. It was just -- I think it was just a distraction so he could do it -- do it to me again.

Q You think it was a distraction?

A Yes.

Q Let me be clear. And like the Judge says, if that's not what you said you've got to repeat -- you've got to correct me. S.B. 's speaker broke. She took it to Man for him to fix.

A Yes.

Q And he said he felt the problem was with the Bluetooth

--

A Yeah, that was it.

Q And so he said Minor needs to come help me because she's good with technology?

A Yes.

Q And did you go to see him to help look at the radio?

A Yeah.

Q Where did -- was it S.B. ?

A It was S.B. 's speaker, yeah.

Q Where did S.B. go after you went to go look at the speaker?

A She went back outside.

Q She went back outside. So what did Man say when he asked for you to come look at the speaker?

A He did like a hand movement that he does mostly all the time.

Q I'm going to come over here and see if I can hear you. Say that again.

A He did a hand movement that he does it like a lot.

Q A hand movement that he does a lot?

A Yeah.

Q Can you show us what that is?

A It was like -- it was like pulling on like his pants like that or --

Q He's pulling on his pants?

A Yeah, like this (demonstrating). I just got terrified.
Q That terrified you when he did that?
A Uh-huh.
Q Had you seen him do that hand movement before?
A Yeah.
Q And what did that hand movement mean to you?
A I thought he would like pull his pants down or something.
Q Had he done that hand movement to you before?
A Yes.
Q And you're saying you thought that meant for you to pull your pants down?
A Yes. That's why I got so terrified.
Q And did you pull your pants down?
A No.
Q No?
A Because after that I kind of like -- I got like -- at that time I was like not that afraid to say no.
Q You said no that time?
A I was like kind of afraid, but not as much as last time.
Q Was that the last time anything happened?
A Yes.
Q But let me get it straight. He did a hand movement that you thought meant to pull your pants down but you

didn't do it?
A No.
Q So we talked about three different times; is that right?
A Yes.
Q But only one of them he touched you; is that right?
A It was more than once.
Q What now?
A It was more than once.
Q Well, we talked about two times where he asked you to pull your pants down.
A Yes.
Q But the one time in the bathroom when he touched you. Tell us about another time when he touched you?
A It only had -- when he pulled my pants down, it only happened once. The touching was like twice.
Q Well, you've only told us about one touching time.
A Oh, that was like -- the first one was when I pulled my pants down. The second one was like Man touching me inappropriately. Like the third one was like I'm kind of rusty on it.
Q You're kind of what?
A Kind of rusty on it. Like S.B. , her speaker was broken, so I got confused.
Q That's what I just heard. But did he touch you that

time?
A Yes.
Q That's what I'm trying to get at. Can we talk about that a little bit?
A Yes.
Q You're a little bit rusty on that time, you say?
A Uh-huh.
Q Well, what we just talked about was he did a hand movement. But I thought you said you didn't pull your pants down that time, did you?
A It was like touching inappropriately.
Q Oh, okay. Was that after he asked you to take your pants down?
A Well, it was like second -- first time that was like happening, like the second or third.
Q The order it happened isn't so important, Minor , but I just want to make sure we have these different times we talk about. You talked about the one time in the bathroom when we were playing hide and go seek and S.B. went downstairs and he touched on the inside of the heinie.
A Yeah.
Q And then there was another time in the bedroom and he asked you to pull your pants down?
A Yes.
Q Did he touch you that time?

A No.
Q No, okay. And then you're saying there was another time when S.B. had a speaker that was broken and she asked Man to fix and Man had you come in there to look at it. And I remember you said he did a hand movement for you to pull your pants down. What else happened?
A I think -- So I think I -- I think we went upstairs. Or I get it confused.
Q Well, don't -- I only want you to talk about stuff you remember. If you remember it happening. If you don't know, then we don't want to talk about it.
A Okay.
Q Do you remember him touching you that time?
A No.
Q No?
A Huh-uh.
Q So just one time he touched you on the inside of your heinie?
A Yeah.
Q And that was in the bathroom that time?
A Uh-huh.
Q Why didn't you tell your mom about this when it happened?
A Because I was too afraid to.
Q What were you afraid would happen?

A I was afraid he would spread lies that wasn't even true.
Q You were afraid of what?
A He was spreading lies that weren't true.
Q He would spread lies that weren't true?
A Yes.
Q Were you afraid you'd get in trouble?
A Yes.
Q Are you embarrassed about this?
A Kind of right now but not so much.
Q Not so much embarrassed?
A Huh-uh.
Q Okay, good. Has anyone else ever touched you inappropriately?
A No.
Q After that last time when he touched you on the heinie, in the heinie, what did you tell your mom about going up to Granny Pooh's house?
A I told my mom that Man had been --
Q I can't hear you. What did you say?
A I told my mom that Man has been inappropriately touching me.
Q So you said you didn't want to go there anymore?
A Huh-uh. Not for a while.
Q And what made you finally tell your mom you didn't want

to go up there anymore?
A My little sister. I asked her a few questions.
Q You asked your little sister a few questions?
A Yeah.
Q And that made you decide to tell your mom that you didn't want to go?
A I told her about what -- about Man inappropriately touching me.
Q You told your sister about it?
A No. I asked her like if someone was been doing something to you would you tell mom or would you keep it to yourself and she said I would tell my mom.
Q Okay. Is that your little sister?
A Yes.
Q So you said that if somebody was doing wrong would you tell mom or keep it to yourself? That was your question to her?
A Yes.
Q And then after she told you what she would do you decided to tell your mother?
A Yes.
Q How did it feel to finally tell your mom that?
A I felt comfortable that I would be able to trust her with everything.
Q You felt confident you could trust her?

A Yes.
Q Then do you remember speaking with the policeman?
A Yes.
Q And do you remember him showing you some pictures of people?
A Yeah.
Q Let me show you -- this is -- we call this State's No. 2. But do you remember seeing this?
MR. SCOTT: Walter, could you get the lineup?
Q Do you remember seeing that?
A Yes.
Q Do you remember seeing that?
A Yes.
Q And do you remember picking somebody out of that -- those pictures? Somebody you recognize?
A Yes.
Q And how did you show the officer who you were picking?
A I checked the one that I --
Q You put a checkmark by it?
A Yes.
Q And who was that person you put a checkmark by?
A Man.
Q Man? Then do you remember going to speak to a lady at a place called the Dickerson Center and she made a DVD of your all's talk?

A Yes.
Q And you remember this silly picture?
A Yeah.
Q No. 3. State's No. 3. And who put that circle right there?
A Me.
Q And what do you call that part that you circled?
A My heinie.
Q And why did you circle that part?
A Because Ms. Trina told me which part where he touched me, so I circled it.
Q Okay. You know, there's really no bad words in this courtroom right now, so don't be embarrassed about that. So that's a heinie is what you call that?
A Yes.
Q Do you have another name for the front part? Just something different?
A Yeah.
Q Was that part ever touched?
A Outside my clothes, uh-huh.
Q What?
A Outside my clothes.
Q Outside of your clothes?
A Uh-huh.
Q But not under the clothes the front part wasn't

touched?
A No.
Q Just the back heinie?
A Uh-huh.
Q There was a time -- there was a story about getting hit with Man's knee.
A Yeah.
Q What as that? Was that just you all playing rough?
A Yeah.
Q Tell us about that. That was -- we had some questions about that on the video. What was that all about?
A The video? Oh, we were just talking about the people that I knew and people -- She was like trying to make me feel comfortable and I would tell her.
Q Are you talking about during the interview? But I'm asking about do you remember a time -- I think maybe you were playing rough with Man and his knee hit you somewhere.
A Yeah.
Q What was that? Tell us that story?
A So Sunshine, me and Tamara, we was just playing around and suddenly we -- I was kind of running around and accidently got hit with Man's knee and I start feeling a pain near my private spot.
Q You, Sunshine, and Tamara were playing running around, and what happened next?

A It was just an accident and I got kind of hit. Got hit with his knee.
Q On your private?
A Yeah.
Q Your front private or your back private?
A Front private.
Q Tell me how his knee ended up hitting your front private.
A His leg was like on the thing and I accidentally ran into it and I got hit in the front private.
Q His leg was where?
A Like he was standing with his leg on like and I kind of got hit.
Q Was that kind of an accident type thing on that one?
A Yeah.
Q Was it something different? Tell me what happened. You all were playing and he had his leg up and his -- your private hit his knee?
MR. VERNER: I don't mean to interrupt, but the picture of the naked child has been up now for the last 15 minutes. I mean, if he's going to go back to it. But I don't know that it needs to be up until cross.
THE COURT: Mr. Bentley is taking it down.
Q Minor , the knee thing. Tell me how that happened again? Man's knee hit your private. How did that happen?

A It was like me and Tamara and Sunshine was just doing gymnastics around and I accidently got hit with his knee. I kind of think it wasn't an accident, because I know -- I think he knew I was going to run past him.

Q Okay. You don't think it was an accident, but it was his knee that hit his front private, but it was on the outside of your clothes?

A Yes.

Q How did that feel?

A Really painful.

Q Did he say anything to you about that?

A No.

Q Did you miss going up to your grandmother's house?

A Yes.

Q Did you miss going to see Tonya and D.D. ?

A Yes.

Q Did you get in a fight with any -- before -- before the touching and all that happened did you used to have fun with Man?

A Yes.

Q Minor , I want you to do one more thing for me and I'm going to sit down. Will you point to Man for me?

(Whereupon, witness identifies Defendant.)

MR. SCOTT: Thank you, Minor .

THE COURT: Let the record reflect that she pointed in

the direction of the Defendant and Mr. Verner.

Mr. Verner, do you have any cross-examination?

MR. VERNER: May it please the Court, Judge.

CROSS-EXAMINATION

BY MR. VERNER:

Q Hello, Minor .

A Hello.

Q Is it Minor or Minor ?

A Minor

Q Minor , if you don't mind, I'm going to ask you questions from over here so anybody can hear you. Okay?

A Okay.

Q When is your birthday?

A , .

Q Good. Now, do you remember going to a party at HiWire last year?

A Yes.

Q Who's birthday was that?

A I think it was when my little sister's or -- I kind of get confused. I think it's my little sister's.

Q Your little sister's?

A Yes.

Q Now, what is your little sister's name again?

A S.S. .

Q Was Man at that party?

A Yes.
Q And that was last year, wasn't it? When is your sister's -- could it have been around Valentine's day of last year?
A Yes.
Q And did you all play?
A Yeah. I was like playing mostly with D.D. and S.B. .
Q And who took you to that party?
A My mom.
Q Now, I did have a question. You indicated for Mr. Scott that you had some incident where the bed had pulled down your pants.
A Yes.
Q Do you recall getting in trouble with D.D. -- for behaving improperly with D.D. ?
A No.
Q You didn't get in trouble?
A No.
Q Mr. Washington, Man, didn't threaten to tell your mother about improperly playing with D.D. ?
A I think that never happened.
Q When you were playing hide and seek you said at some point he took you into the bathroom?
A Yes.

Q Who was -- were the other kids playing with you, Minor ?

A Yes. S.B. was it and the rest of us were hiding.

Q The rest of you. Who else was there?

A D.D. , S.B. , my little sister and I think that's all.

Q Typically who were the kids that would go over there and play at Ms. Tonya and Man's home?

A Mostly S.B. and me and my little sister.

Q And your little sister?

A Yes.

Q And D.D. ?

A Yeah.

Q Were there any other kids in the neighborhood who would play?

A Sometimes McKenzie would be there.

Q What about the little girl we met earlier today?

A That's S.B. .

Q S.B. . She would sometimes be other there, too, wouldn't she?

A Yeah.

Q And these kids would have -- would their moms come over and play with them, too?

A Mostly Tonya would be outside on the porch talking to my mom and my grandma.

Q This apartment had a front porch or a back porch on it, too, didn't it?
A It has like a back -- like it was like in the front.
Q In the front?
A Uh-huh.
Q Was it like concrete on the ground or was it kind of built up in --
A It had concrete on the sidewalk, but it was brick.
Q And the mother's would sit out there sometimes and talk?
A Yes.
Q Did you know Ms. Josephine next door?
A Yes.
Q She's your great aunt?
A Yes.
Q Would she be over there sometimes, too?
A Mostly I kind of don't remember.
Q You don't remember whether she was or don't?
A Uh-huh.
Q I think for Mr. Scott you said one time you touched inappropriately. He took you into the bathroom while the kids were playing hide and seek, right?
A Yes.
Q Were you all hiding or were you all taking a break from the game or was somebody --

A I was just trying to find another hiding spot.
Q What's the incident about getting hit? You got hit by Mr. Washington with his knee in your privates?
A It was like straight out. I was just about to do a cartwheel and I accident ran into him.
Q I understand that. Was this inside the home or was this out in the playground, or where was --
A Inside the home.
Q Well, where were you doing the cartwheel?
A In Tonya's room.
Q In Ms. Tonya's room?
A Yes.
Q Were there other kids there while you were --
A Yes.
Q Who else was with you?
A Sunshine and Tamara.
Q But it sounds to me like you were saying that he did that to you kind of intentionally. Is that how you took it?
A Yeah, because I was like running and suddenly he just put his leg over me and I got hit.
Q Was he standing, walking or sitting, or do you remember?
A He was standing.
Q And did you feel like he had touched you inappropriately at that time?

A Kind of, yes. It felt like a great pain in my front private.

Q Did you get in trouble with your sister hiding before going to visit your dad?

A My real dad or my step-dad?

Q Your real dad.

A Got in trouble?

Q Did you get in trouble from times for hiding in the closet with your sister not wanting to go see him?

A I never knew that. I was just hiding in there because we were playing hide and go seek.

Q Did somebody get angry because you all were hiding?

A Yeah.

Q But you were just playing a game at that point though?

A Yes.

Q Who was hiding with you?

A My little sister and I.

Q Back at Ms. Tonya's house who were some of the adults who would have been there?

A Man, and sometimes Tonya would walk in and out.

Q Tonya would walk in and out?

A Yeah, like go in the kitchen, going back outside.

Q Were there some other moms that you might remember?

A I think that's all.

Q You don't remember any other moms when you were ever

playing over there? You don't remember S.B. 's mom?
A Yeah.
Q So she would be over there sometimes, too?
A I think she would be outside.
Q And the door to the outside, was there like a regular door that opened and closed, or was there like a sliding glass door?
A It was like an open and close door with a screen in the front.
Q With a screen door. Hold on one second, Minor .
Minor , can you tell me who you spoke to prior to testifying today? Before you got in that chair right there have you spoken to other people about testifying today?
A Testifying?
THE COURT: You may want to explain testifying.
Q You heard the Judge tell you -- talk about testifying, or that you would testify? That you would tell the truth about what happened from the -- where you are?
A Uh-huh.
Q Okay. Sometimes people call that testifying. It's just that you tell people what happened. Did anybody go over your testimony with you today, what you're telling us? Did you have a chance to practice it before you came here?
A Yes.
Q Today or yesterday?

A Yesterday.
Q Yesterday? Did anybody suggest to you the word appropriately or inappropriately? Where did you learn that word from?
A I don't know what you mean by that.
Q I thought it was a very big word you used, inappropriately or appropriately. Is that a word you already knew or just did somebody suggest that word to you?
A It's a word that I already knew. We learned it in school.
Q They teach you at school about good touching, I guess, or bad -- appropriate touching or inappropriate touching?
A Yeah, in DARE.
Q In DARE?
A Yeah, it's like to resist drugs and violence.
Q Good. So at school sometimes they talk to you about that you're able to go talk to an adult when inappropriate things happen, right?
A Yes.
Q Do you recall when you spoke to your dad about what happen?
A Which one?
Q Your real dad.
A I was in the car and my mom told my real dad.
Q Do you remember, was that shortly after you told your

mom or was it a little while later?
A It was a little while later.
Q When you were talking about what you were going to say today who was going over that with you; your mom, or was it somebody that you -- one of the lawyers or prosecutors?
A You mean like?
Q When somebody asked you about what you would say today, who went over that with you? Who helped you?
A My therapy teacher.
Q No. I'm talking about the -- you said you had practiced last night about what you were going to say today.
A Oh, no. I just thought you meant like the things Mr. Scott told me to be brave, tell the truth and --
Q Okay. And was that yesterday then?
A Yeah.
Q So Mr. Scott talked to you a little while yesterday before you testified and told you to be brave and that he was going to ask you questions?
A I think that was a little bit after we came in the court. That was like a little bit after, I think.
Q Was that yesterday or was that earlier than yesterday?
A It was like yesterday.
Q Has your mom talked to you about this -- what's going on today? Have you discussed this with your mother before?
A My mom always says just tell the truth and be brave.

Q Good. But prior to today had anybody told you what kin of questions they were going to ask you or gone over your story with you?

A Yes.

Q I'm just asking who. I just wanted to know who you had spoken to about this before. Had you spoken to Mr. Scott before?

A Yes.

Q Now, Mr. Scott's got another lawyer helping him. The gentlemen with the beard in the middle. Have you gone over it with him before?

A I was talking about it.

Q So you had a chance to kind of speak to him before you spoke to him today? Today is not the first day you ever met him, is it?

A No.

MR. VERNER: Thank you, Minor . I think if Mr. Scott has anymore questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Your Honor, what kind of grades do you make?

A Usually I get As and Bs.

Q And you go to a Magnet School?

A Yes.

Q So you know the word appropriate, don't you?
A Yes.
Q They talk about that in DARE? DARE is about not doing drugs, right?
A And resisting violence.
Q So they talk about what's appropriate and what's not appropriate in DARE?
A Yes.
Q And that lawyer was just asking you about practicing and everything?
A Yes.
Q You sat right in that seat yesterday, didn't you?
A Yes.
Q And he was in here, too, wasn't he?
A Yes.
Q And the Judge was there?
A Yes.
Q And we were all in here. And so, you've been in here before. And you spoke with me, right? Haven't you spoken with me before?
A Yes.
Q Did I get you some homework last night?
A Yes.
Q What was my homework?
A To be brave, always tell the truth and work on my

voice.

Q Okay. Have you said anything different today than what you've said on that video that day?

A It was a little bit about the speaker. That was a little bit that I could tell.

Q You tell them the speaker part the first time today?

A Yes.

Q But you understand the importance of telling the truth here today, right?

A Yes.

Q And nobody told you what to say here today, did they?

A No.

MR. SCOTT: Thank you, Minor .

THE COURT: Recross?

MR. VERNER: No, Your Honor.

THE COURT: Thank you, Minor . You can step down.

(Whereupon, the witness stepped down from the witness stand.)

MR. SCOTT: Your Honor, the State rests.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, the State has indicated that they are resting their case and this is a good time to take another break.

Let me go ahead and just explain one thing to you, that -- well, I'll explain that to you in a little bit. What I want you to do is just go back to the jury room. You can

take you another about 10 minute break or so, and then we'll proceed forward. I remind you once again, no discussions among yourselves about this case. And I'll bring you back out shortly.

(Whereupon, the jury exited the courtroom at 3:53 p.m.)

THE COURT: Mr. Verner, we had a conference in chambers and you had indicated that you were thinking about putting up a case. Is that still your plan?

MR. VERNER: It is, Your Honor. And my inclination now is that the Defendant, Mr. Washington, will likely testify. We've become kind of accustomed to the Court going over the Fifth Amendment rights --

THE COURT: Right, and I'm going to do that. And I'm just -- because as I had indicated in chambers, it was my desire at least to get all the testimony in today and then we'll argue and charge -- because I know you've got some appropriate motions to make. But we get all the testimony in and then argue and charge tomorrow. So what I'm going to do is I'm going to bring the jury back out and give them the opportunity if they need to make any phone calls, to make whatever arrangements, because they are going to be staying a little bit longer than normally. And then we could -- I'll hear your motion or motions, certainly advise Mr. Washington as far as his rights to testify or not testify, and then we can go forward.

MR. VERNER: Yes, and I would -- is now my opportunity to move for a directed verdict or probably when the jury comes back in.

THE COURT: You can go ahead and put your motion on the record now before we bring the jury back out. That will be fine.

MR. VERNER: Yes, sir. At this point I would move for a directed verdict that the State has not produced evidence to support the charge. The child, at best, said it felt hard, or butt, but there was no -- other than the -- just what I consider fairly vague, you know, it felt like maybe it was in my butt or it was hard, I would argue does not reach the matter of law and we would ask for a verdict.

THE COURT: I understand. Anything on the record in opposition, Solicitor?

MR. SCOTT: Yes. Just in a light move favorable to the state, obviously under the age of 11 the sexual battery law says intrusion however slight and she was very clear on what the inside of her heinie meant as opposed to the outside. And again, she talked about the pressure and talked about the same kind of feeling as when she, I guess, would wipe. And I think the evidence taken in a light most favorable to the State there was evidence of intrusion.

THE COURT: And you guys very well know, what I'm concerned about is the existence of any evidence. I'm not

concerned with the weight. And I do find that there is the existence of evidence to send this case to the jury.

Let me -- we'll bring the jury out and explain to them that we're going to go a little later. Give them an opportunity to make whatever phone calls they need to make. And we can proceed forward. Madam Bailiff.

THE COURT: Sometimes I don't give enough time for the break and then other times I give too much, right? While we're waiting, let me see the lawyers for a sec.

(Whereupon, a sidebar was held.)

(Whereupon, the jury entered the courtroom at 3:59 p.m.)

THE COURT: Ladies and gentlemen, what I want to do is finish all of the testimony today. The Defense is going to put up a case and have several witnesses testify, and I want to accomplish that today. So that would leave us for tomorrow the lawyers closing arguments and the Court's charge. But in order to accomplish that, that's going to mean that we're going to probably be here probably a couple hours more. What I want to do is give you an opportunity if any of you need to make a call home to make whatever arrangements you need to make. I don't know if you do, but if you need to let family members know that you're going to be here potentially a couple more hours, then I want to give you that opportunity to do that. I would imagine that your

cell phones are in your cars, or do you have your cell phones with you? Let me ask you, raise your hand if you need to make a call.

(Whereupon, jury members raise hands.)

THE COURT: There are two. Then what I'm going to do is ask the two to go with Clerk Bowers down to her office and you can use her phone to make the call. The rest of you, if you'll just go back to your jury room. But I think -- I think this is going to be better by just getting all the testimony in today and then just leaving the closing and court charge tomorrow. So appreciate your patience, your understanding. And just go back to the jury room. The two of you all follow Clerk Bowers.

(Whereupon, the jury exited the courtroom at 4:03 p.m.)

THE COURT: We're just going to be in recess and we won't do anything else until we get all the jury back in.

(Whereupon, a recess was held from 4:03-4:21)

THE COURT: Mr. Washington, if you'll please stand and let me give you -- advise you of your rights.

MR. VERNER: Step on up.

THE COURT: You can stay back there. That'll be fine. Madam Clerk, would you swear Mr. Washington in, please.

CARROL WASHINGTON, having been first duly sworn, testified as follows:

THE COURT: Mr. Washington, I'm going to at this time

explain to you certain of your rights, and I'm sure Mr. Verner has gone over these, but I need to. Okay? If you do not understand anything that I say, please let me know. If you want me to explain anything in more detail, please let me know that as well. Do you understand, sir?

THE DEFENDANT: Yes, sir.

THE COURT: We've now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States. This amendment states in part that no person shall be compelled in any criminal case to be a witness against themself. This means that you cannot be required to testify in this case. You certainly have the right to testify on your own behalf. However, no one, including myself, can make you testify. This is a personal right and no one can waive this right except you. If you decide to testify you'll be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement, or for crimes punishable by imprisonment for more than one year and this court determines that the probative value of admitting that evidence outweighs the prejudicial effect to you, the Solicitor would be able to introduce your record, if you

have one, to attack your credibility. If you decide to testify, this decision on your part much be freely, voluntarily and intelligently made with the knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify. However, if you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. You may talk with your lawyer, which I'm sure you already have. Your family, friends, anyone. But the final decision will be left entirely up to you. Have you understood what I've explained to you, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about what I've explained to you?

THE DEFENDANT: No, sir.

THE COURT: Do you need any more time to talk with your lawyer, your family or friends about this decision about testifying?

THE DEFENDANT: No, sir.

THE COURT: Have you made a decision whether or not you'll testify?

THE DEFENDANT: Yes, sir.

THE COURT: And what is that decision, sir?

THE DEFENDANT: I'll testify.

THE COURT: You're going to testify?

THE DEFENDANT: Yes, sir.

THE COURT: Was that decision made freely, voluntarily and intelligently?

THE DEFENDANT: Yes, sir.

THE COURT: And it's made with the understanding of the protections afforded to you by the Fifth Amendment to the Constitution?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you very much, sir. You can go back to your table.

(Whereupon, the Court was in brief recess.)

We're going to start the Defense case. And I don't know if I made a finding on the record or not, but I do find that Mr. Washington has freely, voluntarily and intelligently, with assistance from counsel, as elected to testify with full knowledge of the protection and guarantees afforded under the Fifth Amendment to the constitution.

Madam Bailiff, if you'll bring the jury back out, please.

(Whereupon, the jury entered the courtroom at 4:21 p.m.)

THE COURT: Let the record reflect the jury is back in.

Ladies and gentlemen, one comment I need to make concerning cell phones. I understand that some of you may have cell phones on you, and tomorrow when you come in be sure to leave them in the car. The reason I say that is sometimes we think we've cut the cell phone off and we haven't, and if it were to go off while we're in the trial then it's very disruptive. Even if you put it on vibration sometimes some phones the vibration makes a racket. So I'm just requesting that all of you just leave your cell phone in the car before coming into the courthouse.

Mr. Verner, are you ready to proceed sir?

MR. VERNER: We are, Your Honor.

THE COURT: Okay. You may do it.

MR. VERNER: Your Honor, I call Candice Hopkins.

CANDICE HOPKINS, having first been duly sworn, testified as follows:

MADAM CLERK: Please state your name for the record.

THE WITNESS: Candice Hopkins.

DIRECT EXAMINATION

BY MR. VERNER:

Q Ms. Hopkins, if you don't mind, I'm going to ask you questions from over here. Okay?

A Okay.

Q Just so that -- just to make sure that I can hear your answers, and that way everybody can hear your answers.

A Okay.
Q Ms. Hopkins, I apologize, but may I ask you how old you are?
A Thirty-four.
Q Thirty-four?
A Yes.
Q And where do you live?
A I live in Whitmire.
Q Whitemire?
A Yes.
Q How long have you been in the Whitmire community?
A My whole life.
Q Did you go to Whitmire High School?
A Yes.
Q Where do you live in Whitmire?
A I live off of -- it's called .
Q Do you live -- are you familiar with this apartment complex?
A Yes. I used to stay there and my grandfather used to live there.
Q So you're familiar with it?
A Yes.
Q That's not where you live?
A No, not now.
Q Not anymore?

A No, sir.
Q About how far away do you live from that --
A Maybe a mile, not a mile.
Q Is it an apartment complex or is it a neighborhood? How would you characterize it?
A It's an apartment complex.
Q Do you know how many roughly apartments there are in that complex?
A Maybe five buildings, but each building has like maybe two or three sections to it.
THE COURT: Speak up a little bit, ma'am.
A Maybe five buildings, but each building has separate -- like different sections to it.
Q I believe you said there could be two or three different families in each?
A Yes.
Q Now, the people who lived there, are they typically retirement age older people, or are there younger people, or is it a mix, or how --
A It's a variety, yes.
Q Are there plenty of children there?
A Yeah, there are a couple.
Q There are some children in the area. Do you know Carrol Washington?
A Yes, I do.

Q How long have you known Carrol Washington?
A Roughly, I would say, three or four years. I'm not really sure. I'm not good with time. But ever since he's been going with Tonya.
Q You said up to four years?
A Yes.
Q Do you know the child Minor ?
A Yes.
Q And how do you know Minor ?
A She's my little cousin.
Q You're related to her by blood?
A Yes.
Q So on her father's side or on her mother?
A Her mother.
Q Are you first cousins or more distant than that?
A No, probably more distant than that.
Q How long have you known the mother?
A My whole life.
Q Are they also from the Whitmire area originally?
A Yes. Yes.
Q Now, do you have children yourself, Ms. Hopkins?
A Yes, I have two.
Q Boys or girls?
A Two girls.
Q How old are they?

A My oldest is 15 and my baby is seven.
Q And they live with you?
A Yes.
Q Are you familiar with Carrol Washington's apartment that he lived in with Ms. Tonya Dawkins?
A Yes.
Q Did you have occasion to visit with them?
A Yes. My children would be over there just about every day. My small little child, Ms. Josephine, she used to keep her every day.
Q And Josephine is the great aunt of Minor ?
A Yes.
Q And where does she live in relation to --
A Next door to Tonya.
Q Next door like in a duplex side-by-side or kind of next door?
A No, next door in the same duplex.
Q Same building --
A Yes.
Q -- just next door over in the same building?
A Yes.
Q Does anybody live with Ms. Josephine?
A She used to have a boyfriend that say with her but he doesn't anymore.
Q Roughly how old would you estimate Ms. Josephine is?

Is she old old or is she kind of --
A No. Maybe, I would say, 60.
Q Sixty?
A Maybe.
Q So she's not quite retirement age?
A No.
Q Do you know if she works?
A She doesn't work. She's retired.
Q And you say she keeps her child or children?
A Yeah, she used to keep her. She doesn't anymore. But my baby still goes over there if not every day, every other day.
Q Still on a good relationship with her?
A Uh-huh.
Q And how often would -- would you go visit either Carrol Washington or Ms. Tonya Dawkins at their apartment?
A I would drop my kids off before I stay -- before I moved away. My kids would be over there every day. But after I moved away I would drop them off all the time.
Q Well, you're now on , right, in Whitmire?
A Yes.
Q So when you say you moved away, is that when you moved out of that apartment complex?
A Yes.
Q So within the past few years you lived in the apartment

complex?
A It's been a while.
Q Who would you drop your kids off with?
A Well, my baby would be with Ms. Josephine and Tonya sometimes, but my oldest daughter, she used to be over at Tonya's all the time.
Q Were you familiar with whether the children would play in Ms. Tonya and Mr. Washington's apartment?
A Oh, yes. That's where all the kids would like gravitate to.
Q Do you know why that was?
A I guess it was a fun house.
Q Do you remember what the layout is of those apartments? If I walked in, what's the room I would go into?
A It depends on which door you walk through.
Q There's a front door and a back door?
A Yes, a front door and a back door. Where the ladies would sit on the front porch, when you walk through the door it would be the livingroom, and to your left would be the steps to go upstairs. But if you didn't take the steps, to go straight you would walk into the kitchen and out the back door.
Q Are there any bedrooms that you're familiar with downstairs?
A No, they're not downstairs.

Q Is there like a bathroom or a half bath downstairs?
A It's a half bath.
Q And then what would be upstairs?
A Upstairs would be three bedrooms and a full bath.
Q Was that a fairly typical layout of these units?
A They have two bedroom and three bedroom apartment. Tonya stay in a three bedroom.
Q But would the other three bedroom units be pretty much laid out the same way?
A Yes.
Q And you had been in that home before?
A Yes.
Q How often do you think that you would go and visit them?
A I mean, I would drive my kids over just about every day. I mean, it's very seldom that I would go in. But they would get dropped off all the time.
Q Did you feel like you were dropping your kids off at a safe location?
A Oh, yes. I mean, they -- all of them good -- they're good with the kids over there.
Q And you said -- I think you said something about there would be ladies on the front porch.
A Yes.
Q Who would typically be out on --

A Ms. Josephine, Ms. Ethyl, Tonya. Those three. Those are like the main three.

Q Would there sometimes be other mothers coming down, too?

A No, not really. No. Not that I can think of.

Q Now, what was the name of your child who would go over there?

A McKenzie.

Q We heard about the girls talking about McKenzie, that would be your daughter?

A Yes.

Q And she's about the same age as the other girls?

A She's seven.

Q She's seven now?

A Yes.

Q But you had your 15-year-old, too --

A Yes.

Q -- at Ms. Josephine's?

A Yes. Well, she would be at -- my 15-year-old would be at Tonya's. And I have custody of my niece and she would be over there also.

Q So you have a 15-year-old daughter. What was her name?

A My daughter's name is Arielle. My niece name is Amaya.

Q So you also have Arielle, your daughter?

A Uh-huh.

Q And she's 15 now?
A Yes.
Q So she -- in the last -- in 2012 she would have been around 12?
A Yes.
Q And Amaya is your niece?
A Yes.
Q And she lives with you, too?
A Yes.
Q And how old is Amaya?
A She's 14.
Q Is she one of the girls who also --
A She used to be over -- uh-huh.
Q Do you remember some of the other children that you would frequently see over there?
A We have Tamara. She stays there. Tamara and her little sister Kaitlyn. And this little fellow named Cameron. And we have a -- it's a little -- it's a fellow that stays over there. He's kind of special needs. His name is James, if I'm not mistaken.
Q But he would sometimes -- the boys you remember being there were Cameron, James and D.D. ?
A Uh-huh.
Q And is it possible on different days there could be more kids and on some days --

A Yes.
Q -- there would be fewer?
A Yes. Yes.
Q Do you recall whether this was primarily during the weekdays or weekends or are we talking about during the summer months?
A Well, my kids would be over there weekdays and weekends.
Q Do you recall if the last few years Ms. Tonya was working outside the home?
A Not often. Not often.
Q So how long -- you've been doing that for about four years; is that what you said?
A Doing what?
Q That you've been dropping your kids over there?
A I mean, I've been dropping them off ever since -- like I said, I used to live there. And even after I moved I was still dropping them off over there. But they been around Tonya all their life. She like raised my oldest daughter.
Q And you're aware of the allegation we're in court for?
A Yes.
Q And do you consider that a serious allegation?
A Yes. Yes, I do.
Q And you've got three girls?
A Yes. I have three girls and I questioned them.

Q And did you ever see any indication that your girls had been mistreated?
A No.
Q About any children who were there?
A No.
Q Do you know what Mr. Washington's reputation for good character is? Are you familiar with it?
A Yes. Everybody over there, you know, I thought he -- I think he's a good person, and I know other people in the complex, you know, they think he's a good person, I mean.
Q Does he generally got a reputation for good character?
A Uh-huh. Playing with the kids, you know. I mean, most -- you know not a lot of people that do that. And, you know, some people have their bad days and good days. Like they don't play with kids all the time. But he never had a -- you day like that. He always loved playing with kids.
Q Have you seen him playing with children before?
A Yes.
Q Does he seem like he's playing with the appropriately?
A Yes.
Q Is he kind of a hands-on? Does he like playing, you know, chase games with them, or is it more like --
A No.
Q -- he's playing video games?
A Yeah. I mean, like they'd be out in the field playing

softball or something like that.
Q And he would go out with them and play?
A Yeah.
Q And you are family --
A Yes.
Q -- of the Simms child -- of the child?
A Yes.
Q On the mother's side?
A Yes.
Q I have to ask you, are you familiar with the reputation of Ms. Simms for honesty?
A Yes, I am.
Q What is it?
A She's not known for her honesty. I mean, she could fabricate a story.
Q Is that her reputation?
A Yes. Even all through high school, yes.
Q And you think that's the general reputation that she has from the people who live there?
A Yes.
MR. VERNER: Hold on just one second. Thank you, Ms. Hopkins. If the prosecutor has any questions, please answer them.
THE COURT: Solicitor, any cross-examination?

CROSS-EXAMINATION

BY MR. SCOTT:

Q Candice –

A Yes.

Q -- is you birthday , ?

A Yes, sir.

Q Tell me some of the -- I heard Tamara, Cameron, James. Who's Tamara's sister?

A Kaitlyn.

Q Kaitlyn. And, of course, Arielle and McKenzie.

A And Amaya.

Q Huh?

A Amaya.

Q Amaya. Who's that?

A My niece.

Q And then there was a boy you said special needs but he would play along with the other children?

A That's James.

Q James?

A Uh-huh.

Q Oh, okay. Tamara, where does she live?

A She lives roughly maybe three apartments over from Tonya.

Q Three apartments over?

A Uh-huh.

Q In Whitmire?

A Yes.
Q And, of course, her sister Kaitlyn lives there, too?
A Yes.
Q Cameron, where does he live?
A He doesn't live there anymore.
Q Where does he live now?
A They stay in the apartment complex down the road.
Q Still in Whitmire?
A Yes.
Q But back in -- during all this that you were talking about when all the kids were hanging out he lived in that apartment complex?
A Yes.
Q James, did he live in the Apartments?
A Yes. He still does.
Q And then your three, Arielle, Kaitlyn and Amiya --
A No. McKenzie, Arielle and Amaya.
Q I'm sorry. You guess all live in the Apartments.
A I used to.
Q Used to.
A Uh-huh.
Q Where did Minor live?
A With her mom.
Q Where was that?
A Well, they used to stay there. Nicole used to stay --

Q I know.
A -- in the apartment complex.
Q I know.
A But they used to live --
Q But around all this time where did they live?
A Columbia.
Q So all these other kids had parents that lived in this apartment complex --
A Yes.
Q -- and they stayed there all the time.
A Uh-huh.
Q Minor was down in Columbia and would come infrequently, or she would come on weekends.
A Uh-huh.
Q But she wasn't always there with her parents and everything; is that right?
A I mean, in the summer she would be there.
Q But she didn't live in the Apartments?
A No.
Q And then you talked about -- do you ever call him Man?
A Yeah.
Q Do you remember how he got that nickname?
A No.
Q You say he played with the kids a lot?
A Yes.

Q Would you describe him as kind of maybe associating more with the children more than a lot of the adults?
A No, not like that. Just --
Q Not like what?
A Not like you're trying --
Q Well, what am I trying to do?
A He would play with them if they were playing like softball or -- because they -- the kids out there, they like to dance and all that. He wouldn't be out there dancing with them or --
Q Well, what would he do?
A -- anything like that.
Q What would he be doing?
A I mean, if they were dancing and stuff he wasn't around.
Q I'm talking about when he would play with them. Who were some of the other adult men who would pay hide and go seek and Wii with them and softball and everything else?
A None.
Q Did he drive an ice cream truck? Is that true?
A Yes.
Q And you're good friends with Tonya?
A That's my cousin.
Q And you've been in here all day today at least. Were you here yesterday?

A No.
Q But you've been in here this morning sitting over there by Tonya?
A Yes.
Q That was a curious -- to me it was curious when the lawyer asked you would Nicole Simms fabricate a story.
A He didn't ask me that. I said that freely.
THE COURT: Ma'am, you need to speak up a little bit.
A He didn't ask me that. I told him that.
Q I thought he just asked you is she known to fabricate a story and you said yes?
A No. He asked me about her honesty. I told him that she's not known for being honest. That she would fabricate a story.
Q Do you ever fabricate stories?
A No, not like she does. Me and Nicole have a history.
Q You all have a history?
A Yes.
Q Well, that's fine. But we're not here to talk about y'all's history.
A I know that.
Q So if you're here to air something, this ain't the place to do it.
A That's not what I'm doing.
MR. VERNER: Your Honor, that's not a proper question.

THE COURT: What did he say?

MR. VERNER: He said if you're here to air something this is not the proper way to do it -- proper place to do it. That's not a question.

THE COURT: Be sure to form it in question form.

Q I do have a question for you. Are you the same Candice Hopkins that was convicted of giving false information in 2012?

A False information?

Q Yeah. Giving false information on your rap sheet? Were you convicted of that?

A The driver's license?

Q Were you convicted of giving false information February 13th, 2012?

A I was convicted of -- I had my mother's driver's license.

Q Did you tell law enforcement you were somebody who you weren't?

A No, I didn't.

Q Tell us all the underlying reason why you have a conviction of giving false information to law enforcement.

MR. VERNER: Your Honor, if he's impeaching her for a prior conviction. That would be his proper way of doing it. Have you been convicted of giving a false name to law enforcement. Yes, I have.

MR. SCOTT: She's denying it.

MR. VERNER: I don't think she did deny it. She said that she had --

A I said I used my mother's license.

Q Have you been convicted --

THE COURT: Wait a minute. Wait a minute. Answer his question yes or no, and then if you want to offer an explanation you can do that. Repeat the question, Solicitor.

MR. VERNER: May I see the report he's --

THE COURT: Yeah, go ahead -- before you ask her anything, show Mr. Verner what you got.

Q Have you been convicted of giving false information?

A Yes.

Q And then the fact that you've had prior disagreements with Nicole Simms is not affecting your testimony today?

A No, it's not.

MR. SCOTT: Thank you.

THE COURT: Anything on redirect, Mr. Verner?

MR. VERNER: No, Your Honor.

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

(Whereupon, the witness stepped down from the witness stand.)

MR. VERNER: Your Honor, I would call Ms. Tonya

Dawkins.

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

TONYA DAWKINS, having first been duly sworn, testified as follows:

MADAM CLERK: Please state your name for the record.

THE WITNESS: Tonya Dawkins.

DIRECT EXAMINATION

BY MR. VERNER:

Q Ms. Dawkins, I'm going to ask you -- I apologize, but I'm going to ask you how old you are.

A Thirty-eight.

Q Thirty-eight. Where do you live?

A In Whitmire in Apartment .

Q Are you from Whitmire?

A Yes.

Q All your life or just --

A Yes, all my life.

Q Did you go to Whitmire High School?

A I did.

Q Are you currently employed?

A I am.

Q Where are you working now, ma'am?

A At the SC DHHS in Newberry.

Q Is that the Department of Social Services?

A Human Health, yeah.

Q What is your position there?
A Administrative assistant.
Q And about how long have you been --
A About roughly two months.
Q Are you aware -- well, let me ask you. How do you know Carrol Washington?
A He and I date.
Q And how long have you known him?
A Four years and some months.
Q Does he go sometimes by the nickname Man?
A Yes.
Q Is that what you call him?
A Yes.
Q Is that what most his friends call him?
A Yeah, everybody that I know that know him calls him that.
Q Did you all live together for a while?
A Yes.
Q Do you still consider that you're currently in a relationship with him?
A Yes.
Q How long did you all live together?
A Three years is the -- almost four years.
Q Was that at the Apartment --
A Uh-huh.

Q -- complex?
A Yeah.
Q Who else lived with you?
A My son, D.D. .
Q How old is your son?
A He's 10.
Q Ten?
A Uh-huh.
Q Do you remember when Carrol was arrested in June of 2015?
A Yes.
Q Was he working then?
A Yes. In Caterpillar and at Kraft.
Q In what section?
A In the cafeteria. The canteen area.
Q Do you recall what his hours at work were?
A From 6:00 to 2:00, and then he was working from 2:00 to 8:00.
Q Now, when you say 6:00 to 2:00 are you talking about 6:00 in the morning until --
A 6:00 a.m. to 2:00, and then from 2:00 to 8:00 on Sundays.
Q Would those be alternating days or would he work --
A Just as needed.
Q Did he work on the weekends?

A If they called him sometimes, but no.
Q It was typically a weekday?
A Uh-huh.
Q And you remember when Carrol was arrested in June of 2015?
A Yes.
Q Prior to him being arrested -- were you all aware of this allegation prior to Carrol --
A No.
Q -- being arrested?
A No.
Q Did it kind of come out of the blue?
A Yeah, it really did. I got a phone call June the 4th from Officer Epps and he was saying he needed to speak to Carrol and I gave him Carrol's cell phone number. And prior to that I didn't know.
Q Had any parent come to you and discussed any issue with you about the children?
A No.
Q Had any of the children raised any issues with you?
A No, not at all.
Q Prior to Carrol being arrested when was the last time that you had seen the child Minor ?
A Maybe a couple of months before that. They would come off and on on the weekends.

Q Had you seen Nicole prior to -- are you related to Nicole?

A Yes. That's my cousin.

Q But you had seen them within the past few months prior to you being arrested?

A Uh-huh, yes.

Q In the apartment complex that you live in, how many other people live in that apartment complex?

A We have four sets of family in my building.

Q So there are four different families in your building?

A Uh-huh.

Q Do you have a neighbor -- if I look at your front door, do you have a neighbor on your left?

A I currently have a new neighbor, yes.

Q There is a lady that lives to your left?

A Yes, Josephine. I'm sorry.

Q Ms. Josephine lives --

A From my front door, yes.

Q Do you have people who live on your other side on the right?

A I have new neighbors now, but I did have a neighbor that used to live there for a couple of years.

Q So your house and unit is kind of in between two other --

A Yeah.

Q Now, back when Carrol was arrested and was charged were you working then?
A No.
Q Were you a stay at home mother?
A Well, I was doing temporary jobs and contract assignments, but mostly going to school online.
Q So you were an online student --
A Uh-huh.
Q -- last year?
A Uh-huh.
Q I apologize. You're going to have to say yes or no, because the lady in front of you --
A Oh, okay.
Q So just try to come up with a yes or no or I don't know.
A Okay.
Q Were you home most of the time last year?
A Yes.
Q And just quickly, what's the layout of your apartment?
A Downstairs is the livingroom, a kitchen and a pantry and a half bath. Upstairs is three bedrooms and a full bath.
Q I guess one bedroom would be the master bedroom --
A Yes.
Q -- that you and Mr. Washington had?

A Right.
Q And then your son D.D. had another bedroom upstairs?
A Yes.
Q What would be in the third bedroom?
A It was just a spare room. It had bunk beds in it and an Xbox thing.
Q Are there any -- and you said there's a bathroom?
A Uh-huh, a full bath upstairs.
Q Is that between the bedrooms or is that back in the master bedroom upstairs?
A It's between the master and D.D. ' room.
Q So accessible to the hallway?
A Yes.
Q Do you have like a front porch, or what's the front part of the house?
A It's the front porch area where the porch is connected with the other apartments.
Q So you share -- you have a common porch with your neighbor?
A Uh-huh, we share. Yeah.
Q And which neighbor would that be?
A Josephine directly next door.
Q Was Josephine last year working outside of the home?
A No, she doesn't work.
Q Does she take care of kids, or what does she do?

A Well, she used to babysit my son. It's been a while ago. And she used to have McKenzie. But no.

Q What's the arrangement with the kids coming in and out of the house?

A They just be in there playing. They wanted to come and play with my son. They played the Xbox or the Wii U or dance or whatever. They loved to play.

Q Is there a reason that your house is kind of the popular house for kids?

A I guess the kids love to play with my son. I'm not sure.

Q Who are some of the regular children who come to your home?

A Let's see. S.B. and –

Q S.B. was the little girl we met earlier?

A Uh-huh, yeah. She come all the time, everyday. Armani, Sunshine, and McKenzie. Those are pretty much the regular kids.

Q How often would Minor come?

A Maybe when they -- during the summertime they would come like everyday if they be with their grandmother. But during school season and stuff maybe every now and then. Not all the time.

Q Do you know if they were coming in 2015 to visit you, or did they stop coming in 2014?

A Well, the other child used to come like, you know, pretty regular. But most of the time the other kids were with their father. Their biological father. But it was not all the time, but some weekends.

Q So the youngest child didn't share the same father as the older two daughters?

A No.

Q So when they were with their father for visitation just the younger child would come? The youngest?

A Yeah. She come play with my son.

Q When Minor came did she come by herself or would she come with her siblings?

A Her sisters.

Q And you -- who is Minor 's older sister?

A N.T. .

Q N.T. ?

A Uh-huh.

Q And the baby child would be --

A S.S. .

Q S.S. ?

A Uh-huh.

Q So the only time they would come alone was when S.S. would come --

A By herself, yeah, because the other two siblings would be with their father.

Q And who is the father or Minor ?
A Michael Thompson.
Q Does he live in the Whitmire community or do you know where --
A No. I think he lives in Columbia.
Q Did he ever come to see you?
A To my apartment?
Q Mr. Thompson.
A Did he come to see me?
Q Or did he ever come with the kids, or do you know?
A No. Not to my apartment, no.
Q Well, is there a particular time of the day that the kids would come over? Would they come in the mornings, or would they come around lunchtime, or was it all day?
A Just all day they be in and out. Whenever they get up just in and out playing.
Q Was there a time when you had to tell the kids that they had to be home?
A Like when it get dark.
Q Towards dark is when they --
A Yeah.
Q What kind of games were the kids playing?
A Oh, wow. It varied. Baseball, kick ball, basketball, the Wii U, Xbox.
Q So they're playing outside. Where would there be to

play outside?

A There's a little area beside my apartment that they call the little tree house. They love to play over there and in the front yard doing gymnastics or dancing, or just whatever kind of games outside. Riding bikes.

Q I'm guessing that the boys typically play with the boys and the girls play with the girls, or was it --

A Well, they all played together.

Q So they played pretty well together?

A Yeah. So, I mean, they would have fights every now and then, but they played together.

Q Are you aware of a time of Minor ever being there by herself?

A No.

Q Would she have ever been out there without her siblings with her?

A No, because if one came the other two came. She's never just been over there by herself.

Q Where were the adults when the kids were playing in you home?

A Well, if they're not sitting on the porch, the adults would come over periodically to check on the kids.

Q What do you mean by that?

A Well, when they stay with their grandmother, the grandmother would come over and check on them.

Q Who is the grandmother?
A Ethyl.
Q Who testified earlier?
A Uh-huh.
Q So she would sometimes come down and check on the kids?
A Uh-huh.
Q Would she sometimes spend some time sitting with you and talking to you all on the front porch?
A Yeah.
Q Would Ms. Josephine be over there at times?
A Well, when the kids were over there she would come check on the kids.
Q What other -- were there any other mothers that you remember would be fairly there, fairly often?
A No.
Q So who typically were the adults there during an average day?
A Myself and Carrol.
Q I'm sorry, who?
A And Carrol.
Q Were there any other adults there during a typical day?
A In and out. But no, not just there like me.
Q Well, with the ladies who were sitting on the front porch, what would you all be doing?
A Just out there laughing and talking.

Q Were there any other men?
A No.
Q Carrol was the only --
A Uh-huh.
Q Well, how does Carrol get along with children?
A He loves children. He played good with kids, and he talked to them and tried to --
Q How does he get along with your son, D.D. ?
A He -- my son loves him.
Q And how long has he lived with you?
A Roughly four years. Three to four years. Three years and some months.
Q Did you ever see any inappropriate behavior toward any of the children?
A No.
Q Did any of the children ever come up to you and say that they had been touched inappropriately or anything like that?
A No.
Q Did you have a -- did you get along with the children who would come in?
A Yeah.
Q You knew most of them, didn't you?
A Yeah. All of them that came in.
Q Are you aware of any time that the child, Minor , ever

became withdrawn or had any incident that raised --
A No. I've never noticed anything like that.
Q Did you ever see Carrol act inappropriately with the kids?
A No.
Q Would you be living with him if you had seen him --
A Oh, no. No.
Q -- be inappropriate?
A No. Not at all, no.
Q And you're not married to him, right?
A No, I'm not.
Q Can you tell me what Carrol's reputation is in the community?
A Everybody like him. People still ask about him to this day. He get along good with everybody. I've never heard anything bad about him from my neighbors or anybody that know him.
Q Do the kids still come over to your home?
A Yeah.
Q Is there any family or children who don't come to your home anymore because of Minor 's allegations?
A No. All the kids still come that was always came.
Q Is it fair to say that the people in this neighborhood have heard of this allegation?
A Yeah. Oh, yeah.

Q It hasn't been a secret, has it?
A No. No.
Q But all the children still come?
A Yes.
Q Did you meet with the investigators in this -- did anybody from the police ever call you and say that they wanted to ask you about what happened?
A No. When Officer Epps called he was asking for Carrol's number and I gave it to him. And Carrol came home and told me what happened and I went to talk to the officer myself.
Q So nobody ever asked you to give any kind of witness statement about seeing anything or anything like that?
A No.
Q So you yourself went and spoke to Investigator Epps?
A Yeah.
Q Are you familiar with Minor and her sister hiding in the closet not wanting to go to their father's home?
A Yeah. They used to cry hysterically not wanting to go and run over to my apartment for whatever reason.
Q Did they tell you why they didn't want to go?
A No, they never said. They dreaded going to their father's house.
Q Did you just -- that was just because of the divorce type --

A I guess. I never really tried to figure it out.
Q And you told that -- when did you meet with Investigator Epps?
A I think it was maybe June 6th. June 5th, June 6th.
Q Did you speak to Nicole about that incident?
A No. I've never talked to her about that incident. She's never said anything to me about it. I've never said anything to her about it.
Q Are you aware of Minor ever acting inappropriately while she's been over at your home?
A Well, I have caught her watching stuff on YouTube and I told her to cut it off. But no.
Q What do you mean by stuff?
A Well, anime cartoons and kind of perverted stuff of a sexual nature. But --
Q Stuff that was just too adult for her?
A Yeah. I just reprimanded her and told her not to do it. Not be watching stuff like that.
Q Do you have a lock on your bedroom door?
A That lock is broke.
Q What do you mean by broken?
A You can't lock it. I've been meaning to change it, but you can't lock that door.
Q How would you lock the inside -- an inside door? Is it got like a button in the middle you press or do you kind of

push the whole door?
A Well, it's got a little knob that you can turn left or right to lock and unlock.
Q Was it working last year?
A No. It's been broke for a while.
Q Has it ever worked?
A It had when I first moved in there. But I broke it and just never fixed it.
Q Are there any rules about where the kids can go or can't go in your home?
A Yeah. I try to keep them downstairs and not upstairs.
Q Over what period of time was Minor and her sisters coming over to your house? I know you're saying -- well, I mean, for a year they came over, or for several years, or what?
A Ever since they were small children they would come over when they were at their grandmother's house.
Q So they have been coming over for years?
A Uh-huh.
Q And have you ever seen any kind of inappropriate behavior on the part of Carrol?
A No.
Q And you are family of Minor ?
A Yes.
Q Would you tell us if you had?

A Yeah, I would.

MR. VERNER: The Prosecutor might have some questions.

THE COURT: Cross-examination, Solicitor.

CROSS-EXAMINATION

BY MR. SCOTT:

Q Tonya, you named a few more kids; S.B. , Armani, and Sunshine?

A Uh-huh.

Q They live at the Apartments?

A Not anymore. They used to. Well, S.B. still lives there but not the other ones.

Q Is there more kids that live right there in the apartment complex, or used to?

A Well, Tamara and Kaitlyn, they still live out there. And that's really it, yeah.

Q So far we're talking about S.B. , Armani, Sunshine, Tamara, Kaitlyn, Cameron, James, Arielle, Amaya, McKenzie?

A Uh-huh.

Q Those are all kids that would play out there. But they all live there at the Apartments, or nearby; is that right?

A All of them did at once. But when McKenzie -- McKenzie and her mother moved out. McKenzie, Amaya and Armani, they moved.

Q Is it fair to say during this time when they would all

get together that all those kids lived right around that apartment complex?

A Yeah, right there.

Q Around the time he was arrested you said Carrol was working at Caterpillar and Kraft.

A Uh-huh.

Q Where was he before that?

A He was doing odds and ends jobs on --

Q So kind of --

A -- Craigs List.

Q I'm sorry?

A On Craigs List finding jobs.

Q Craigs List?

A And doing construction work, outdoor work.

Q So hours were kind of irregular at that time; is that correct?

A Yeah.

Q So he would be home different times of the day?

A Yeah. He worked the day shift jobs when he worked, in the daytime.

Q Now, the hallway bathroom upstairs. You say that's one that would -- the way I picture it, you'd come to the top of the stairs and then there's bedrooms. There's three bedrooms up there and then --

A Uh-huh.

Q -- a bathroom just opens up to the common hallway area?
A Yeah, it's like a common area.
Q And you try to keep the kids from going upstairs but --
A Yeah.
Q -- but you don't always -- you're not always successful in keeping them from --
A No. They don't always mind me, no.
Q Well, that PlayStation you got is upstairs, isn't it?
A In my son's room. He just got it last Christmas. But the Wii U was downstairs. We've had that a couple years now.
Q So they do go up there, especially when they're playing hide and go seek and everything?
A Yeah, they run everywhere.
Q Now, the adults, for the most part, would be -- well, to the extent adults were there, that would be you and Carrol Washington --
A Right.
Q -- would typically be the adults there?
A Uh-huh.
Q Sometimes you talked about you would go out on the porch and just have lady time, I guess?
A Yeah, just sit outside and talk and just relax.
Q What would Carrol be doing when you all were out there?
A Upstairs on the Xbox if he was home.

Q And sometimes the kids would be up there playing with him and everything?
A Sometimes. Not all the time.
Q And I ask, were there other men, adult men that would come around and play with the kids and everything?
A No.
Q It's fair to say you can't keep your eyes on Carrol Washington at all times, can you?
A No, not all the times. But for the most part, yeah. I'm in and out from the porch.
Q You've never seen him do anything?
A No.
Q But again, you don't get to keep your eyes on him the whole time?
A Not 24/7 when I'm sitting outside.
Q Before all this you were getting along fine with this family. You were getting along fine with Nicole and them, weren't you?
A They're my family, yeah.
Q You all had no disagreements before any of this?
A Not that I was aware of, no.
MR. SCOTT: Okay. Thank you, Tonya.
THE COURT: Anything on redirect?
MR. VERNER: No, Your Honor.
THE COURT: Thank you, ma'am, for your testimony. You

can step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Mr. Verner, how many more witnesses would you have in your case?

MR. VERNER: Your Honor, I anticipate just one.

THE COURT: One? Okay. Let's take -- before we go into your last witness let's take one last break for about 10 minutes. And so, ladies and gentlemen of the jury, if you'll go back to the jury room. Once again, don't begin any discussions about this case, and then we'll finish up with the Defense's last witness.

(Whereupon, the jury exited the courtroom at 5:19 p.m.)

THE COURT: We'll be in recess for about 10 minutes.

(Whereupon, a recess was held from 5:19 p.m. to 5:36 p.m.)

THE COURT: Gentlemen, are we ready for the jury to come back out?

MR. SCOTT: Yes, sir.

MR. VERNER: Yes, sir.

THE COURT: All right. Madam Bailiff.

(Whereupon, the jury entered the courtroom at 5:36 p.m.)

THE COURT: Let the record reflect the jury's back in. Mr. Verner, are you ready?

MR. VERNER: We are, Your Honor.

THE COURT: Okay. You may proceed.

MR. VERNER: Your Honor, I'd ask Mr. Carrol Washington to --

THE COURT: Okay. Come around, please, sir.

CARROL WASHINGTON, having been first duly sworn, testified as follows:

MADAM CLERK: Please state your name for the record.

THE WITNESS: Carrol Washington.

DIRECT EXAMINATION

BY MR. VERNER:

Q Mr. Washington, I'm going to ask you questions from over here just to make sure everybody that needs to hear you can. Okay? Okay?

A Okay.

Q How old are you, Mr. Washington?

A I'm 32.

Q Thirty-two. Speak up just a little bit.

A I'm 32-years-old.

Q Where did you -- where were you born?

A I was born in Greenwood, South Carolina.

Q Last year, in June of last year, you were arrested for criminal sexual conduct, correct?

A Yes, sir.

Q Where were you living at that time?

A , which is Apartments.

Q And who were you living with?

A My fiancee, Tonya Dawkins.

Q Was anybody else living with you?

A My step-son, D.D. .

Q Do you have any other children of your own?

A Yes. I have one daughter in Laurens.

Q How old is she?

A She's nine.

Q Nine. How long have you lived at the Apartments in Whitmire?

A I'd say three years and -- three years and a little over six months.

Q The same apartment the whole time?

A Yes, sir.

Q Were you working as of June of last year when you were arrested?

A Yes, sir.

Q Where were you working?

A I was working at Caterpillar, and I would go and take up a second shift job at Lewis Rich, because my fiancee, she wasn't working at the time and she was going to school. So I had to do extra hours to get these bills paid.

Q And what department were you working at Caterpillar?

A In the canteen.

Q In the canteen. Do they feed the workers onsite at Caterpillar?
A Yes, sir. And at Louis Rich.
Q So they both have cafeterias?
A Yes, sir. Same company.
Q What would typically be your house you were working?
A 6:00 to 2:00, and I would stay at one of my coworker's house to 3:00 and I'll go to Louis Rich.
Q But you'd start out in the morning at --
A Yeah.
Q -- Caterpillar?
A Yes, sir.
Q And then how long did you have between getting from Caterpillar to Louis Rich?
A Like an hour. Just a little downtime is all.
Q Was that basically Monday through Friday, or what were your days?
A Usually -- well, my -- at Caterpillar it was Monday through Friday, 6:00 to 2:00 every day. 6:00 to 2:00 every day. And Mondays, Wednesdays and Fridays and -- they were short on help. So usually I work like seven days a week pretty much.
Q Where would you work on the weekend?
A At Louis Rich.
Q Did you have any other job at that time, too?

A Yes. I was a sous-chef at Steven W's.
Q What were your hours at Steven W's? That's the restaurant next to the Opera House?
A Yes. Well, in front of the Opera House. Yeah, in front of the Opera House by -- I can't remember the little wine shop that's across the street from it. But in front of the -- or behind --
Q How often did you work at Steven W's?
A Sir?
Q How often did you work at Steven W's?
A It was like two days out of the week. And on the weekend when I didn't have to work at Caterpillar, which was from 6:00 to 2:00, I would work Louis Rich in the morning and I would work there in the evenings from like -- from like 4:00 to 9:00 depending on how many tops we have. Which tops are -- those are basically parties. Yeah, so pretty much it was predetermined how long we would work.
Q Based on how many tables they had?
A Yeah, yeah.
Q Any other jobs you had at that time?
A I did Straight Talk at Walmart, which it was just maybe one day out of a week. Maybe like one month I'll do, say, six events. And that would be like one day out of the week I'll go there and setup for like six hours, and I'll do that maybe like every two months.

Q That's not technically working for Walmart? That's --
A No. It was a self-contractor for Walmart which is Straight Talk.
Q Straight Talk are like the --
A Straight -- prepaid cell phones, yeah. I was a cell phone ambassador. Straight Talk ambassador. I'm sorry.
Q What does that mean that you do?
A Pretty much when they have promotional deals for Straight Talk, I would stand there with -- stand there at the little table like that and have like pamphlets and give you a reason why you should switch from a contract to a prepaid. And I would sell phone calls and I can activate your phone, deactivate your phone. Just pretty much getting you signed on with Straight Talk, and with promotional deals. Selling -- selling phones that's in the store. Just pretty much making sure that Straight Talk have a good relationship with Walmart.
Q When you were arrested on June -- was it June 10th? Do you remember what day you were arrested?
A Yeah, I think it was on the 10th. It was somewhere around that time.
Q Had anybody come to you or talked to you beforehand and said, hey, you've been alleged of doing such and such, or is that the first you heard about this allegation?
A June the 10th? No. It was like, I think, the 4th.

Q What happened on June 4th?
A I was actually going to Steven W's, and I just had left -- left my friend's house and I was going to Steven W's and I received a phone call and I answered the phone. And I actually thought it was like one of my friends playing with me because I don't do anything to get in trouble. I thought it was one of my friends doing a little prank -- you know, a prank on me. So come to find out that -- I Googled the number that called and it was actually --
Q Did you speak to him?
A Yeah. I spoke to him and --
Q What did he tell you, or what --
A He just told me that I would need to come to the Sheriff's Office. And like I just -- honestly, I just thought it was my friend. I told him, I was like the only reason that I possibly would have to talk to a sheriff is because of my child support, which is not even in this county but the county do serve my papers at my house. So that's the only reason why I was thinking that. He wanted me -- he didn't really give me a description of what he wanted. So we initially -- I got off the phone and --
Q Had you ever met him before?
A No, sir.
Q And I think you said you Googled the phone number?
A Yeah, I actually -- yeah, I Googled the number, because

there was something just in my mind that told me to Google the number. And I Googled the number and it was actually the Sheriff's Department. So I called him like immediately back, maybe like three minutes I called him back. And I told him that, yeah, I would come. I called my boss and told -- yeah, I called my boss and told him that I was -- that I had to handle something, and he let me handle me. It wasn't a problem, and I went and talked to him.

Q Where did you talk to him?

A At the Sheriff main office. I'm really not familiar with Newberry.

Q Do you remember what street that was on?

A I Googled it. I want to say maybe Wilson Road.

Q So that's where you met with -- did you met with any of the other officers or investigators?

A The only officers that I met there was Epps and Womack.

Q And did they tell you what the allegations were?

A Well, at first -- at first it was just Epps in the room, and he told me what was going on. I was baffled.

Q What did he tell you was going on?

A At first he just told me, he was like do I know -- do I know Minor . And at first, when he first said the name, it didn't hit me then until he said her mother's name. And that's when I was like yeah, I know -- yeah, I know her, you know what I mean. She's like a family friend.

Q Then he appraised you of the charges that they had made the allegation that you --

A No. After the fact of me having recollection of who he was talking about. He didn't tell me for real.

Q But he did tell you what they had --

A Yeah, after I -- yeah, after I realized who he was talking about, Minor , he told me what the charges was and I -- I mean, I was just -- I couldn't believe it.

Q Had any of the officers bothered to tell you -- advise you that they were investigating a crime that you were suspect of and that you would have the right to -- do you know what Miranda rights are?

A Now I do. But at that point in time I didn't because I've never been in trouble, so I -- you know what I mean. I'm a dummy to the law.

Q But did they tell you --

A No, he didn't. Go ahead. I'm sorry.

Q I mean, they advised you that you were being investigated as a suspect of a crime or --

A Not at any time. The only thing that he said was just the CS -- or however they call the crime. But they didn't tell me that I would be -- what I would say would be used against me or anything like that.

Q Did you admit touching Minor ?

A No. I've never done anything of that sort.

Q And did you tell the investigator that at the time?
A Yeah. And I was talking to the investigator to try to help him with what was going on. You know what I mean. I didn't show any deception at all when I talked -- when I initially talked to him or when I came. You know what I mean. I told -- I told him that I don't have nothing to hide from you. So yeah, I will come and talk to you. That's what I told him on the phone when I came and talked to him.
Q Well, I want to ask you how you got the nickname Man.
A When I was little they called me Packman. I used to eat a lot. So that's how I got the name Man.
Q Why did they call you Packman?
A Because I used to eat a lot when I was little.
Q You'd eat a lot?
A Yeah. Packman, eat a lot.
Q So that's the origin of how Man --
A Yeah, it derived. Yeah. Yeah, it derived from Packman.
Q Well, tell me about your house that you're living in with Ms. Tonya. I think you indicated you had been there for about three and a half years?
A Yeah, about three and a half years. Yeah. Yes, sir.
Q How often would you have visitors?
A The usual kids, which are Money, which I think her name

is Amori, or something like that. But I call her Money by her nickname. Sunshine, which is Amaya. S.B. --

Q Well, I'm going to skip the names, just --

A Okay. Well --

Q But it would be -- it wouldn't be unusual for --

A Usually just -- usually --

Q -- children to play at your house --

THE COURT: Wait a minute. Do not talk over one another.

THE WITNESS: Okay. I'm sorry.

THE COURT: Mr. Witness, if you will let Mr. Verner finish a question before you answer.

THE WITNESS: Okay.

THE COURT: Okay?

THE WITNESS: Okay.

Q Just how often would children come over there and play at your home?

A Oh, children from the neighborhood, every day.

Q Would that be -- would they come over when you were not there?

A Yeah, yeah, yeah. Like, you know what I mean, they never stopped if I'm there or not. My son get out of school they're pretty much there.

Q Is there a particular reason why they were coming to your all's house as opposed to the other --

A A lot of the other parents don't -- you know what I mean? I guess they don't want their house to get messed up by any chance, which they don't mess up our house. That's the only reason why I would think.

Q You're all just more open to have kids come over and play?

A Yeah. That's just something that's been going on even before I moved there, and I felt like it wasn't my right to tell my fiancee, you know what I mean, not to let all of the kids to come over like that.

Q Well, we heard it come up. Why weren't there more men, adult men over there?

A It's kind of sad to say, it's just a lot of the families in the apartment complex, which I see is a mixture, and the younger -- the younger females, they don't have the kids' fathers with them. So they don't like have fathers there, or boyfriends. So, you know what I mean, they come to the house and --

Q So there weren't a lot of men --

A No, no, no, no.

Q Was there ever a man who came over or was it just primarily you when you were there?

A Yeah, just primarily -- yeah, primarily me.

Q I think you're saying that the mothers of some of these other children were single ladies?

A Yeah, single.
Q What would you do with the kids?
A Well, like sometimes if I get off work --
Q Well, let me back up. You lived with D.D. for about three and a half years?
A Yeah, that's my step-son but I call him my son.
Q How do you spend time -- what do you and D.D. --
A Oh, man, D.D. , man, we got like a -- like a real -- he -- he never knew his father. You know what I'm saying? And I grew up in a household with my mother and father. So it was kind of sympathetic. You know what I mean? And he really -- me and really attached to each other.
Q But how did you all spend time together?
A Me and him spend time together, we play video games. I'm a big Xbox fan myself. I play 2K Madden, which a lot of adults play. I don't play like, you know what I mean, children games, which a lot of adults play Madden 2K. And we do a lot of sports together. Last year we started fishing a lot together. There would be stuff -- I'm a country boy. So, you know, it be stuff like that that my father done with me, I try to do with him.
Q But you play -- you played sports together with him? You played basketball?
A Yeah, basketball, football, baseball. You know what I mean? Kick ball. Whenever I get a chance. It's not as

frequent as it would seem.
Q Do you recall kind of being rough with him? I don't mean hurt him rough, but I mean --
A Yeah, he's a boy. He's a boy. You know what I mean? We wrestle. He give me cheap shots. You know what I'm saying? That's my son. That's the only boy I would consider me having besides a girl.
Q And Tonya was comfortable with you --
A Yeah.
Q -- rough play with the kids? With him?
A Yeah, yeah, yeah. Because it's not like I'm trying to hurt him. It's just, you know what I mean, he's a boy.
Q And would there be some boys coming over, too?
A Yeah, Cameron. We have another neighbor called Doodle. James, he's mentally challenged.
Q What kind of games -- or what would the boys do when they would --
A Oh, boys. Like when they all come over like they -- they don't even bother me. Because most of them really don't bother me, because they know once I get on my game -- I play on the Internet and I put my earphones on and I talk through my mic. You know what I mean? Pretty much everything else is singled out.
Q So when they're over -- which room was that that you would be able to play on your --

A I have a -- well, it's actually D.D. ' bunk bed room. I call it my Xbox room. My game room.

Q So that's the third bedroom that --

A Yeah, yeah.

Q -- has the bunk beds upstairs?

A Yeah, yeah.

Q Would the boys play like basketball and athletic games outside?

A Yeah, basketball, kick ball, football. You know what I mean? I'm too old to get out there and try to tackle with them, so I just be quarterback. Quarterback for both teams. I'll probably pitch the ball to them. Now, basketball, that's like one of my things. So I do get out there and try to run around with them. Try to.

Q Was it more on the weekend or -- when these kids are coming over is it a particular time? Like is it after school, or is just on weekends, or is it just about every day?

A Well, the kids in the neighborhood pretty much every day. As long as it's no raining outside they're there.

Q At any particular day there could be about how many kids playing outside, inside? In the general area of being in your home?

A I'd say roughly seven to eight.

Q Are there any rules on where they can play in the

house?
A Yeah. They really can't come upstairs. But they do sneak upstairs and I tell them not to be upstairs.
Q The general rule is they can come in but they --
A Yeah, they can come in and play Wii. Because that's like the main games for the kids is the Wii. Because they always say I'm hogging the Xbox, so pretty much the Wii is their game. Which we have like a 72 inch TV screen -- TV downstairs that they sit there and play on the Wii downstairs.
Q How many girls would typically come over? On a typical day there could be as many as --
A Yeah, as many as six, seven.
Q What would their age range be?
A Four to, at the time, 14.
Q What would the girls typically do when they were over there?
A Watch YouTube, watch music videos, go Justin Bieber crazy. Stuff like that. Just girl stuff.
Q What about would they play hide and seek and active games, too, or --
A No, not really.
Q What was your relationship like with Minor ? How well do you know Minor ?
A I know her fairly well.

Q What was your relationship like with her?
A It was -- it was fairly good. Like I don't dislike one of the kids other than -- you know what I mean? I don't dislike one better than the other one. You know what I mean? But it wasn't like the rest of the kids.
Q She wasn't necessarily the favorite child but she wasn't the least favorite?
A I'm not going to even go so far to say favorite, but --
Q She was just one of the --
A Yeah. Yeah, she was just one of the children up there.
Q Would you see her as often as the other girls?
A No, no, no.
Q Well, how often were you at home when the girls would come over and play? I mean, was this like -- how many times a week do you think that you were at home when the kids were playing in the home?
A Which kids?
Q All of them.
A Including Minor ?
Q Yes.
A Well, like see, with Minor and them, they have to go down to their father's house every like -- I think like two weekends out of a month, which he stays in Columbia. So --
Q So they were coming less often than the other kids?
A Yeah, yeah, yeah. Most definitely.

Q Would you play with the kids?
A If you -- how would you define play? Like --
Q Well, I mean, would you play like any hands-on games? Would you play -- let me start with video games. Would you play video games with the kids when they came over?
A Dance Central. That's it, downstairs. Dance Central.
Q They had a game where they kind of danced to music?
A Yeah, Dance Central. Like it's a Wii and it's got a power bar, like it tracks your movement.
Q And sometimes you would play that game?
A Yeah.
Q Well, I mean, did you ever play like football with the boys upstairs or --
A No, no, no, no. We don't play football in the house.
Q But, I mean, you talked about video football. Like video games.
A No. Usually -- usually Xbox is like -- that's mine.
Q Just you?
A Yeah, that's mine. Yeah.
Q But when you would play with them on the video games it was primarily the Wii downstairs?
A Yeah, yeah, yeah.
Q What were some other things that you would do with the kids?
A Sometimes I would take them fishing. Not Minor and

them. But sometimes I take the other kids fishing. Most the time I'm like just playing my game. Like I said, I'll go out there and play basketball with the boys.

Q So you weren't regularly playing with the kids when they were there? You would sometimes play with them, but not play with them every time they came over?

A No, no. Most the time I was like -- I was beat.

Q Doing your own thing?

A Yeah, I was beat from working so much.

Q Did you all ever feed them?

A Yeah, yeah, yeah. I love to cook. I love to cook. So, you know what I mean, they love to eat what I cook. You know what I'm saying?

Q So you'd feed some of the kids?

A Yeah, yeah, yeah, yeah. That's another reason why they like our house.

Q Did the girls, Minor and her sisters, did they ever go from your house to visit their father?

A Yeah.

Q Was there ever an incident where they hid in the closet?

A Yeah, on several occasions.

Q What was that about? What happened?

A Like they would be at their house when they -- they actually stayed beside -- stayed beside us. Well, I wasn't

actually staying there then. It was more or less me coming over spending the night with Tonya.

Q You're talking Ms. Josephine?

A No, with Tonya. Me coming to spend the night with Tonya. But no, no. Nicole stayed like to the right of my back door at the time, which it wasn't maybe like three months she stayed there. But she stayed there longer. But when I was there she stayed there like three months and left.

Q I guess my question was, were there ever issues of them not wanting to go see their father?

A Yeah, like all the time. Like, you know what I mean, all the time. They would like literally cry. And like I would be down the stairs and I would like hear the door slam. Like we got like the little thin wood and I would hear the door slam. The whole house. You know what I'm saying? And I would come downstairs thinking that the kids running through the house or something. And I would hear them in the closet.

Q Were they playing or were they --

A No. They were like, you know what I mean, scared to go down there.

Q Did you tell this to Investigator Epps?

A Yeah. I told Investigator Epps that.

Q You understand the allegation of Minor ,

don't you? The girl who testified?

A Now I do. But at the time I didn't, because it really wasn't explained to me.

Q You understand she's -- the State is alleging that you touched that girl inappropriately?

A Yes, yes, now I do.

Q Was there ever a time when you were alone with Minor ?

A No, sir.

Q Did you ever take Minor up in the bedrooms upstairs?

A No, sir.

Q Would it be -- what would be some of the problems with taking her upstairs to a bedroom upstairs or bathroom?

A What would be some of the problems? For one thing, there's too many kids. For one thing. Like --

Q Typically somebody -- there are other people in the --

A Yeah, yeah. There's other people there. Like you can't -- you won't be able to single out a child.

Q What about adults?

A Yeah. They come through the house all the time. Ms. Josephine. She comes in the house and check on McKenzie. Ethyl, she comes to the house and check on them, and --

Q Other adults would come?

A -- Tonya. Well, you know, she stays there. But, per se, say come would be Ethyl and Josephine.

Q Would be the -- commonly over there would be Ms. Ethyl

and Ms. Josephine?
A Yeah.
Q Were there other mothers there sometimes?
A Nicole would come sometime, you know what I mean, but she'll stay briefly. I mean, she's done by her business.
Q The front door -- was the front door closed or open when the kids would come?
A Oh, the door is always open.
Q Is there like a screen door?
A Yeah, it's a screen door. The door's always open.
Q You understand Minor is saying that you told her to take her pants off.
A Yes, I understand that.
Q Did you do that?
A Oh, no, sir. No, sir.
Q Did you have her alone in the bedroom?
A No, sir. Never had her alone in the bedroom.
Q Did you expose yourself to Minor ?
A No, sir.
Q Do you know why she's saying you did?
A I have no earthly idea, sir. And I'm -- I still -- I'm still baffled and I think about it --
MR. SCOTT: I object to the mischaracterization of any testimony thus far.
MR. VERNER: I just asked if he understood why she was

--

MR. SCOTT: He's pitting witnesses, A, and the second he said that she said Mr. Washington exposed himself to her and that was never testified to.

THE COURT: I think -- having to speak for the Solicitor, I think Solicitor Scott is saying that the child never said on the witness stand that the Defendant exposed himself.

MR. VERNER: Yes, sir. In candor, the child, in my opinion --

MR. SCOTT: No. No testimony from the Defense attorney, his opinion, Your Honor.

Q Did you touch the child improperly?

A No, sir. Never.

Q Did you put your fingers on her breast?

A No, sir. I never done anything like that.

Q On her vagina?

A No, sir.

Q Did you put your fingers inside of her butt?

A No, sir.

Q Inside of her anus opening -- or anal opening?

A No, sir.

Q Did you have Minor alone in a bathroom?

A No, sir.

Q Is there a lock on the bathroom?

A The one downstairs, no. But the one upstairs, yes. But the one upstairs actually like is broke from the kids running in. Especially D.D. . He's rough. Running in and twisting the doors. Like a little flimsy door. So it's barely on there.

Q Had anybody ever raised any allegation of -- prior to you being arrested of inappropriately acting with any of these kids?

A No, sir. Nobody's ever said anything like that.

Q Can you show me your fingernails? How would you characterize the length of your fingernails?

A They're long. Extremely long.

Q Were they long at the time last year or is that just something that --

A No, they -- yeah, they always been like this.

Q You had long fingernails at the time?

A Yeah, they're -- they looked a little bit better. A lot better. But yeah, pretty much --

Q Longer than average fingernails?

A Yeah.

Q If you scratched a person would they like leave -- were they long enough to leave marks?

A Yeah.

Q We've heard some testimony that you drove an ice cream truck in the past.

A Yes, sir.
Q Did you have other jobs beyond that?
A Between the ice cream truck and Louis Rich -- I mean, Caterpillar, I worked in Greer doing construction, which I used to work 14, 15 hours -- 15 hours a day. I did cable for Charter Communications. I was a subcontractor for Charter Communications. I can't actually remember the number -- remember the precise the company, but it was in Greer right in front of BMW.
Q So you've had several jobs?
A Yes, sir. Yes, sir.
Q I just wanted to -- were you driving an ice cream truck to get proximity to children?
A No, no, no.
Q That's just a job you had?
A Yeah.
Q You've had many jobs in your life?
A Yeah, that's just a job. Yeah, yeah, yeah.
Q Well, we heard the -- did you ever -- do you ever remember a time where you would have kneed Minor even by accident?
A No.
Q Can you think of a time where you would have given Minor even the opportunity to feel uncomfortable with you?
A No, not feel uncomfortable. No.

Q Did you make any kind of motion with your pants that she needed to pull off her pants when she was with you?
A No. No, sir.
Q Have you ever admonished Minor for her behavior at your home before?
A If you mean admonish by like semi-discipline?
Q Yes.
A Yes, sir.
Q What was that?
A I smoke cigarettes. One day I had went on the front porch with the ladies and I was out there smoking a cigarette. And when I came back upstairs she was on the computer in the Internet room watching anime cartoons, which they're pretty graphic for --
Q You mean like violent graphic or --
A Yeah, violent graphic, sexual graphic. You know what I mean? It's like --
Q They're adult --
A Yeah, yeah, yeah. It's an adult cartoon. It's way worse than Family Guy and stuff like that. Like they --
Q So what did you do as a result of that?
A I told her to cut it off and I made her go downstairs and I told her she shouldn't be watching stuff like that. And I asked her where did she watch that. Actually, she told me that her mom let her watch it at her house.

Q Is that the only time you've ever had to call her down?
A One time I caught them --
Q Who is they?
A Well, her and D.D. .
Q D.D. is your step-son?
A Yeah, her and D.D. . They were supposedly playing hide and go seek. When I come upstairs they had the door shut, and when I opened the door to see what was going on -- because I don't like doors to be shut in my house. You know, in our house, especially when kids around. And there was inappropriate stuff going on. And I pulled -- I split then up and and I told them -- I told D.D. -- I actually popped D.D. and I told him don't -- he shouldn't be doing that. And I asked her -- I told her she shouldn't be doing stuff like that. Where did she learn that from. And the only thing that she could do was just say I don't know. I don't know. And that's when I completely stopped them from going upstairs. Like nobody can go upstairs. But the older -- the older girls, which were 13 and 14, or maybe 12 and 13 at the time.
Q And you all had a rule that the kids weren't supposed to be upstairs, right?
A Yeah.
Q What would Ms. Tonya have done if she had seen closed doors upstairs?

A Oh, she would have done the same thing.
Q She would open them to see who's in there?
A Yeah. She would have done the same thing, yeah.
Q And that's one of the problems that you would have with being alone with the child is that the likelihood or the chance of being caught?
A Rephrase that again.
Q There are plenty of children and other adults in the home?
A Yeah, yeah, yeah.
Q It's hard to get in a room with a child alone --
A Yeah, it's hard -- it's hard to single out anybody in the house. You know what I'm saying? It's hard to single out anybody. Plus it's a concentration of kids, especially downstairs when they love to play the -- like I said, they play the Wii. And sometimes the guys come up there and they, you know what I mean, want to check out what I'm doing on there because they might here me on the Internet talking junk to the people on the Internet. You know, I mean, that's something that they do. Because when you're on the Internet you're actually playing with real people as if someone was sitting --
Q And D.D. himself would be available to go up stairs and downstairs?
A Yeah. It's his house. So naturally, yeah.

Q And D.D. himself would be available to go upstairs and downstairs?

A Yeah, it's his house, so naturally. Yeah.

Q Did you touch Minor ?

A No, sir. No in any inappropriate manner.

Q Did you touch her below the belt line?

A No, sir.

Q Did you remove or ask her to remove any of her clothing?

A No, sir.

Q Did you stare at her while she was -- or tell her to remove her clothes?

A No, sir.

Q Have you ever been in a room alone with Minor ?

A No, sir.

Q Any other prior allegations ever made against you prior to the police arresting you on June 4th?

A No, sir. I've never been in trouble before.

MR. VERNER: If Mr. Scott or Mr. Daniel have any questions for you.

THE COURT: Thank you. Solicitor, any cross-examination?

MR. SCOTT: Yes, sir.

CROSS-EXAMINATION

BY MR. SCOTT:

Q All right. Mr. Washington, where were you just prior to Caterpillar and Kraft? You've gone on quite a bit about the hours you worked and everything.
A Yeah.
Q But you don't deny that you were home with those kids a lot of times, too, right?
A Sometimes, like -- yeah, like sometimes I would be.
Q Well, sometimes, yeah. But you may have had a busy schedule at some point, but there were also times when you were down, wasn't it?
A Pretty much during the week, if I would be at home.
Q You were at one point looking for jobs on Craigs List, so you kind of had a regular hour then, right?
A Well, in actually, me looking for jobs on Craigs List is just me finding extra money. Like I said, I was pretty much the primary caregiver of the house. Tonya was going to school. So, you know, what I mean, I didn't really care if she wasn't working. She was doing something constructive with herself going to school. A lot of people don't do that. So I really, you know, appreciate it that she was doing that. So, you know, being me, as a fiancee, I would prefer to go out and get extra money.
Q Okay. Well, that's good of you. But let's don't beat around the bush. You were home with those kids oftentimes. I mean, you know them by their first names, don't you?

A Yeah, I know them by their first names, just like they pretty much know me by my name.

Q So you were -- that's great. I'm glad you had that job. But you're not denying the fact that you were at the house a lot of times, too, when the kids were there?

A Depending on which kids.

Q Let's just go with Minor . You've been in the house when Minor was there, right?

A Sometimes, yeah.

Q That's all I'm asking. You're not denying that, right?

A No.

Q So you did have these jobs where you worked hours, but that didn't prevent you from being in the house when Minor was there, did it?

A I don't understand what you're saying.

Q You were talking about Miranda and they didn't advise you of Miranda. Tell me your understanding of what Miranda is?

A Now? It was just you are -- your rights. You know what I mean? The right -- like if you say something that can be used against you in a court of law. Stuff like that, you know what I mean. Usually what they always say when you get locked up. I watch Cops and, you know what I mean. Even before they lock you up they tell you -- I mean, let you know what you got going on.

Q So the way you understand Miranda is from the TV show Cops?
A Yeah. And police movies and stuff. But like I said, I've never had to deal with police.
Q But your testimony was they didn't give you Miranda the first time they spoke with you; is that right?
A No. No.
Q Well, were you under arrest?
A Was I under arrest?
Q Were you under arrest?
A The first time they talked to me?
Q The first time they talked to you.
A No.
Q No?
A No.
Q So why would they have to give you Miranda?
A Like I said, I don't know. You know what I mean? Like I said, I'm a dummy to the law.
Q But you know they do it on Cops and TV shows?
A Yeah, I'm a dummy to the law. You know what I mean? Maybe that's a good thing, maybe that's a bad thing.
Q But what you did end up telling them was -- they told you about what the allegations were, right?
A Uh-huh. Epps did, yeah.
Q And your response was you don't know Minor like I

know her. She's a fast little girl.
A Not exactly like that, no.
Q Tell us exactly what you said.
A Not exactly like that. He asked me a question, and I answered his question with that. And fast meaning promiscuous. That don't mean like I'm saying that she sexually active or nothing. That just means promiscuous, you know what I mean. You do maybe -- you know, you maybe kiss boys, stuff like that. You know what I mean? That's pretty much -- it's just a country saying. That's all.
Q Promiscuous is a country saying?
A Well, no. I'm talking about -- pretty much that's what it means.
Q So that little girl we saw in here today, that eight-year-old, is a fast little girl to you?
A Promiscuous, yeah.
Q How is she promiscuous to you?
A Like I've said, I've seen her -- I caught her watching anime.
Q Yeah, I'm going to get to that. I'm going to get to that. How else is she fast though? Tell me.
A Watching anime. Like I said, I caught her doing some inappropriate things with my step-son. That pretty much sums it up.
Q That girl we saw earlier today is the fast promiscuous

little girl you're talking about?
A Yeah.
Q Do you know a lot of promiscuous and fast eight, nine-year-old girls?
A At these days and times things like that, you know what I mean, you -- it's a lot of things on TV.
Q Let's talk about the time you caught Minor upstairs with your boy. Now, I thought they weren't supposed to be upstairs?
A That was -- that was before the fact of me telling them. I told them not to go upstairs. But that's when I caught her watching it. But they snuck upstairs while I was outside smoking a cigarette with the ladies. Which they don't smoke cigarettes. But I was out there smoking because I don't smoke cigarettes in the house.
Q You don't?
A No. I don't smoke cigarettes in the house.
Q But back then you did and you found yourself upstairs with D.D. and Minor . And they were doing something that you're just going to describe as promiscuous or inappropriate --
A Yeah, inappropriate, yeah.
Q And then, of course, you went and told Minor 's mom, right?
A No.

Q Well then, of course, you went and told Tonya, right?
A Yeah.
Q Is it the same Tonya in here who said she never saw anything like that happen?
A Said she saw anything like that happen?
Q You were here when Tonya testified?
A Yeah. Well, she didn't see anything like that happen. I told her.
Q She had no knowledge of that?
A I don't get what you're saying, she had no knowledge of that.
Q Did she have any knowledge of this? The inappropriate behavior with D.D. ? Where is he, by the way? Where's D.D. ? He's been here all day. Where is he now?
A He at baseball practice.
Q So he's gone now and Tonya's not here, and neither is the other woman. But you're here to day you saw them inappropriate together sometime in the past and you're the only one who has any knowledge of it; is that right?
A Yeah.
Q And I want to ask you, you've never been alone in a room with Minor ?
A No.
Q Well, go ahead and describe that anime thing where you found yourself alone and upstairs with her on the computer.

A I wasn't alone. There was kids -- it was kids out there in the hall. Actually Money, which I can't remember her real name. But Money, she's the oldest -- oldest -- one of the oldest girls that come there. She actually told me about it. And I went upstairs and she followed behind me, and she was up there watching me. I told her she couldn't watch it. Watch it -- watch stuff like that and I made her go outside.

Q What's this girl's name again?

A Money.

Q Money?

A Yeah.

Q Why didn't you mention her when you were telling Mr. Verner about this anime story?

A When I told him about it?

Q Yeah. You never mentioned this other girl the first time?

A Well, that don't mean nothing.

Q So -- but the children would play hide and seek throughout the house; isn't that correct?

A Every now and then.

Q And they would play PlayStation?

A No. Actually, the PlayStation just recently came there while I've been incarcerated.

Q The PlayStation what?

A The PlayStation just recently came in the house when I was incarcerated. So I've actually never seen the PlayStation. Playstation and Xbox -- we got like three different game systems. Xbox, PlayStation, Wii U.

Q What was the one you're the master at that you get on?

A Oh, Xbox. Xbox. Xbox.

Q The kids would play PlayStation and Xbox upstairs?

A It wasn't -- by then there wasn't a PlayStation there.

Q Okay. Xbox. I'm sorry.

A Kids usually don't play the Xbox. I play the Xbox.

Q Usually don't. But they would play from time to time?

A Mainly they play Wii. Downstairs they play Dance Central, Just Dance, Mario Kart. Usually that's what they play downstairs. It's more of a kid friendly game system.

Q You're not going to say the kids never went upstairs, are you?

A Kids never went upstairs?

Q You're not going to say the kids never went upstairs, are you?

A The kids went upstairs?

Q You are not here to say the kids never went upstairs, are you? Is that what you're saying, the kids never went upstairs?

A Yeah, the kids -- yeah, the kids -- yeah, went upstairs sometimes. But usually when that happened Tonya's upstairs.

Q What about when she's on the porch?
A When Tonya's on the porch the kids are usually outside.
Q How do you know that?
A How do I know that? Because usually I'm either on the back or on the front, or I'm upstairs and the kids are downstairs.
Q So it never happens that Tonya's on the porch and you're upstairs and the kids come upstairs? That never happens?
A D.D. . Maybe Money and Shine. They're older. You know what I mean. They can come up there. We only allow the older kids come up there because they know better.
Q All right. Now you've got to explain this rule all over again. What's the age limit where they get to go upstairs?
A At the time they were 13 and 14, or 12 and 13. D.D. naturally can come upstairs because he stays there.
Q What is it like, a rope? If you're under 12 you can't come up past this stairwell, or how does that work?
A Well, kids are younger. You know, they don't really -- they'll junk up stuff. Stuff like that. We try to keep our house fairly clean, even though with all the kids being around. So that's the main purpose.
Q You remember when S.B. and Minor were upstairs playing hide and seek upstairs?

A Remember S.B. and Minor playing up? I can't necessarily say so.

Q But you don't deny that they were upstairs playing hide and go seek while you were up there?

A I'm not going to say they were. I'm not going to say were -- they weren't upstairs. I have no recollection of it.

Q And you play with the kids a lot? You play sports. You play video games. You even dance with them, it sounds like.

A Yeah, Just Dance. It's a video game.

Q Is no other adult man who are out there playing with these kids?

A There's -- like I said, once again, it's a mixed community.

Q What's that mean?

A A mixed community. A lot of older -- older people stay out there. And the younger females that stay out there, they don't have a father figure in their household. So that's the -- that's the reason why a lot of men don't -- you know what I mean, be out there interacting with the kids.

Q Well, I mean, this -- there's five different buildings with multiple units in each one of them, isn't there?

A Yeah.

Q There's no men out there at that place?
A It was only one, and he actually played ball with his son. He'd come out there and play ball sometimes. I can't remember his name. Cameron's step-dad.
Q So he's only other man besides you in that whole complex?
A Which I don't know how old he is. I'm pretty much the youngest out -- yeah, I'm pretty much the youngest out there. And at that time there's a guy named Irvin. He was staying there then. But yeah, other than that, yeah.
Q So all females in all five buildings in that complex --
A There's older men out there. Yeah, there's older men.
Q Is it safe to say that you were the adult man who was playing with all these little girls and boys?
A Well, like I say, sometimes -- I can't remember -- I think the guy's name is Greg. Yeah, he'll come out there and, you know what I mean, play ball with us. He'll come out there and play ball. Like I say, I'll be alternate quarterback for the guys. You know what I mean? And especially like when Money and Shine and D.D. , they started playing baseball. I would get out there and help them with the baseball. Help them, you know what I mean, play the baseball. They wanted to learn how to, you know, play baseball. Because, like I said, they don't have a father figure in their lives to, you know what I mean,

really show them how to do things like that. Like I said, I grew up with my mother and father and I had the privilege of having that and, you know what I mean, if I can do something like that why deprive them of that if I have time.

Q And you knew Minor fairly well? That's what your testimony was, right?

A Yeah, I know her. Yeah.

Q And you knew she had lived up there in Whitmire, didn't you?

A Yeah, she stays in Columbia.

Q All these other kids live up in Whitmire, don't they?

A Yeah. Yeah.

Q And you have been alone with her in a room before, haven't you?

A No.

Q You can testify to that under oath you've never been in one room alone with her before ever?

A No. I've never been in a room with her alone.

Q And you can put your hand on that Bible beside you and say that?

A Yeah. I've never been in the room with her alone.

Q And you can put your hand on that Bible and say that?

A Yeah. You want me to?

Q Can you put your hand on that Bible and say that?

A Yeah. If you're insinuating me to do it.

Q Your fingernails, how long have they been like that?
A I been having these fingernails like -- I've been having fingernails.
Q Why do you wear your fingernails so long anyway?
A I just -- they're kind of long now, but, you know, I mean, they usually --
Q They haven't always been like that, have they?
A You can ask Epps. When he first seen me my nails was long. So if you're saying I'm just trying to grow them now.
Q Why do you wear them like that?
A I can do that.
Q That's true. I just wondered if there was an underlying reason for that.
A No.
Q You're kind of child like, aren't you, as far as just the way you act? You have tendencies that children -- you enjoy the things children enjoy. Is that not fair to say?
A No, that's not fair to say, because I know a lot of adults that play Xbox. I know a lot of adults that shoot basketball.
Q I'm just thinking the ice cream truck, the video games, playing with the children. You wouldn't think you'd have a lot of the same interests as these little children?
A No. I wasn't on the ice cream truck to enjoy it. I was on the ice cream truck to take care of myself and start

getting out here doing things that other people do to get money. I'm a law abiding citizen, so I do the right thing. However, by any means necessary to take care of myself or take care of my family, I'll do it.

Q You've had all the police reports and all the evidence they got against you, hadn't you?

A Probably maybe like two months.

Q You've been able to go through it though, haven't you?

A Yeah. I'm supposed to. It's my stuff.

Q Then you heard Minor testify, so you know what it is that you're accused of doing, don't you?

A Yeah.

Q That wouldn't necessarily take a long time to accomplish, would it?

A What you mean?

Q What she said you did to her. That wouldn't really take a long time to do, would it?

A I wouldn't have no earthly idea.

Q Well, it's your testimony all those different times she's been there you've never found yourself in the same room with her?

A No. Because, for one being, Minor – I mean, yeah, Minor wouldn't be there by herself. When she come, she come with her sister -- her two sisters, and D.D. is going to be there, and pretty much the other three kids are Money,

Shine. They're going to be there, too. Like you know what I mean? It's just not one child there alone.

Q Except when they play hide and go seek, right? They've got to separate when they play hide and go seek? That's the only way to play it, isn't it?

A Well, if you say so. But like I don't have them -- they don't come upstairs to play it.

Q I thought you said they did? Sometimes they do go upstairs and play. What about S.B. and Minor ?

A I don't have any recollection of them being upstairs playing.

Q But you don't deny it though, right?

A I've never seen them upstairs.

MR. SCOTT: Thank you, Mr. Washington.

THE COURT: Mr. Verner, any redirect?

MR. VERNER: No, Your Honor. We'll close.

THE COURT: All right. Thank you for your testimony, sir. You can step down.

THE WITNESS: Thank you, sir.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Any other witnesses?

MR. VERNER: No, Your Honor. We'll close.

THE COURT: All right. The defense rests. Does the State have any reply case?

MR. SCOTT: No, Your Honor.

THE COURT: Okay. The evidentiary record in this case is closed. Ladies and gentlemen, it's getting really close to 6:30. You all have worked very hard and I do appreciate that. It would be tiring just sitting there all day long which you have done. And I've watched you and you've been very attentive, and I certainly appreciate that. We're going to go ahead and recess until 9:30 in the morning. Again, what we have left to do is the lawyers will make their closing arguments to you, and then I will instruct you on the law, and then I will instruct you when to being your deliberations, and you'll get the case sometime tomorrow. So get you another good night's rest. And remember about cell phones. Don't bring them into the courthouse, and have a good evening. No discussion with anybody about this case, and we'll see you in the morning at 9:30. Have a good evening.

(Whereupon, the jury was released for the day at 6:28 p.m.)

THE COURT: Gentlemen, anything this afternoon or this evening before we go ahead and recess until in the morning?

MR. VERNER: Your Honor, I renew my motions for the directed verdict.

THE COURT: Certainly. So noted for the record. Let's try to get together about 9:00 in the morning and we can

have a little charge conference. Okay? Everybody have a good evening.

TRIAL DAY 3-03/02/2016

THE COURT: Gentlemen, we're back on the record. Anything we need to put on the record before we bring the jury out and start with closing?

MR. SCOTT: Nothing from the State, Your Honor.

MR. VERNER: None, Your Honor.

THE COURT: Is the State going to open on the law or charge in full?

MR. SCOTT: No, Your Honor. We reserve the -- just close in full.

MR. VERNER: All right. Very good. Madam Bailiff, if you'd bring the jury out, please.

(Whereupon, the jury entered the courtroom at 9:57 a.m.)

THE COURT: Let the record reflect that the jury is back in. Good morning, ladies and gentlemen. As I indicated to you yesterday when we adjourned, what we have left to do are the closing arguments. The Defense will give their closing argument first and then the State will give theirs. We'll probably take a little small break after that, and then I will charge you on the law in the case. These lawyers have worked very hard, so if you will give them your close and strict and undivided attention.

Mr. Verner, you ready, sir?

MR. VERNER: May it please the Court, Your Honor.

THE COURT: Yes, sir.

CLOSING ARGUMENT

BY MR. VERNER: Mr. Foreman, members of the jury. With terrible actions there are terrible consequences. I mean, make no mistake about that. That's what you're here for today is whether the State has produced without any reasonable doubt that there was criminal sexual conduct in the first degree. But understand, this is a weighty case. There is nobody after you today who can undo your verdict. And I've had that come up sometimes with jurors over the years. I've been here about 15 years. Well, somebody kind comes back and kind of looks over what we do and makes sure everything -- that's not right. Nobody, not the Judge, nobody can change a fact that the jury finds. The Courts are exclusively concerned with the law charged. I've got great respect for Judge Hocker out of Laurens today. But the Supreme Court didn't send him to Newberry today for a non-weighty case. And I understand Judge Hocker has a lot of authority, a lot of power. Really today he is the least important person at this moment, because Judge Hocker cannot comment. He cannot opine. He can have no opinion in this case. Can't undo your findings of fact. I can at least argue what I submit what the evidence shows, and so can the

lawyers on the other side. The case ends with you, but there's no cavalry who's going to undo your verdict today. So it is important that you all get it right. This is a criminal prosecution. The State has charged Carrol with first degree criminal sexual conduct with a minor. They basically have to prove two things. That the child, the victim, is under 10-years-old. Is 10-years-old or younger. For first degree criminal sexual conduct, which is what the State -- what they have chosen to bring this case as. First degree rape. First degree criminal sexual conduct with a minor. The State has to prove beyond any reasonable doubt that what we're saying happened without any question the way we're saying it happened, based on the evidence, that Carrol Washington had sexual intercourse with a child. The cunnilingus or fellatio. I'm not going to define those. They haven't alleged that. Anal intercourse. They haven't alleged that. The fourth -- the fifth of these five categories is intrusion into the child's anal opening, orifice, even if it's slight. But it has to be -- an object has to be inserted, it can be a hand, into the child's vagina or anas. But there has to be without any reasonable doubt an intrusion for a first degree charge that the State has brought. This is the heaviest charge and this is what we're here for. If there is any possibility that it didn't happen completely the way you've heard it or that it

happened entirely different. That the only person you all have a duty to is Carrol Washington to give him the benefit of the doubt. He's the one who picks up the check today based on your verdict. That's the end of the case. If there is any doubt on any element of their claim he is entitled to a not guilty verdict or you will be convicting an innocent man. And I understand. I saw the child victim. I saw Minor testify. I would say for 15, 20 years, you can see, children are always persuasive witnesses. They're hard to question. Sometimes answers are incomplete. It's almost like when you have a dream sequence. The testimony is just blurbs and bits and pieces of dream sequences and then you wake up the next morning and you have to piece them altogether and try to figure out without any doubt what my dream was from point A to point Z, and you're kind of going on dream sequences. Well, this kind of happened but then we were playing on the playground. There's just not linear testimony like an adult. And the State will tell you -- I think sometimes they harp on it too much, but a child's testimony by law does not have to be corroborated, and the State will tell you that again and again. But that's not a lower standard for the child's testimony. An adult's testimony doesn't have to be corroborated. You can be convicted on a he said/she said case. If 12 members all unanimously agree there is no other reasonable doubt other

than guilt you can be convicted of he said/she said testimony. That is enough. Whether it's a child's testimony, whether it's an adult's testimony. But that doesn't mean that you weigh the child's testimony any less than you would an adult. You have to consider the source of the testimony, but you still have to weigh it just like an adult. It does not have to be corroborated. But it does have to be proven. And the way to do that is you consider the child's testimony. And then I think you have to consider all of the other evidence in the case. The totality of the circumstances that supports the case. In this case you don't have any corroborating -- there's no medical testimony. There are no other child -- the only other eyewitness that they presented was the child S.B. . And I thought that was interesting testimony, their witness, who said he never put his hands on me. I saw him grab D.D. one time, but he never put his hands on me. That, to some extent, is inconsistent with their allegations. The fact that there were -- would have been multiple adults coming and going from the premises doesn't mean it doesn't happen. But it certainly means that it might not have, but it certainly would not have been a great place to commit a crime when you have adults coming and going. You have children coming and going, upstairs, downstairs. And their best witness is a child who said, well, he never grabbed me,

but I think I remember he took Minor into the bathroom. I think I remember he was in the bathroom with Minor because we were playing hide and seek, I was it and I found them in there. I submit to you, if you're going to commit a crime in the middle of a game of hide and seek while somebody's actively searching for you is possibly inconsistent with the child's version of the facts. The fact that the child -- and I can understand the allegations. She understands the appropriate touching and the -- to some extent she does, but to some extent she doesn't because she -- even with the interview she's talking about, well, he kneed me one time. I was running past there, or I got kneed in my stomach and my chest. And when you saw the child testify she felt that that was something wrong that he should have been punished for. She couldn't equate at that age, and she's two years older now, and she couldn't equate -- she still felt that -- what she said was I ran into his knee, and she still felt that that was part of the inappropriate touching. And we know it wasn't. But it's in that grey area of the child where she doesn't have a clear comprehension of what was the appropriate and what was not. And you just have to factor that in. I don't dispute that the child was a very forthright, attempting to be open. I do also suggest that for the past few years that people have been talking to her, asking questions, putting her ideas, and then she's got a

blended memory now. Her stories, as you heard from the witness stand and two years ago, they don't -- they don't fit squarely. The child has a blended memory of even then when she was seven of what happened without fully understanding the consequences. I will tell you, and the Judge will tell you, if you find that the activities were suspicious he's entitled to a not guilty verdict. You cannot convict somebody on suspicion. It has to be hard proof beyond a reasonable doubt.

The fact that he worked full-time he would not have been a regular person -- now, the Solicitor says, well, I think it's weird that this adult man spends time with children and he drives an ice cream some time in his past. That's kind of weird. I don't -- he's a man with children in his home and from time to time he plays with the kids. He may have driven on one of his many jobs an ice cream truck. I don't think that adds anything to their story one bit at all. It doesn't move the football back. It doesn't move the football forward. I think he's going to present it to you as suspicious. I think his story is right. As an adult man you wouldn't go to a neighbor's house to play with children. But if they come to you house and you spend some time with children playing from time to time, I don't think that's enough to convict him, and I don't think it's suspicious.

Some other factors just from the testimony. That Minor -- I don't think they've proved it one way or the other. But she never could have been to that property by herself. As you heard, she was either at her father's house who -- it's not evidence, but he's not here. Why didn't he testify. At no part in the trial did you hear from her father. And I'm going to come back to that in a second. It doesn't -- that's not proof, but I'm going to come back to exactly why it's significant to me. But she was never at that home alone. She had an older sister who was two years older than her. She had a sister who was a year younger than her. She never would have -- or she was not there. I understand they're going to say, well, children don't immediately report things, but sometimes they do. But you have to factor in, you know, what they are saying as an excusable two year delay in saying some of these things without really dating them when they happened.

I think you have to consider the testimony of Candice Hopkins, cousin of the victim's family. No relation this side. Friends, cousins of his girlfriend, but no family relations to Carrol Washington. Her cousin says that sometimes the reputation in the community is that we don't get credible information from that family is her reputation in the community. All the other mothers still come and play. In fact, she said Carrol's reputation in that

community is good. The other mothers still come. He's got a good reputation. And the Judge will tell you, he's had no prior trouble before. He's got a good character, good reputation. That is something in and of itself you can find somebody not guilty of. If somebody comes to court and says for 30 years I've led a law abiding good life, I'm of good character, that in and of itself is sufficient to find somebody not guilty if there is not beyond a reasonable doubt evidence of guilt. Candice, familiar with the scene, said I felt -- I don't know what happened, but it was unlikely that something happened. And so did Ms. Tonya. I understand she's got a bias. I understand the girlfriend's got a bias. But she also testified that there would have been adults, other women in the house moving up and down, that would make these allegations unlikely.

And finally, I've got some concern also about the child's testimony. We know, they admitted, the officer, the Investigator Epps testified to it. There have been some allegations of prior abuse. Now, when the Officer said he investigated it he said I thought we were talking about her older sister. The mother testified and said no, it was her, from the father's side. And we don't know anything about that. It wasn't investigated. It wasn't brought up on the witness stand. I don't know how much you all weighed that but I don't think that you call can consider that child's

testimony without considering that this is a child of tender years who has other memories of abuse. And I submit to you that there is a very real danger that she may be projecting it onto Carrol Washington. We've just got dream bits of testimony that they want you to convict somebody of first degree rape, criminal sexual conduct to a minor. And I submit to you that that's probably not fair.

Now, the State gets the final argument because they've got the burden of proof. I hope you -- if you have a question about testimony, it's a court of record. Testimony is recorded. It can be played for you. It wasn't any long trial, I submit. That you all saw as much as I did and heard as much as I did. Just the only thing we're here -- we're not here as fact finders. We're here to determine if the State has enough evidence to deprive somebody of liberty. And it is your job to defend the citizen unless you have no other choice but to find him guilty because the case is so strong that he should be removed from society. And I think that their case -- I submit to you that their case might fall just a bit short, without knowing exactly what happened.

THE COURT: Thank you, Mr. Verner. Solicitor.

MR. SCOTT: Yes, sir.

CLOSING ARGUMENT

BY MR. SCOTT: Sometimes, if you listen carefully, the

softest voices speak the loudest. Sometimes the words of the smallest carry the greatest weight. There are times that a voice like this cries out from the dark begging to be heard, asking to be believed. And this is what a child in this case looks like. And this is the kind of case that demands justice. This is why we have a criminal justice system. Because after all, if we have a criminal justice system that can't speak up and protect the most vulnerable of us, the most helpless of us, then what good is it. You were called here today to make a decision in just such a case. Will you believe the soft voice of the meek whose message rings the loudest, or are you going to believe the voice of the taker? The taker has taken away so much from Minor . Taken away her security, feeling of safety. Taken away all those good times in Whitmire. Taken away her innocence. And the taker stands here today and tells you don't believe her. She's just 10-years-old. My voice is loud.

Whitmire used to be such a fun place for Minor . That was -- I think it was clear that was a place she very much enjoyed going. Where her Granny Pooh lived. And that was kind of -- you know, Whitmire to her was school breaks, weekends with grandma. Getting away from the home that you're in day in and day out and kind of, you know, maybe grandma let's you get away with more than mom does at home.

At least that's how it was when I was growing up. But she also had all the friends there. All the little kids her age that she could run outside with, play games with and everything else. It just abruptly comes to an end. Why is that? Why is this place that Minor loved so much suddenly she's begging her mom don't take me there. I don't want to go there. It kind of confused Nicole because this is somewhere she's begging -- begging to go up and then all of a sudden it's like a lightbulb. I do not want to go there anymore mom. Please don't make me go. Why is that? We know why not. It's because the last few times the taker had waited until she was alone and gradually he's getting ready to take her pants down so he can look at her. That happens a couple of times. They call this grooming. And, what the molester does, what the taker would do, is gauge how much he can get away with. And he gets bolder and bolder until it leads to that one situation in the bathroom when he's touching her. It's progressing. And don't -- don't mistake yourself. It would continue to progress had she not been brave enough to finally tell her mom I don't want to go up there anymore. Make no mistake about it. He had grown bold enough to slip his hand down her pants. Yeah, I think it's funny because -- I don't know. Depending on who you ask. She was always supervised. She was never alone. Never for one second was she alone. It only takes a couple seconds to

do what he had done. Don't get me wrong. That was one step in progressing and progressing because that's what a taker will do. He's going to take what he can when he can when the opportunity presents itself. Now, how long do you think it would take him to slip his hand down the back of her pants and inside her buttocks? It wouldn't take but a few seconds. And that's all it did take. And make no mistake about it, he has been in a room with her alone before. He took great pains. He took a lot of effort to stand up here and try to tell you that could never have possibly happened. But, well then, I don't know. Maybe -- I can't deny that it didn't happen. But there's no way it could happen because the parents were there all the time and the kids were everywhere. He was trying very hard. But make no mistake about it. He's been in a room alone with her. S.B. , the other little girl, saw it with her own eyes. She saw it. It only takes a second, because the taker is opportunistic. When the opportunity arises he's going to take it, and he did in such a situation. And it's been consistently testified to by Minor from the time she did the forensic interview to yesterday when she was in here. I just want to -- do any of you people truly believe an eight, nine, 10-year-old is capable of concocting something like this. Going someplace like the Dickerson Center, sitting alone in a room with a perfect stranger and disclosing all these

things in great detail like she did, and then months later, almost a year later come in this courtroom. You all seem to be very nice people, but you're complete strangers to me. You're complete strangers to her. And she had to sit up here and besides y'all and she had to look out here at all these people and the person who did this to her and she had to again speak in great detail about this sort of thing. And that's a 10-year-old girl. I can't imagine being in her shoes. I'm a great deal older than her, but that takes the kind of bravery that I don't know that I can muster. But here she is doing it, and for what. For what? What's the agenda? What's the motivation for making this up? Have you heard one? Has anyone heard one? She lived going to Whitmire. Never had a problem with Man. Never had a problem with the taker. Never had a problem with Carrol Washington before this. What's the motivation? Did that occur to you guys when you were hearing it? I kept asking. I kept asking on the Defense. I kept asking my own witnesses. Nicole, did you have a falling out with Man? Did you have a falling out with Tonya? Did you all have some kind of -- no. We've always been on good terms. That's my family. And then they call the Candice girl. You know, well, they ask -- they ask her, you know, what's the thing going on here. And the best she could say was Nicole sometimes doesn't tell the truth. And then she said, well,

me and her have problems. Now, she had some kind of problem, but she was just a witness and that Bible just about caught on fire when she was testifying. I don't find her to be a very credible witness at all because I said, well, aren't you the same Candice Hopkins that has a charge of lying to law enforcement. You have some convictions on here and one of them is just you've lied to law enforcement. They asked you a question and you lied to them about it. And then she lied to me. And said no, that's not me. I said, what's your birthday. And I read her birthday, and she said, oh, that is my birthday. And I said, well, okay. Are you sure you didn't have a conviction for lying to the police? No, that's not me. I had to take it up with her until she finally said you got me. I don't find her testimony very credible at all. Aside from her they called Tonya. You all remember Tonya. That's Carrol Washington's girlfriend. I said, do you have a problem with this man? Somebody gave you a reason why this girl would concoct this story and make this whole thing up. And she said, no. I never had a problem with her. I think the testimony was that Nicole had been on the phone with Tonya talking about being in her wedding just prior to this. No, that's my family. I don't have a problem with her. Mr. Washington took the stand. I said, Mr. Washington, you know, have you had any kind of falling out with Nicole and this family?

No, no, no, no, no. There's no agenda here. There's absolutely no motivation for this girl to concoct this story. This story has been consistent from the very get go from the initial allegation to the times -- you all going to get to watch that forensic interview as much as you all want to, by the way, and you're going to find, and you can compare it to her testimony yesterday, that it's wholly consistent. Is a nine, 10-year-old capable of doing that. You know, if you're lying, you got to be good at it. If you're lying you got to remember what the lie is so you can carry it on. You know what I'm saying? But if you tell the truth you don't have to do all that because you remember what happened. If you're telling the truth your story is going to be consistent. The big part's going to be consistent, and that's what you're going to find when you watch that forensic interview and you remember how she testified yesterday. She's talking about things here that a nine-year-old doesn't probably really know about. She uses terms like a heinie. She didn't even have, I guess, a word for her genitalia. She's every naive. She's very young. But she's describing those things that we know sometimes child abusers do. Describing giving her hand gestures to make her pull her pants down. She's describing how he'll stand there and watch her as she's standing there naked in front of him. She described him cornering her in that

bathroom, slipping his hand down the back of her pants, putting it inside her butt. A nine, 10-year-old doesn't know that kind of thing because they don't understand things sexual in nature to that degree. And then she's describing the intrusion. She's describing it -- and I'm sorry. It was -- I'm trying to get it out of her because you could tell the shame in her voice. You could tell the shame in her demeanor while she's up here. That's the tragedy in these kind of situations. The child always thinks they did something wrong. They child thinks they're the reason. The child thinks they had something to do with it. The child thinks they should have something to be embarrassed about. The taker is the one who did it. The taker is the reason that girl is going to remember this the rest of her life. The taker is the reason she had to sit up here and tell you all about this thing. And she did. And she was brave. She told you what happened. She told you about how the best way I can describe it is how I have to wipe my heinie. How I have to put my hand in there. That's where his hand was. And she talked about the pressure she was feeling and that was against her anus, because he's trying to penetrate her anus with his finger. How would an eight, nine, 10-year-old know how to talk about something like that? And it ain't coming from Japanese animation or whatever they're talking about catching her watching on the computer, which

incidently they never told her parents about. But why make this up if you're a 10-year-old girl and continue it? What does she have to gain from this? Did that ever occur to you guys? What is the end game here for a 10-year-old. I mean, it would have been very easy just to say I don't want to do this anymore. I forgot. I can't remember what happened. Just make it stop. I don't want to do this. There ain't no motivation here. And I'm not going to harp on it. But there need not be no corroboration of her testimony. It's just hard when you get -- when you get a grownup in here, and you got a little girl like that. Just the meekest, mildest little girl. She's trying to tell you what happened. She's trying to articulate it. She's trying to tell you. And it's true, kids don't communicate like adults do, but she's trying. And then you got the taker over there. She's saying here's what happened to me. Please believe it. And he's saying, don't believe her. She's 10-years-old. But the law does say her testimony, her -- what she says does need to be corroborated. In this case it is. We got Washington over here saying I've never been in the same room with her. I just want you to know that. It's impossible. Tonya had said something to the effect of, well, parents sometimes over there. But, you know, most of the times the kids just came to our house. I'll be outside smoking cigarettes and talking with the ladies. Carrol will

be playing with the kids. He'd be upstairs on his game or playing with the kids or whatever. But he wants you all to know that he's ever been in the same room with Minor . Well, her testimony says otherwise and it's corroborated by S.B. who said I specifically remember one occasion when we were playing hide and go seek. I was upstairs. I went running down the stairs and I looked and I saw Man. I saw Carrol Washington and Minor in the bathroom alone together. Completely contradicts what we've been trying to tell you guys that it could not happen. It's impossible. It could never happen. But S.B. has already corroborated Minor 's testimony. She said I saw it with my own two eyes. And now he's in the situation where he's saying, well, don't believe Minor . That nine, 10-year-old. But I also don't want you to believe S.B. because she's 10-years-old, too. Just believe me. Minor was the perfect victim. You saw it with your own eyes. You saw that little leg of hers shaking the whole time she was testifying. You heard her voice wavering. You saw me trying as hard as I could to get her to raise her voice. That's just her nature, I think. But I think it's intensified, it's magnified when you're in this environment, this situation. But aside form that, aside from her stature, aside from her personality. Here's the people I would count. He named a lot of kids that were hanging out

over there. There was S.B. , Money, Sunshine, McKenzie, Kaitlyn, Tamara, Cameron, James, Arielle, Amaya. Do you know what they all have in common? They all lived at the Apartments. You know what made Minor a little bit different? She didn't. She lived down in Columbia. So Man, Carrol Washington, the man who spent all this time playing with the kids while the women were doing their thing, was able to pick the vulnerable one. Pick the one whose parents weren't living next door to them. Pick the one who wasn't there every day, you know. Pick the one who didn't live in close proximity to him. Pick the tiny one and he can focus on her. He identified her as the most vulnerable without all her people around all the time. I think she made the perfect victim for somebody like Carrol Washington, and I think that's why he targeted her. And I think it's interesting when they first ask him about it he pipes up she's a fast little girl. When he was on the stand yesterday he wanted you to know she's a promiscuous little girl. I'm going to leave that to you guys. I'll leave that to you all. You all saw the same thing I did. If you all thought that was a fast little girl, a promiscuous little girl, that's going to be up to y'all to make that decision. And that's going to be up to y'all to decide who was credible and who was not. That's one of your jobs. And to determine this case you're going to decide whose story do I

believe. You know, S.B. , when she said she saw them in that bathroom together was she telling the truth, or maybe she had something -- some hidden agenda. I don't think so, because she still lives over there with them. She says she loves Man and she loves Tonya. She loves hanging out over there. Her testimony was she caught them in the bathroom alone together. Do you all find that credible or not. Did -- Minor got up there and you saw her demeanor. You saw her trying to testify and you saw her taking a deep, swallowing hard before she testified. Is that something that you think the average nine, 10-year-old is capable of doing, coming in here and swearing on the Bible telling that story like that in front of you all. In front of everyone here. In front of that Judge. I submit to you she was wholly credible. That she's only capable of telling the truth. She's not capable of carrying on a lie to that degree for that long. A child just isn't capable of doing that. And they tried to crack her under the pressure. They have cross-examination at one of their - - they question her and question her until she cracks and they catch her in a lie. They couldn't do it. And a child will fold under a cross-examination because they're not capable of lying to that degree and to that extent and her story was consistent. Sometimes the softest voices carry the most weight. I tell you that. All the taker could muster was she was a fast

little girl.

It's not in question that she was under 11. That's element number one that I've got to prove for this charge. She's 10-years-old now, so we know it had to happen when she was less than 11-years-old. The question is was there a sexual battery. Sexual battery in this case is an intrusion, in a legal term, an anal opening. The testimony from Minor was he put his hand under her pants, put his fingers in her butt. And she described the same feeling as when you're wiping and she described the pressure of something entering her anal opening. And that's y'all's decision. That's what you're going to go back there and decide. And you're going to put all 12 of your minds together? And you're going to put all 12 of your recollections together, and you're going to put all that lifetime experience that each one of you have and you're going to combine it. And y'all are all from different points in this county. And you're going to speak to the consciousness of this county. That's what you are. You're going to speak for the ideals of Newberry County. And you're in that place because you're all residents of Newberry. I couldn't serve on a Newberry jury. I don't live in this county. The Judge couldn't serve on a Newberry County jury. He doesn't live in this county. The Defense attorney, he couldn't serve on a Newberry County jury. He

doesn't life in Newberry. You guys speak for your home. You speak for this county and the values and the morals of Newberry County. And you're going to speak for what Newberry County will decide is acceptable and not acceptable. Do you understand? I'm going to ask you to go back there, give voice to the weak. Do what's right. Do what justice calls for. Do what all the evidence points at. Find the taker guilty of what he's done. Find him guilty of taking everything that he's taken. Find him guilty of that indicted charge, criminal sexual conduct with a minor first degree for what he did to little Minor . Thank you.

THE COURT: Thank you, Solicitor. Mr. Foreman, ladies and gentlemen of the jury, we're going to take about a 10 minute break, and then I'll bring you back and charge you on the law. Again, don't start your deliberations yet. No discussion among yourselves, and we'll see you in about 10 minutes. Okay?

(Whereupon, the jury exited the courtroom at 10:36 a.m.)

THE COURT: We'll be at recess about 10 minutes. The final charge and verdict form has been emailed to everybody. So take a look at that during the recess and make sure you're okay.

(Whereupon, a recess was held from 10:36 a.m. to 10:50

a.m.)

THE COURT: We're back on the record. Let me just put on the record that it was by way of agreement that the verdict form would not include a finding by the jury as to the type of sexual battery if, in fact, they were to find the Defendant guilty. That was -- the discussion was based on 16-3-655 subsections (d)(1). Anything further before we bring the jury out for final charge?

MR. SCOTT: Nothing from the State, Your Honor.

MR. VERNER: Nothing.

THE COURT: All right. Madam Bailiff.

(Whereupon, the jury entered the courtroom at 10:50 a.m.)

THE COURT: Let the record reflect the jury is back in. Mr. Foreman, ladies and gentlemen of the jury, I am now going to charge you the law applicable to this case and you must consider the charge as whole and not focus on some portion to the exclusion of other portions.

The indictment charges, as I briefly explained to you, charges the Defendant with criminal sexual conduct with a minor first degree as pursuant to section 16-3-655 Code of Laws for South Carolina. I remind you that the fact that the Defendant was arrested, charged and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create

any presumption or inference of guilt. This document is simply the formal written instrument which contains the charges made against the Defendant. It is the formal document by which this case is brought into this Court.

I also remind you that during this trial you and I have had certain duties to perform. As the trial judge it's been my responsibility to preside over the trial of this case, and I also have had the duty to rule on the admissibility of evidence offered during this trial. You are to consider only the competent evidence before you. If there's any testimony ordered stricken from the record in this case during this trial, and I believe that there was, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case and any stipulations of counsel. I have the additional duty to charge you the law applicable to this case. As the presiding Judge I am the sole judge of the law in this case, and it's your duty as jurors to accept and apply the law as I now state it to you. As I told you yesterday, if you already have any ideas of what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon your idea, because you are sworn to accept the law and apply the law exactly as I state it to you. As I also told you, in every

care case tried in this Court before a jury, the jury becomes the sole and exclusive judge of the facts in this case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in the case. Since you, the jury, are the sole judge of the facts in this case you are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence or otherwise or anything that I say now during the course of this instruction to you that I have any opinion about the facts in this case. I do not have any opinion about the facts in this case. The law does not allow me to have any opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors it is your duty to determine the affect, value, weight and truth of the evidence presented during this trial.

Now, the Defendant has pled not guilty to this indictment, and that plea of not guilty puts the burden of proof on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of law that a Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been

proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations but it accompanies the Defendant throughout the trial unless you reach a verdict of guilt based on the evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant which remains with the Defendant unless it has been stripped of the Defendant satisfying you of the Defendant's guilt beyond a reasonable doubt. Now, this presumption of innocence is not mere legal theory and it's not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

Let me explain to you what reasonable doubt is. The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you are told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt leaves you firmly convinced of the Defendant's guilt. Now, there are very few things in

this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty. If on the other hand you think there's a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

Now, Mr. Foreman, ladies and gentlemen of the jury, there are two types of evidence which are generally presented during a trial. That being direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. However, circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of these circumstances must be consistent with each other, and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If the circumstances merely portray the Defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the

Defendant guilty beyond a reasonable doubt, and this burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two. Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who have testified in this case you may believe one witness over several witness, or several witness over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in the case. You may also consider the appearance and manner of a witness while on the witness stand.

At issue in this case is the identification of the Defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant. Identification

testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider it a believability of each identification witness in the same way as any other witness. You may also consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short of time was available. How far up close the witness was. The lighting conditions. And whether the witness had the chance to see or know the person in the past. Once again, I instruct you, the burden of proof on the State extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the Defendant as the person who committed the crime. After examining the testimony you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty.

Now, criminal intent is a necessary element of each crime and must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. Now, there's no way to improve intent to a mathematical certainty. There's no way medical science can dissect a person's brain to determine what he or she had in

mind. So the law states criminal intent may be inferred from the circumstances shown to have existed both before and after the fact. This is how you, the jury, makes a determination of whether or not the element requiring an intent was present. Criminal intent is a state of mind that operates jointly with an act or omission in the commission of a crime. Criminal intent is a mental state of conscious wrongdoing. So it is up to you, the jury, to determine what the Defendant intended to do based on the circumstances shown to have existed. I tell you that the State must prove criminal intent beyond a reasonable doubt just as the State must prove every element beyond a reasonable doubt as I have previously explained to you.

Now, a statement alleged to have been made by the Defendant has been admitted into evidence in this case. While the Court has determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the Defendant made the statement. If the Defendant did make the statement, you must determine whether the statement was made by the Defendant voluntarily and of his own free will. This means that the his statement was not caused by pressure, force, fear, threats, coercion, or intimidation, or by hope or a promise of leniency or reward of any kind. In determining whether a statement was voluntary you should consider both the characteristics of

the Defendant and the details of the questioning. Some of the factors that you may consider are the age of the Defendant, the Defendant's education or lack of education, the Defendant's mental ability or capacity, the Defendant's IQ or intelligence, the Defendant's background and environment, the place and length of detention, the nature of the questioning. You must carefully consider all the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the alleged statement. If you determine the alleged statement was not the free and voluntary statement of the Defendant, you should not consider the statement at all.

Now, Mr. Foreman, ladies and gentlemen of this jury, during this trial you have heard testimony from children. When a witness is a child you must determine, as with any witness, whether that testimony is believable. In deciding believability you may consider not only matters that I have already discussed with you, but you may also consider the age of the child. The child's ability to observe and remember facts. The child's ability to understand and

answer questions. Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness in this criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth. In addition, young children may be influenced by the way that the questions are asked. It is up to you to decide whether the child understood the questions asked.

Mr. Foreman, ladies and gentlemen of the jury, I charge you that evidence of good character and good reputation may, in and of itself, create a doubt as to guilt and should be considered by the jury along with all other evidence in determining the guilt or innocence of the Defendant. I further charge you that the testimony of the victim need not be corroborated in prosecutions under Section 16-3-655 Code of Laws for South Carolina.

Now, as already instructed to you, the Defendant has been charged with first degree criminal sexual conduct with a minor. The State must prove beyond a reasonable doubt the Defendant engaged in a sexual battery with the victim. A sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight of any part of a person's body or of any object into the genital or

anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes. The State must then prove beyond a reasonable doubt that the victim was less than 11 years old at the time of the sexual battery.

Consent, willingness, indifference or ignorance on the part of the minor, if any, as to what was taking place does not in any way affect the charge of criminal sexual conduct with a minor, because an unmarried woman under the age of 14 cannot legally consent to any sexual intercourse or a sexual battery.

Now, Mr. Foreman, ladies and gentlemen of the jury, there are only two possible verdicts in this case. And I'm going to come down in just a moment and show you the verdict form. That being guilty and that being not guilty. And there's no significance to placing guilty ahead of not guilty. One has to go before the other. But your verdict that you reach, Mr. Foreman, and ladies and gentlemen of the jury, must be unanimous among the 12 of you, and when you have reached a verdict you are to knock on the door and notify the bailiff that, in fact, you have reached a verdict.

Now, I told you a lot in these last 20 some odd minutes. I'm going to give you a copy of what I have just read to you to take back into the jury room for your use

however you deem appropriate and necessary for purposes of your deliberation.

Mr. Foreman, this verdict form is very simple. It just has -- this would be what we call the caption of the case, The State of South Carolina vs. Carrol Tremayne Washington. And it says, "We, the jury, unanimously find the Defendant in connection with indictment," and there's the indictment number and the charge, criminal sexual conduct with a minor first degree. Under that section either guilty or not guilty. You'll place your X or your checkmark at either guilty or not guilty depending upon the verdict you reach, and you'll sign and date the verdict form.

Now, I'm going to send all 14 back to the jury room. Do not start your deliberations yet. I need to talk with the lawyers to make sure that my charge to you was proper. That I don't need to make any additions or corrections to what I have charged you. Now, if I don't bring you to do that, and when the bailiff brings to you the exhibits, which I think are only two exhibits, verdict form and the charge, that will be your cue for two things to happen. I need the two alternates to exit the jury room. Mr. Foreman, then you can begin your deliberations. Okay?

Go back to the jury room, all 14 of you. Do not begin any discussion yet.

(Whereupon, the jury exited the courtroom at 11:07

a.m.)

THE COURT: Does the State have any exceptions or objections to the final charge?

MR. SCOTT: No, Your Honor.

THE COURT: From the Defense?

MR. VERNER: No, sir.

THE COURT: Thank you very much. We have three exhibits, as I understand.

MR. SCOTT: Yes, sir.

THE COURT: Everybody in agreement on that?

MR. SCOTT: The identification, the photograph and then the DVD. And how are we doing the DVD?

MR. SCOTT: There's a TV in there.

THE COURT: If they want to watch the DVD, then -- is there a TV back there that they can use? This one here?

MR. SCOTT: Yes, sir.

THE COURT: They'll just have to request it and then we'll probably just bring them out. Probably the easiest thing would be to bring them out and let them look at it again. All right. Give these to the bailiff.

(Whereupon, jury began deliberations at 11:10 a.m.)

(Whereupon, a recess was held from 11:10 a.m. to 12:30 p.m.)

THE COURT: It's my understanding that the jury has reached a verdict in this case. Anything we need to put on

the record before we have the jury come out?

MR. SCOTT: Nothing from the State, Your Honor.

MR. VERNER: No, Your Honor.

THE COURT: Madam Bailiff, if you would bring the jury out, please. Mr. Washington, if you'll please stand, and officers, if you will --

(Whereupon, the jury enters the courtroom at 12:35 p.m.)

THE COURT: Let the record reflect that the jury is back out. Mr. Foreman, it's my understanding that the jury has reached a verdict in this case.

MR. FOREMAN: Yes, Your Honor.

THE COURT: And without telling me what the verdict is, was and is your verdict unanimous among the 12 of you?

MR. FOREMAN: Yes, Your Honor.

THE COURT: Okay. Would you hand the verdict form to the bailiff, please. Madam Clerk, would you publish the verdict, please.

MADAM CLERK: Yes, sir. "State of South Carolina versus Carrol Tremayne Washington. We, the jury, unanimously find the Defendant in connection with indictment 2015-GS-36-546 charging him with criminal sexual conduct with a minor, victim under 11 years of age, first degree, section 16-03-0655 Code of Laws of South Carolina, the verdict of the jury is guilty," and it's signed Lloyd

Arrowood. Mr. Foreman, ladies and gentlemen, if this is your verdict, please indicate by raising your right hand.

(Whereupon, jurors raise their right hand.)

THE COURT: Let the record reflect that all 12 raised their hands. Does either side want individual polling of the jury?

MR. SCOTT: None from the State, Your Honor.

MR. VERNER: Yes, sir. Let's poll the jury.

THE COURT: Okay. Madam Clerk, if you will --

MADAM CLERK: As I call your name please raise your hand and I'll ask you a question and please respond. Robert Ott. Mr. Ott, was this your verdict and is it still your verdict?

THE JUROR: It is.

MADAM CLERK: La'tisha Chalmers, was this your verdict and is it still your verdict?

THE JUROR: It is.

MADAM CLERK: Shykerra Burnside, is this your verdict and is it still your verdict?

THE JUROR: It is.

MADAM CLERK: Doris Sheppard, was this your verdict and is it still your verdict?

THE JUROR: Yes.

MADAM CLERK: Timothy Hudson, was this your verdict and is it still your verdict?

THE JUROR: Yes.

MADAM CLERK: Lloyd Arrowood, was this your verdict and is it still your verdict?

MR. FOREMAN: Yes.

MADAM CLERK: Sharon Derrick, was this your verdict and is it still your verdict?

THE JUROR: Yes.

MADAM CLERK: Sara Wessinger, was this your verdict and is it still your verdict?

THE JUROR: Yes.

MADAM CLERK: Robert Griffen, was this your verdict and is it still your verdict?

THE JUROR: Yes.

MADAM CLERK: Justin Dickert, was this your verdict and is it still your verdict?

THE JUROR: Yes.

MADAM CLERK: Norman Way, was this your verdict and is it still your verdict?

THE JUROR: Yes.

MADAM CLERK: Troy Pridham, was this your verdict and is it still your verdict?

THE JUROR: Yes.

MADAM CLERK: Thank you.

THE COURT: Thank you, Madam Clerk. Mr. Washington, you can have a seat.

Ladies and gentlemen of the jury, I want to take this opportunity once again to thank you for your jury service. As I mentioned, I think maybe yesterday before we adjourned I commented on the fact that you remain very attentive throughout this entire trial and that's, of course, absolutely essential for a jury to do is be very attentive to everything that goes on and be attentive to the testimony presented, and we appreciate that very much. Also, we had to send you out a time or two to your jury room and keep you back there for periods of time and you were very patient with us and we appreciate that as well. I hope that serving on this jury was an educational experience for you, especially for those of you who have not sat on a jury before. This is a difficult job that you had, and your verdict means nothing to me. I accept your verdict, whatever it is. But you have performed your duty admirably and conscientiously, and that's what we expect of juries.

We have no further business for a jury this week. So you will not need to come back. You are free to discuss this case if you like with anyone. You don't have to, but you are free to discuss it if you wish to. I understand that there is a check downstairs at the window at the Clerk's Office. So when you leave, go down there and pick up your check for service on this jury this week. And I hope sometime down the road that you'll have an opportunity,

once again, to serve on a jury, whether it's a criminal jury or whether it's a civil jury. As I mentioned to you on Monday, service on a jury is considered by many to be the second highest responsibility -- civic responsibility that we have second to only serving in the military. So it's a very important role that you have performed and have taken on this week, and certainly your contribution to our justice system.

I like to shake the hands of my jury, so as you leave I'll shake your hand and you are free to go.

MADAM CLERK: Excuse me. I need Mr. Arrowood to sign.

THE COURT: Mr. Arrowood, when you leave, if you'll go right to the Clerk. You need to sign an additional paper. Thank you, sir.

(Whereupon, the jury was released.)

THE COURT: Mr. Verner, do you need a few minutes?

MR. VERNER: No, sir.

THE COURT: I'll be glad to hear from the State first as it relates to sentencing.

MR. SCOTT: Judge, Nicole Simms, the mother of the victim, would like to speak. I have nothing to say on behalf of the State. But would you like to hear from her now?

THE COURT: Ms. Simms, I'll need to have you sworn in now. Madam Clerk, would you swear her in.

NICOLE SIMMS, having first been duly sworn, testified as follows:

THE COURT: Ms. Simms, I'll be glad to hear from you, ma'am.

MS. SIMMS: I'm Minor 's mom. I just want to let everybody know that it's affected Minor . Even though he was incarcerated Minor also was incarcerated, having nightmares, wouldn't go around nobody, cry constantly. My 10-year-old even started wetting in her bed because the nightmares. And the bad part about it is she trusted you. She thought of you as family. And the reason why she came out with the truth is because she didn't want Tonya to hurt. But you hurt my baby. You changed her life completely. Thank you.

THE COURT: Thank you, Ms. Simms. Nothing further from the State, Solicitor?

MR. SCOTT: No, Your Honor.

THE COURT: All right. Mr. Verner, I'll be glad to hear from you and then if the Defendant wishes to address the Court and anybody that may be here, I don't know if there are, on his behalf.

MR. VERNER: Judge, Carrol is 32-years-old. He's been in jail continuously since June 10th of 2015. I don't know the time but that will be his sentence start date, June 10th of '15. Other than one bad check, he's never been arrested

for anything. He was full-time employed. Judge, I just -- in a case like this where the sentence is kind of either/or, if this is his first general session ever, I'm not making light of the charge but I would say fact-wise this would be at the lower end of a criminal sexual conduct. I understand there might be evidence of repeated type conduct, but I don't think it -- fact-wise it would be warranting the life sentence. So we feel that would be 25 years is appropriate.

THE COURT: Thank you, Mr. Verner.

MR. VERNER: Do you want to anything, Carrol, at this time.

THE COURT: Let me hear from Ms. Dawkins. I think the last name is Dawkins, right?

MS. DAWKINS: Yeah.

THE COURT: Ms. Dawkins, if you want to address the Court I need to have you sworn in. Yes, ma'am. I'll be glad to hear from you.

MR. VERNER: She just said she's here for moral support. To support him.

THE COURT: Oh, I'm sorry. Mr. Washington, I'll be glad to hear from you. Anything you'd like to tell me, sir.

THE DEFENDANT: I know I was found guilty of the crime, but sir, I did not do anything. I still maintain my innocence. Ever since I first talked to Epps I told him that, you know, something was going on with the kid with her

father, which I believe. He didn't show up. She said that it did happen. So I'm just another innocent person. I don't have anything else to say. It's a shame that there were no hardcore facts to indicate that I done anything, which I didn't do anything. I'm a law abiding citizen. I've been doing it ever since I've been able to be charged with anything. And I work. There were just so many other children that come to our house that didn't have, you know what I mean, nothing be said. Her background tells it all. People - people know her in the town of Whitmire as a liar. I just think the child is covering up for her father or whoever. She actually said it out of her mouth before the whole time that the case was being processed from March to June. They actually came down to Whitmire during the whole case.

MR. VERNER: Is there anything just sentence-wise you want him to know?.

THE DEFENDANT: I just wish that you would take -- since this is my first time ever being in trouble or charged with a crime.

MR. VERNER: Your Honor, I don't anticipate, but I would ask 10 days to file post-trial motions.

THE COURT: Sure.

MR. VERNER: But I don't anticipate any, but I'll just ask for that time.

THE COURT: You've got the 10 days if you determine that's something you need to do.

MR. VERNER: Thank you, Your Honor.

THE COURT: Everybody be at ease for just a moment.

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

THE COURT: For purposes of the record I need to put several findings on the record. This is a violent felony pursuant to Section 16-23-500 pursuant to or in connection with any future ownership of possession of any firearms. This is a sexual violent offense for purposes of potential sexually violent predator act proceedings. In addition, I'll require sex offender registry. And lastly, the Defendant will be placed on the central registry of child abuse and neglect pursuant to Section 17-25-135.

Mr. Washington, in light of the fact that we do have a pretty substantial mandatory sentence, and in light of the fact that you do not really have a prior record, unless one bad check charge, the sentence of the Court is you be committed to the State Department of Corrections for a period of 25 years and I'll give you credit for 266 days that you have been incarcerated. Good luck to you, sir.

MR. SCOTT: Thank you.

MR. VERNER: Thank you, Your Honor.

1

2

Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Newberry County, South Carolina, on the 29th day of February and the 1st-2nd day of March, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR
Circuit Court Reporter
September 28, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Newberry County

Honorable Donald B. Hocker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

CARROLL TREMAYNE WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2016-000792

---

ANDERS BRIEF OF APPELLANT

---

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR APPELLANT

## TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL ..... 1

STATEMENT OF THE CASE ..... 2

ARGUMENT

The trial court abused its discretion by admitting the videotaped forensic interview of the minor complainant pursuant to S.C. Code Ann. § 17-23-175 when the forensic interview was hearsay, was cumulative to and impermissibly bolstered Minor's testimony, and was unduly prejudicial under Rule 403, SCRE, particularly where there was no physical evidence presented and Minor's credibility was the most critical determination in this case. ..... 3

**The Objection** ..... 6
**The Solicitor's Closing Argument** ..... 7
**Verdict and Sentencing** ..... 7
**Discussion** ..... 8

CONCLUSION ..... 11

PETITION TO BE RELIEVED AS COUNSEL ..... 12

## TABLE OF AUTHORITIES

### Cases

Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994) ..... 10

Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010) ..... 9

State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011) ..... 9

State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013) ..... 9

State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016) ..... 7

State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012) ..... 8

### Other Authorities

S.C. Code Ann. § 16-3-655 ..... 7

S.C. Code Ann. § 16-3-657 ..... 7

S.C. Code Ann. § 17-23-175 ..... 1, 3, 6, 8

### Rules

Rule 403, SCRE ..... passim

Rule 801(c), SCRE ..... 8

Rule 801(d)(1), SCRE ..... 8

## STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by admitting the videotaped forensic interview of the minor complainant pursuant to S.C. Code Ann. § 17-23-175 when the forensic interview was hearsay, was cumulative to and impermissibly bolstered Minor's testimony, and was unduly prejudicial under Rule 403, SCRE, particularly where there was no physical evidence presented and Minor's credibility was the most critical determination in this case?

## STATEMENT OF THE CASE

A Newberry County Grand Jury indicted Appellant on October 9, 2015 for first degree criminal sexual conduct (CSC) with a minor. R. 382-383. His case was called to trial on February 29, 2016 before the Honorable Donald B. Hocker, and a jury. R. 1. Assistant Solicitors Dale Scott and Taylor Daniel represented the state, and Charles Verner represented Appellant. R. 1.

On March 2, 2016, the jury found Appellant guilty. R. 370, l. 19 – 371, l. 5. Judge Hocker sentenced Appellant to the mandatory minimum sentence of twenty-five years' imprisonment. R. 378, ll. 16-22.

This appeal follows.

## ARGUMENT

The trial court abused its discretion by admitting the videotaped forensic interview of the minor complainant pursuant to S.C. Code Ann. § 17-23-175 when the forensic interview was hearsay, was cumulative to and impermissibly bolstered Minor's testimony, and was unduly prejudicial under Rule 403, SCRE, particularly where there was no physical evidence presented and Minor's credibility was the most critical determination in this case.

Minor's grandmother lived in an apartment complex in Whitmire, South Carolina. Minor, who was ten years old at the time of trial, and her two sisters would frequently visit their grandmother on the weekends and during the summer months. R. 98, l. 2 – 99, l. 23. Appellant lived in the same apartment complex as Minor's grandmother with his girlfriend, Tonya, and his girlfriend's ten year old son. R. 100, l. 11 – 102, l. 14; R. 290, l. 25 – 291, l. 5. Tonya and Minor's mother are second cousins. R. 100, ll. 11-18; R. 121, ll. 15-20.

Minor, her sisters, and several other neighborhood kids would often play at Tonya and Appellant's apartment. R. 298, l. 24 – 299, l. 23. The children loved to play at the couple's apartment largely because the family had a Wii U, a videogame console. R. 202, ll. 8-25; R. 275, ll. 3-11. When the neighborhood children came over, including Minor, they would be "in and out playing" all day long. R. 277, ll. 12-16. Tonya, Minor's grandmother, and other neighbors would sit out on the porch and socialize while the children played. R. 278, l. 19 – 279, l. 12. Sometimes the children were inside playing videogames or dancing and other times they were outside playing baseball, basketball, football, and other sports. R. 277, ll. 22-24; R. 301, ll. 22-25.

Appellant worked odd hours during the day, but if he was home he was usually upstairs in a spare bedroom playing on his Xbox, another videogame console. R. 286, ll. 4-20; R. 287, ll. 24-25. Appellant loves children and would occasionally play with the children when he was not working or playing on his Xbox. R. 280, ll. 5-6.

Minor claimed that when she was eight years old while the children were playing hide and seek inside Tonya and Appellant's apartment, Appellant "took [her] to the bathroom" and "touched [her] heinie . . . under [her] pants." R. 203, l. 8 – 204, l. 17. Minor was very hesitant and wavered regarding whether Appellant touched her on the "outside" or "inside" of her "heinie." The following exchange took place between Minor and the assistant solicitor:

Q: When he touched your heinie did he touch the outside of it.

A: Yes.

Q: Did he touch any other part of it?

A: *Now that I think about it, no.*

Q: No? [Minor] what was - - where did he touch your heinie?

A: In the - - inside of my pants.

Q: Inside of your pants, okay. Once he touched the inside under your pants what part of your heinie did he touch was the question.

A: Mostly the outside.

Q: Mostly? What was the other part that he touched?

A: Once he did it - - I felt pressure on my heinie, so *I thought the inside*.

Q: Did it feel like he touched the inside?

A: Yes.

R. 205, ll. 5-21 (emphasis added).

Minor later claimed that when Appellant touched her it felt "hard" and "weird" and "cold." R. 205, l. 24 – 207, l. 1. The solicitor then asked Minor the following leading question, "How many times did that happen where he put his hand on the inside of your heinie?" Minor responded "I think twice." R. 207, ll. 9-14. However, Minor said she "kind of like forgot" how old she was when the second time happened, but then later claimed the "second time was like one month before I turned nine." R. 207, l. 19 – 208, l. 208, l. 6.

Minor alleged that the second time happened in Tonya and Appellant's upstairs bedroom while the other children were "mostly downstairs." She said another neighborhood child came into the bedroom before "it happened" to ask Minor a question and then after she left Appellant "forced [her] to pull [her] pants down." R. 208, l. 7 – 209, l. 6; R. 212, l. 13 – 213, l. 2. However, Minor claimed on this occasion Appellant "was just looking at [her]." R. 213, ll. 5-8.

Lastly, Minor explained a third occasion when Appellant allegedly touched her "inappropriately." She claimed while the other children were outside playing, she was inside with Appellant who did "a hand movement that he does a lot." She said he was "pulling on . . . his pants" and she thought it meant he wanted her to pull her pants down. She was "terrified" but did not pull her pants down and nothing happened because by then she was "not that afraid to say no." R. 215, l. 5 – 218, l. 21.

Despite claiming Appellant touched on her two occasions, Minor could not describe the second occasion and admitted she was "[k]ind of rusty on it." R. 219, l. 3 – 221, l. 21. She later contradicted herself and said Appellant only touched her one time. R. 221, ll. 17-21.

Appellant testified in his defense. He adamantly denied the allegations and firmly stated that he never touched Minor improperly. R. 311, ll. 13-24. He also stated that he was never

alone with Minor in his apartment and that there were always children and adults in and out of the house. R. 309, l. 7 – 310, l. 10.

Tonya, Appellant's girlfriend, also testified on Appellant's behalf. She said she never witnessed any sort of "inappropriate behavior" between Appellant and the neighborhood children who frequently came to visit and play. R. 280, ll. 13-19; R. 284, ll. 20-22; R. 288, ll. 11-12. She also testified that even after these allegations surfaced, the other neighborhood kids still came over to play at her apartment. R. 281, l. 18 – 282, l. 4.

**The Objection**

Before the forensic interview was admitted into evidence and published to the jury, defense counsel objected. While he conceded the interview met the elements of S.C. Code Ann. § 17-23-175 for admissibility, he argued it was "cumulative to the child's testimony" and should be excluded for that reason. He also objected under Rule 403, SCRE, and argued the interview constituted hearsay. R. 177, l. 15 – 178, l. 8.

The court overruled the objection, and after conducting an *in camera* hearing, found the interview met the elements of the statute and contained particularized guarantees of trustworthiness. R. 184, l. 6 – 185, l. 3. Therefore, the court admitted the interview and allowed the state to publish it to the jury. R. 186, ll. 6-12. The forensic interview was marked as State's Exhibit No. 1 and is on file with this Court.

The statements Minor made during the forensic interview were consistent with her testimony before the jury. However, she was more assertive during the interview and wavered less in her account. See State's Exhibit No. 1 (DVD of Forensic Interview).

**The Solicitor's Closing Argument**

During his closing argument, the assistant solicitor used Minor's forensic interview to bolster her trial testimony and the state's case.[1] R. 349, ll. 3-17. The solicitor exclaimed:

> This **[Minor's] story has been consistent from the very get go** from the initial allegation to the times - - **you all [are] going to get to watch that forensic interview as much as you all want to, by the way, and you're going to find, and you can compare it to her testimony yesterday, that its wholly consistent.** Is a nine, 10-year-old capable of doing that. You know, if you're lying, you got to be good at it. If you're lying you got to remember what the lie is so you can carry it on. You know what I'm saying? But if you tell the truth you don't have to do all that because you remember what happened. If you're telling the truth your story is going to be consistent. The big part's going to be consistent, and that's what you're going to find when you watch that forensic interview and you remember how she testified yesterday.

R. 349, ll. 3-17 (emphasis added).

**Verdict and Sentencing**

As seen, Minor's credibility was crucial to the state's case. There was no physical evidence or eyewitness testimony presented. The only evidence against Appellant was Minor's testimony and the cumulative forensic interview that was admitted over defense counsel's objection. Despite the lack of evidence, the jury convicted Appellant of first degree CSC with a minor. R. 370, l. 19 – 371, l. 3. Because he had no prior record, the court sentenced him to the mandatory minimum sentence of twenty-five years imprisonment. R. 378, ll. 16-22.

---

[1] The solicitor also repeatedly argued in his opening statement and closing argument that under South Carolina law Minor's testimony does not need to be corroborated. R. 90, ll. 12-21; R. 351, ll. 8-19. The court likewise charged the jury "that the testimony of the victim need not be corroborated in prosecutions under Section 16-3-655 Code of Laws for South Carolina." R. 366, ll. 15-18. Defense counsel did not object to the solicitor's arguments or the court's erroneous charge. See State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016) (holding that instructing the jury that the victim's testimony need not be corroborated by additional evidence or testimony pursuant to S.C. Code Ann. § 16-3-657 is an impermissible charge on the facts and, therefore, unconstitutional).

**Discussion**

The trial court abused its discretion by admitting Minor's forensic interview pursuant to S.C. Code Ann. § 17-23-175 since the forensic interview was hearsay, was cumulative to and impermissibly bolstered Minor's testimony, and was unduly prejudicial under Rule 403, SCRE, particularly where there was no physical evidence presented and Minor's credibility was crucial to the state's case.

The evil of improper bolstering and cumulative hearsay testimony is that both impermissibly give the jury the false impression that by repeating the same story it has been corroborated, and is true. Hearsay is "a statement, other than one made by a declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "Generally, a prior consistent statement is not admissible unless the witness is charged with fabrication or improper motive or bias." State v. Whitner, 399 S.C. 547, 558, 732 S.E.2d 861, 867 (2012) (citing Rule 801(d)(1), SCRE). "However, in CSC cases involving minors, the Legislature has made specific allowances for such hearsay statements of child victims under the proper circumstances." Id. (citing S.C. Code Ann. § 17-23-175 (Supp.2010)). If certain requirements are satisfied, a minor's out of court statements, like those made during a recorded forensic interview, may be admitted. See S.C. Code Ann. § 17-23-175.

Minor's statements during the forensic interview were clearly hearsay and were not admissible under any hearsay exception. The court admitted the videotaped interview pursuant to § 17-23-175. However, there is nothing in a criminal sexual conduct case that allows for the admission of hearsay testimony that is cumulative to and impermissibly bolsters the minor's trial testimony. Therefore, the trial court should have excluded Minor's forensic interview.

As seen, the assistant solicitor argued to the jury that Minor's out of court's statements made during the forensic interview, which went far beyond time and place, were consistent with her trial testimony. The solicitor argued Minor's "story has been consistent from the very get go" and "you all [are] going to get to watch that forensic interview as much as you all want . . . and you're going to find, and you can compare it to her testimony yesterday, that its wholly consistent." R. 349, ll. 3-17. It is undisputed, as admitted by the solicitor in his closing argument, that Minor's out of court statements made during her forensic interview were cumulative to her trial testimony and, consequently, constituted impermissible bolstering.

In State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), our Supreme Court held the trial court erred in allowing the state to introduce portions of a forensic interviewer's written reports about interviews conducted with the three alleged minor victims. The Court stated, "In each report, the forensic interviewer stated that during the interviews, each child had 'provide[d] a compelling disclosure of abuse by [appellant].'" Id. at 480, 716 S.E.2d at 94 (alterations in original). The Court found this was error as "[t]here is no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful." Id.

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), our Supreme Court likewise held that the forensic interviewer's testimony about a "compelling finding of child abuse" was the equivalent of the witness stating the minor was telling the truth and was improper bolstering. Id. at 359, 401 S.E.2d at 500.

While in Jennings, Kromah, and Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010), the bolstering centered on the forensic interviewer, here Minor's in court testimony was improperly bolstered by her out of court forensic interview. Under the reasoning of Kromah and that line of

cases, Minor's forensic interview should have been excluded. Minor made allegations during her forensic interview that she repeated during her trial testimony. The videotaped forensic interview presented the jury with a sympathetic forensic interviewer eliciting the same story Minor told at trial. The evil, again, of improper bolstering is that the jury will impermissibly think that because it hears the same testimony or story more than once that it more than likely is true.

The out of court statements Minor made during the forensic interview were also highly prejudicial under Rule 403, SCRE. The state sought to admit the recorded interview merely to reiterate and reinforce Minor's testimony. See Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994) ("Improper corroboration testimony that is ***merely cumulative to the victim's testimony***, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.") (emphasis in original).

Due to the trial court's error in admitting Minor's forensic interview, which was highly prejudicial in this "he said, she said" case, Appellant should be granted a new trial.

## CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of March, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Newberry County
Honorable Donald B. Hocker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

CARROLL TREMAYNE WASHINGTON,

APPELLANT

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Carroll Tremayne Washington states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial before the Honorable Donald B. Hocker, which was held on February 29, 2016 through March 2, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Carroll Tremayne Washington.

Respectfully Submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of March, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Newberry County
Honorable Donald B. Hocker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

CARROLL TREMAYNE WASHINGTON,

APPELLANT

---

**DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL**

---

Appellant proposes the following be included in the Record on Appeal:

(1) True-Billed Indictment:
(2) Complete Trial Transcript Dated February 29, 2016 through March 2, 2016;
(3) State's Exhibit No. 1 (DVD of Forensic Interview);
(4) State's Exhibit No. 2 (Photographic Lineup).

I certify that this designation contains no matter which is irrelevant to this appeal.

March 17, 2017

Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and 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."

March 17, 2017.

Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Newberry County

Honorable Donald B. Hocker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

CARROLL TREMAYNE WASHINGTON,

APPELLANT

---

CERTIFICATE OF SERVICE

---

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Carroll Tremayne Washington, #367333, at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472, this 17th day of March, 2017.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of March, 2017.

Brittany Wilkinson (L.S)
Notary Public for South Carolina
My Commission Expires: November 3, 2026.

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

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

The State, Respondent,

v.

Carrol Tremayne Washington, Appellant.

Appellate Case No. 2016-000792

---

Appeal From Newberry County
Donald B. Hocker, Circuit Court Judge

---

Unpublished Opinion No. 2018-UP-241
Submitted April 1, 2018 – Filed June 13, 2018

---

**APPEAL DISMISSED**

---

Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General John Benjamin Aplin, both of Columbia, for Respondent.

---

RECEIVED
JUN 13 2018
APPELLATE DEFENSE

**PER CURIAM:** Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.[1]

**APPEAL DISMISSED.**

**SHORT, THOMAS, and HILL, JJ., concur.**

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA )
)
County of Newberry )
)
Carroll Tremayne Washington )
Full name and prison number (if any) of Applicant )
#367333 )
)
v. )
)
)
State of South Carolina )
)
)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2018-CP-36-02114

FILED

## INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institute, 136 Wilson Ave. Ridgeville, S.C. 29472

2. Name and location of Court which imposed sentence General Sessions Court in Newberry County

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) CSC with a minor, first degree

(b)

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.
SEP 10 2018
Elizabeth P Folk
Clerk of Court

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 2, 2016 25 years imprisonment

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. June 13, 2018

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2018-UP-241

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See. Attachment for specific grounds.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See. Attachment for specific facts.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Direct appeal was framed under abuse of discretion, so in my opinion (10) is framed under IAC. I believe No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) All grounds in (10) are proper in IAC claims in PCR

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Charles Verner

ii. Lara Mary Caudy, Division of Appellate Defense
P.O Box# 11589 Columbia, S.C. 29211-1589

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Arraignment, trial and sentencing

ii. Direct Appeal, pursuant to Anders

iii. _____

Revised 3/2003

19. State clearly the relief you seek in filing this application:

Vacate conviction, Remand to General Sessions for a fair trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )
) VERIFICATION
County of Newberry )

I, Carrol Tremayne Washington, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Carrol T Washington

SWORN to and subscribed before me this 5th day of September, 2018.

Ludreen Bryant (L.S.)
*Notary Public*

My Commission Expires: May 26, 2020

FILED

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF**

I, Carrol Tremaune Washington, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Carrol T Washington
*Applicant*

SWORN or affirmed to and subscribed before me this 5th day of September, 2018.

Ludrean Bryant
*Notary Public*

My Commission Expires: May 26, 2020

# ATTACHMENT

10(a): Applicant was denied the right to effective assistance of counsel — guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution — during the guilt-or-innocence phase of his jury trial.

11(a): Supporting facts: Trial counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited, to, the following:

FILED

① Trial counsel ineffective for failing to object to amendment of indictment which changed offenses from CSC Adult to CSC w/minor 1st and thereby raised maximum punishment. The amendment deprived the court of jurisdiction. Hopkins v. State, 451 S.E.2d 389 (S.C. 1994). The solicitor began the second day with amendment. R.72, l.25 – 73, l.1-2. State v. Gentry, 610 S.E.2d 494, 501 (S.C. 2005) Gentry rule not applicable. Applicant was prejudiced on this issue.

② Counsel's failure to adequately investigate law enforcements improper conduct on several issues, and develop critical facts, deprived Applicant's trial strategy relevant, admissible, information regarding an accurate assessment of impermissible tactics to present impeachable evidence which would create a reasonable doubt necessary to determine officer's credibility and bias.

③ Ineffective assistance of counsel for failure to object to leading questions by the prosecutor.

Applicant argues that trial counsel's failure to object to such repeated, objectionable conduct by the Solicitor shows a clear failure by trial counsel to effectively assist Applicant in his defense.

④ Ineffective assistance of counsel for failure to object to impermissibe victim impact testimony.

With at least 16 individule instances of improper comments by the Solicitor in closing argument alone. No objections to this issue from defense counsel.

⑤ Ineffective assistance of counsel for failure to object when the Solicitor impermissiby informed the jury of highly inflammatory remarks which infer Applicant and defense witness' lied under oath. There exists at least 4 individual instances of improper opinions by the Solicitor in closing argument. See U.S v Woods, 710 F.3d 195, 202-03 (4th Cir. 2013) Prosecutor's statement that defendant had lied under oath improper because inflammatory.

⑥ Ineffective assistance of counsel for failure to object to impermissible vouching of State's witness' credibility. There exists over 12 individual instances of improper vouching for State witness' in the Solicitor's closing argument alone. See U.S v Leayza, 107 F.3d. 257, 261 (4th Cir 1997) Prosecutor's comments during closing argument that he believed government witness' were telling the truth improper.

⑦ Ineffective assistance of counsel for failing to object to prosecutor's improper remarks that jury could act as "conscience of Newbury county" which asks the jury to consider social implications of verdict rather than guilt-or-innocence of Applicant. R. 355, lln. 17-23.

⑧ Ineffective assistance of counsel for failing to object to prosecutor's use of improper epithets such as "Granny Pooh" and "taker" intended appeal to jurors prejudices and emotions.

⑨ Trial counsel's failure to act as an adversarial defense attorney allowing the prosecution to use improper and highly inflammatory statements that were prejudicial and irrelevant through out the entire trial is the exact scenario to base the "cumulative effect" of counsel's deficiencies are sufficient to demonstrate a reasonable probability that, but for [the cumulation of] counsel's unprofessional errors the results of the proceeding would have been different. Cherry v. State, 300 S.C. 115,

386 S.E 2d 624 (1989). This case does not meet the overwhelming evidence of guilt bar. First, Applicant has proven deficient performace on several grounds and Second, to the extent that the State argues that the prejudice prong can not be met, Applicant asserts that viewed in the totality of errors and the manner they were presented, the cumulative effect of prejudice meets the standard for relief under Strickland v. Washington, 466 U.S 668 (1984); Butler, 286 S.C at 442, 334 S.E. 2d at 814.

10 (b); Applicant was denied the right to effective assistance of counsel – guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution - during the sentencing phase of his jury trial.

11 (b); Supporting facts: Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited, to the following:

1) Counsel failed to investigate, develop, and present all available, relevant and admissible mitigating evidence. See Wiggins v. State, 539 U.S. 510 (2003). As a result of counsel's failure to uncover and present this evidence, Applicant's sentence is unreliable

② Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the prosecution. As a result of counsel's failure to make all appropriate objections, Applicant's sentence is unreliable.

③ Counsel failed to object to the courts erroneous charge. See State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016) (holding that instructing the jury that the victims testimony need not be corroborated by additional evidence or testimony pursuant to S.C Code Ann. § 16-3-657 is an impermissible charge on the facts and, therefore, unconstitutional. Counsel's failure to object prejudiced Applicant because of the likelihood of reversal on direct appeal if this issue was properly appealed.

10(c): Applicant was denied the right to effective assistance counsel – guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution – during the guilt-or-innocence phase of his jury trial.

11(c): Supporting facts: Trial counsel's attorney-client duty to Applicant and the same duties to key State's witness, did diverge at trial over cross-examination of related relevant issues of fact. See Cuyler v. Sullivan, 466 U.S 335 (1980) Counsel's ethical obligation to promptly advise the court of a potential conflict of interest. Applicant's right to effective assistance violated from counsel's failure to advise and his Sixth Amendment rights violated for the following:

Argument

Appicant asserts the question whether multiple representation has to be contemporaneous, as in Cuyler, or as in this case, chronological, would have the same detrimental effect on counsel's peformance.

During the cross-examination of State's witness Nicole Simms (Simms) trial counsel for Applicant Charles Verner (Verner) elicited testimony relating to Simms ex-husband's possible abuse of victim and her siblings. Verner raised this issue first on his cross-examination. R. 126 ll. 23-24. When Simms became frustrated over Verner's repeated questioning she made the following statement: "I did not tell about my older daugter being molested. First of all, my older daughter went to her counselor appointment and told her counselor that something happened to victim." And you should know, because you was my divorce lawyer and you bringing up something in my divorce. R. 127, lln. 12-16. The redirect tesimony of Simms specifically explains where Verner's allegations derived: "No, My daughter, N. T. , and my mom was there. I was in his office (Verner's) that day because we was going thrugh a custody battle between victim and her father. R. 128, lln. 23-25. It was victims sister who stated "some thing had happened to victim over her fathers house". R. 129, lln 1-2.

Discussion

Applicant asserts that Verner's prior representation of Simms demonstrates an actual conflict of interests.

This case closely parallels Glasser v. United States, 315 U.S. 60, 92 (1942) where the record showed that defense failed to cross-examine a prosecution witness whose testimony linked Glasser with the crime and failed to resist the presentation of arguably inadmissible evidence.

The testimony of Simms relating to the behavioral changes in the victims everday events would be easily attributed to Simms divorce and custody battle due to the timing of both events. An attorney without the loyalty to the State's Key witness would not refrain from presenting evidence relevant to these issues to provide the jury with an explantion for the victims sudden change in behavior.

The Applicant has specifically set forgrounds in which application is based pursuant to Section 17-27-50 of the Code of Laws of South Carolina (1976). The Applicant has at least a prima facie showing which would entitle him relief.

The Applicant's allegations are based entirely on ineffective assist of counsel claims and these claims are very specifically laid out in this PCR application.

All amendments will be filed by an authorized attorney well in advance to allow the Respondent a fair opportunity to prepare for a hearing.

Pursuant to U.S.C 28 § 1746 Applicant swears the foregoing is true and correct under the penalty of purjury.

This application has been prepared in a manner to preserve the issues above for federal habeas corpus review.

x Carrol J Warlington
(pro-se applicant)
DATE: 9-4-18

2018-CP-36-00414

To Clerk of Court,

Please find a PCR application and an 11 page attachment. Questions 14 and 16 were answered to the best of my understanding of the subject matter. Although grounds 3, 4, and 6 may have been discussed in the Anders type brief they were not objected to and preserved for appellate review. In my opinion this is the proper vehicle to raise these grounds for the first time under Ineffective assistance failure to object.

Please file PCR Application, Attachment and this letter. Thank-you.

Sincerely yours,

x Carrol T Washington

Date: 9-4-18

FILED
2018 SEP 10 AM 9:46

Carrol Tremayne Washington #367333
C.C.I. Stand-B#1
P.O Box# 205
Ridgeville, S.C 29472

RECEIVED
SEP 05 2018
MAIL ROOM
LIEBER C.I.

FIRST CLASS
UNITED STATES POSTAGE
PITNEY
$ 001.
02 1P
0000035844 SEP 05
MAILED FROM ZIP CODE

FILED
NEWBERRY COUNTY
2018 SEP 10 AM 9:46
E. L. FOLK
CLERK OF COURT

Clerk of Court
Newberry County Courthouse
1226 College Street
PO Drawer #10
Newberry, S.C 29108

LEGAL MAIL

OFFICE OF CLERK OF COURT
**COUNTY OF NEWBERRY**

Elizabeth P. Folk
Clerk of Court

P.O. Drawer 10
(803) 321-2110
Fax (803) 321-2111

TO: Jenell H Gregory
Office of the Attorney General

FROM: Melisa Vanderford
Common Pleas Court

DATE: September 10, 2018
Carroll Tremayne Washington #367333 vs. State of South Carolina

Enclosed please find a certified copy of a PCR application filed by the above named individual. According to the attached record he was represented in the original case by James Verner and Richard Kenan and the court reporter was Charlotte Smith.

CC: Carroll Tremayne Washington #367333
LCI Stono – B- #1
Po Box 205
Ridgeville SC 29472

OFFICE OF CLERK OF COURT
**COUNTY OF NEWBERRY**

Elizabeth P. Folk
Clerk of Court

P.O. Drawer 10
(803) 321-2110
Fax (803) 321-2111

Carroll Tremayne Washington #367333
LCI Stono – B - #1
PO Box 205
Ridgeville SC 29472

RE: Post-Conviction Relief

Date: September 10, 2018

CIVIL ACTION #2018-CP-36-00414 Carroll Tremayne Washington #367333 vs. State of South Carolina

The post-conviction relief application listed above has been filed and assigned the above civil action number for the docket. Your copy is enclosed with the above information shown. A copy has been forwarded to the Attorney General's Office in Columbia. The Attorney General's Office will be processing the case for court proceedings.

Thank you,

Melisa R Vanderford
Assistant Deputy Clerk Common Pleas
Newberry County

Cc: Jenell H Gregory
Attorney General's Office
PO Box 11549
Columbia, SC 29211

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF NEWBERRY | ) | IN THE COURT OF COMMON PLEAS<br>EIGHTH JUDICIAL CIRCUIT |
| Carrol T. Washington, #367333<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | Case No.: 2018-CP-36-0414<br><br>**RETURN** |

The State ("Respondent"), making its Return to the application for Post-Conviction Relief filed on September 10, 2018 would respectfully show this Court:

## I. Procedural History

Carroll T. Washington (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. During the May 2017 term, the Newberry County Grand Jury indicted Applicant for first degree criminal sexual conduct with a minor (2015-GS-36-0546). Charles Verner, Esquire ("Counsel") represented Applicant. Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case. On February 29, 2016, Applicant proceed to a jury trial before the Honorable Donald B Hocker. On March 2, 2016, the jury convicted Applicant as indicted. Judge Hocker sentenced Applicant to the mandatory minimum sentence of twenty-five years imprisonment.

Applicant filed a timely notice of appeal. Lara M. Caudy, Esquire, of the South Carolina Commission on Indigent Defense - Office of Appellate Defense, submitted a brief and motion to be relieved pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal on June 13, 2018. The remittitur was returned to the circuit

court on July 2, 2018.

## II. Factual History

On March 25, 2015, Nicole Simms took her ten-year old daughter ("Victim") to the Sheriff's department to report Victim had been raped. (Trial Tr. 26.) Simms met with Officer Brad Epps regarding Victim's allegations and identified "Man" as the offender. (Trial Tr. 26.) Officer Epps set up a forensic interview for Victim. (Trial Tr. 26-27.) Officer Epps was able to identify "Man" after Simms provided additional information about Applicant. (Trial Tr.26-27, 36.) Officer Epps put a photo-lineup together that included Applicant's DMV picture (Trial Tr. 36.) He showed the photo-lineup to Victim on June 3, 2015, and Victim identified Applicant as the offender. (Trial Tr. 37.)

On June 4, 2015, Applicant was interviewed by Officer Epps and stated "he didn't know why [Victim] would say this about him and all the kids gravitate towards him". (Trial Tr. 29, 141.) Furthermore, Applicant went on to say that "she was a fast little girl" in reference to questions about Victim. (Trial Tr. 29.) On June 10, 2015, Applicant was interviewed again and confirmed his nickname was "Man." (Trial Tr. 31, 143.) Applicant was arrested that day and, he told officers "he was ready to plea and get it over with". (Trial Tr. 34.)

Ethyl Simms, the victim's grandmother, testified she knew Applicant as her cousin's boyfriend and he and her cousin live in her same complex. (Trial Tr. 45.) She also said that at some point, Victim didn't want to go visit her and would rather cry than come visit. (Trial Tr. 46.) Furthermore, she said that it was common for Victim to go over to her cousin's apartment because Victim plays with her cousin's son. (Trial Tr. 46.) Grandmother testified she had seen Victim and Applicant together a lot. (Trial Tr. 46, 50.)

Simms testified Victim started having behavioral problems at school in 2014 and she didn't

want to go see her grandmother anymore. (Trial Tr. 115-117.) She testified Victim was usually happy and loved everyone. (Trial Tr. 115-117.) Trina Elfering, Director of Forensic Services at the Dickerson Children's Advocacy Center, testified at trial. (Trial Tr. 179-196.) Elfering conducted the forensic interview of the victim that was videotaped. This video was played at trial.

Victim testified she often saw "Man" whenever she visited her Aunt Tonya. (Trial Tr. 58-59.) She also testified she and Applicant played hide and seek together. (Trial Tr. 58-59.) When asked about how many times scary things happened between her and "Man", she stated around four times. (Trial Tr. 61.) She was then asked to identify "Man" in the courtroom and she pointed to Applicant. (Trial Tr. 62.) She further testified officers showed her pictures of different guys at the sheriff's department and, "I had to see which one was the one that was abusing me." (Trial Tr. 63.) The solicitor then asked her if she recognized anyone in the photos and she stated yes, it was "man". (Trial Tr. 64.) She also recalled putting a checkmark by his picture on the lineup card. (Trial Tr. 65, 224.) When asked about what happened in the bathroom with "Man", the victim stated that he touched her inappropriately. (Trial Tr. 204.) She further testified Applicant touched her "heinie" under her pants and that she felt pressure and "it felt hard." (Trial Tr. 205-206.) When asked how many times it occurred, she said twice. (Trial Tr. 207.) The victim then testified that on another occasion, Applicant forced her to pull her pants down. (Trial Tr. 213.) She explained that he asked her again to pull her pants down but she was not as afraid to say no that time. (Trial Tr. 218.) She also recalled telling her mother and sister that "Man" had been inappropriately touching her. (Trial Tr. 222-224.)

## III. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. "Trial counsel was ineffective for failing to object to amendment of indictment which changed offenses from CSC adult to CSC with minor 1st and thereby raised maximum punishment. The amendment deprived the court of jurisdiction. Hopkins v State, 451 S.E.2d 389 (SC 1994)."
   b. "Counsel's failure to adequately investigate law enforcements improper conduct on several issues, and develop critical facts, deprived Applicant's trial strategy relevant, admissible, information regarding an accurate assessment of impermissible tactics to present impeachable evidence which would create a reasonable doubt necessary to determine officer's credibility and bias"
   c. "for failure to object to leading questions by the prosecutor. Applicant argues that trial counsel's failure to object to such repeated questionable conduct by the solicitor shows a clear failure by trial counsel to effectively assist applicant in his defnse"
   d. "for failure to object to impermissible victim impact testimony. With at least 15 individual instances of improper comments by the solicitor in closing argument alone. No objections to this issue from defense counsel"
   e. "for failure to object when the solicitor impermissibly informed the jury of highly inflammatory remarks which infer applicant and dense witness lied under oath"
   f. "for failure to object to impermissible vouching of state's witness' credibility."
   g. "Trial counsel's failure to act as an adversarial defense attorney allowing the prosecution to use improper and highly inflammatory statements that were prejudicial and irrelevant throughout the entire trial is the exact scenario to base the cumulative effect of counsel's deficiencies are sufficient to demonstrate a reasonable probability that but for the cumulation of counsel's unprofessional errors the results of the proceeding would have been different"
   h. "Counsel failed to investigate, develop and present all available, relevant and admissible mitigating evidence. See Wiggins v State, 539 U.S. 510 (2003)."
   i. "Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the prosecution"
   j. "Counsel failed to object to the courts erroneous charge. See State v. Stokes, 416 SC 493, 787 S.E.2d 480 (2016)."
   k. "See Coyler v. Sullivan, 466 U.S. 335 (1980) Counsel's ethical obligation to promptly advise the court of a potential conflict of interest. Applicant's right to effective assistance violated from counsel's failure to advise and his Sixth Amendment rights violated"

As requested relief, Applicant requests that his conviction be "vacate[d]" and "remand[ed] to general sessions for a fair trial."

Attached to this Return and incorporated by reference are the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the application, and the appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

**III. Response to Allegation of Ineffective Assistance of Counsel**

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland,

466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

**IV. Any Future Amendments**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

## V. Response to All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

## VI. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 14, 2018

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | |
| | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF NEWBERRY | ) | |
| | ) | |
| | ) | |
| | ) | 2018-CP-36-0414 |
| | ) | |
| Carrol T. Washington, #367333 | ) | |
| | ) | |
| Applicant, | ) | |
| | ) | |
| vs | ) | AFFIDAVIT OF SERVICE BY MAIL |
| | ) | |
| STATE OF SOUTH CAROLINA, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Overture E. Walker, Esquire**
**Stoney & Walker, LLC**
**1527 Blanding Street**
**Columbia, South Carolina 29201**

DATED this the 14th day of December, 2018.

Carlotta L. Weaver

~~Carl~~otta L. Weaver, Legal Assistant
For Respondent

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | THE COURT OF COMMON PLEAS |
| | ) | FOR THE 8th JUDICIAL CIRCUIT |
| COUNTY OF NEWBERRY | ) | Case No.: 2018-CP-36-00414 |
| Carroll T. Washington, #367333, | ) | |
| | ) | |
| Applicant, | ) | **AMENDED POST-CONVICTION RELIEF APPLICATION** |
| | ) | |
| v. | ) | |
| | ) | |
| State of South Carolina. | ) | |
| | ) | |

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on September 10, 2018, to amend and/or add the following allegations:

1. Ineffective Assistance of Counsel of Charles V. Verner, Esquire:

a. Conflict of Interest and failure to move for a mistrial or ask for a break once the victim's mother indicated that Mr. Verner has represented her before. *See* Transcript page 127, lines 12-24. To establish a claim of ineffective assistance of counsel arising from multiple representations, an applicant must show that counsel actively represented conflicting interests. *See* Langford v. State, 310 SC 357, 426 SE2d 793 (1993). An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's. *See* Fuller v. State, 347 SC 630, 557 SE2d 664 (2001). Clearly in this situation, the interests of the victim's mother are adverse to that of Mr. Washington's who was on trial for sexual misconduct of her daughter.

Applicant never waived the conflict of interest either on the record, in writing, or via a side-bar, nor was he even aware of it until that instance during the trial. To be valid, a defendant's waiver of a conflict of interest in his counsel must not only be voluntary, it must be done knowingly and intelligently. *See* Thomas v. State, 346 SC 140, 551 SE2d 254 (2001).

A waiver is not knowing, intelligent, and voluntary unless defendant knows of precise form of conflict of interest that eventually results. *See* United States v. Swartz, 975 F.2d 1042, 1048–49 (4 th Cir.1992). (*See also* Lomax v. State, 379 SC 93, 665 SE2d 164 (2008), An actual conflict of interested existed where counsel simultaneously represented petitioner and her husband during guilty pleas which arose out of related offenses.) Once an actual conflict of interest is shown, applicant does not have to demonstrate prejudice. *See* Thomas, *supra*.

b. Failure to object to multiple Golden Rule and witness credibilty type arguments during the solicitor's closing argument. In his closing argument, Mr. Scott stated "[a]and you're going to speak to the consciousness of the county. That's what you are. You're going to speak to the ideals of Newberry County." Transcript page 355, lines 18-20. He followed that with "[y]ou speak for this county and the values and orals of Newberry County. And you're going to speak for what Newberry County will decide is acceptable and not acceptable. … give voice to the weak. Do what's right. Do what justice calls for." Transcript page 356, lines 2-7. Trial counsel did not object.

Closing argument should not appeal to the personal biases of jurors, nor be calculated to arouse their passions or prejudices, and its content should stay within the record and reasonable inferences to it. Rule 22, SCRCrimP; Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998). This closing argument is replete with appeals to one's conscience.

Asking a jury, "Who speaks for Victim? You do" goes beyond the bounds of permissible argument and is an appeal to the personal biases of the jury. An argument cannot ask a jury to abandon its impartiality. State v. Reese, 370 S.C. 31, 633 S.C. 898 (2006) (not harmless error since evidence of malice was not overwhelming); Cf. Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009) (solicitor's telling jury to speak up for a child victim violates Golden Rule but was harmless error because it came at end of closing, was limited in duration, and there was overwhelming evidence of guilt). Guilt was not overwhelming in this case. This case hinged on who the jury believed: the victim or the testimony of the defendant.

Furthermore in keeping their closing arguments within the record, solicitors additionally must tailor their remarks "so as not to appeal to the personal biases of the jury" or "arouse the jurors' passions or prejudices." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004).

There are other instances where trial counsel did not object to statements made throughout the Solicitor's closing, for example:

"…voice like this cries out from the dark begging to be heard, asking to be believed. … And this is the kind of case that demands justice." Transcript p. 344, lines 3-6.

"…if we have a criminal justice system that can't speak up and protect the most vulnerable of us, the most helpless of us, then what good is it?" Transcript p. 344, lines 7-9.

"…Will you believe the soft voice of the meek whose message rings the loudest, or are you going to believe the voice of the taker?" Transcript p. 344, lines 11-13.

"… do any of you people truly believe an eight, nine, ten year old is capable of concocting something like this? …sitting alone in a room with a perfect stranger and

disclosing all these things in great detail like she did…" Transcript p. 346, line 22 – p. 347, line 1.

"Is a nine, ten year old capable of doing that? You know, if you're lying you got to be good at it." Transcript p. 349, lines 8-9.

"I submit to you [victim] is wholly credible. That she's only capable of telling the truth." Transcript p. 254, lines 14-15.

Generally, the assessment of witness credibility is within the exclusive province of the jury. Thus, solicitors may not vouch for a witness's credibility, as doing so improperly invades the province of the jury and places the government's prestige behind the witness. Solicitors must confine their closing remarks to the record and the reasonable inferences that may be drawn therefrom. *See* Tappeiner v. State, 416 S.C. 239, 250 (2016). The prosecutor may not cross the line into a purely inflammatory argument that pushes the jury to decide the case out of passion instead of the evidence. *See* Bennett v. Stirling, 170 F. Supp.3d 851 (D.S.C. 2016).

c. Trial counsel allowed a juror to be seated that had worked with the Applicant and Applicant had asked repeatedly not to have on the jury. Trial counsel did not strike the juror and trial counsel had not used all the strikes available to him. This juror had worked with the Applicant and the Applicant informed trial counsel he did not feel comfortable with him on the jury. Furthermore, the juror never told the judge in qualifications that he was familiar with the Applicant.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

ASHLEY A. MCMAHAN, ESQUIRE
MCMAHAN & TAYLOR ATTORNEYS, LLC
PO Box 50536
Columbia, SC 29250
803-219-1110
ashley@mcmahantaylor.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

January 18, 2021

**CERTIFICATE OF SERVICE**

I certify that I have served this document via email to:

Brianna L. Schill
Assistant Attorney General
briannaschill@scag.gov

This 18th Day of January, 2021.

ASHLEY A. MCMAHAN, ESQUIRE
ATTORNEY FOR APPLICANT

| | | |
|---|---|---|
| State of South Carolina | ) | |
| | ) | Court of Common Pleas |
| County of Newberry | ) | |
| | | Post Conviction Relief |
| | | 2018-CP-36-00414 |
| Carrol T. Washington | ) | |
| vs. | ) | Transcript of Record |
| Applicant | ) | |
| | ) | |
| State of South Carolina | ) | |
| Respondent | ) | |

January 27, 2021
Virtual Courtroom, Newberry, South Carolina

B E F O R E:

Honorable J. Mark Hayes, II, Judge

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

Brianna L. Schill, Assistant Attorney General
Attorney for the State

Ashley A. McMahan, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

**I N D E X O F W I T N E S S E S**

(IC) - Denotes In Camera
(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

(AW) Carrol Washington

Direct examination by Ms. McMahan: 8

Cross-examination by Ms. Schill: 21

(AW) Charles Verner

Direct examination by Ms. McMahan: 25

Cross-examination by Ms. Schill: 41

Redirect examination by Ms. McMahan: 54

(AW) Carrol Washington

Direct examination by Ms. McMahan: 66

Cross-examination by Ms. Schill: 67

Certificate of Reporter 70

**E X H I B I T S**

| NO. | DESCRIPTION | ID | EV |
|---|---|---|---|

(THERE WERE NO EXHIBITS INTRODUCED)

THE COURT: You are Mr. Washington?

MR. WASHINGTON: Yes, sir.

THE COURT: You can hear me okay?

MR. WASHINGTON: Yes, sir.

THE COURT: All right, Mr. Washington, you are Carrol, right, Carrol Washington?

MR. WASHINGTON: Yes, sir.

THE COURT: Sir, it is a pleasure meeting you. I am sorry it has to be like this where we cannot be together face to face or in person. But during this time COVID, this is the way Court Administration allows us to take care of some judicial matters, some court matters. Sir, I just need to let you know that we are making a recording of everything that happens. We have a Court Reporter who is with us. I tell you that because whenever you speak today, I need you to speak slowly so that we can all understand you and also speak loud enough so that we all can hear you. Now, Mr. Washington, if ever during this process you cannot hear one of us when we are speaking, immediately let us know and we will speak up as well. Now, Mr. Washington, in order to start this process I am going to go ahead and swear you in because at some point I think you are going to be testifying. So we will go ahead and get that out of the way. Please raise your right hand.

Carrol Washington, being first duly sworn, testified as follows:

THE COURT: Thank you, Mr. Washington. What I am going to do now is I am going to turn this matter over to the Attorney General. She is going to announce to us the case for us.

MS. SCHILL: Thank you, Your Honor, may it please the Court. This case is Carrol T. Washington versus the State of South Carolina. It is case number 2018-CP-36-0414. Mr. Washington is presently confined in the South Carolina Department of Corrections. During the May 2017 term the Newberry County Grand Jury indicted Mr. Washington for first degree criminal sexual conduct with a minor. Charles Verner, Esquire represented Mr. Washington. Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's office prosecuted the case. On February 29th of 2016 the Applicant proceeded to a jury trial before the Honorable Donald B. Hocker. On March 2nd, 2016 the jury convicted the Applicant as indicted. Judge Hocker sentenced Mr. Washington to the mandatory/minimum sentence of 25 years of imprisonment. Mr. Washington filed a timely notice of appeal. Ms. Laura M. Caudy of the South Carolina Commission on Indigent Defense, Office of Appellate Defense submitted a brief, a motion to be relieved

pursuant to Anderson v. California. South Carolina Court of Appeals dismissed Mr. Washington's appeal on 2/13/2018. And the remittitur was sent on July 2nd, 2018. Applicant or Mr. Washington filed this Post Conviction Relief action on September 10th, 2018 alleging various allegations of ineffective assistance of counsel. Subsequently Mr. Washington, through his attorney, Ms. Ashley McMahan filed an amended post conviction relief application alleging one, ineffective assistance of counsel for a conflict of interest, a failure to move for a mistrial; two, failure to object to multiple Golden Rule and witness credibility type arguments during the Solicitor's closing argument; and three, trial counsel allowed a juror to be seated that had worked with Mr., with the Applicant and the Applicant had repeatedly asked not to have on the jury. And Mr. Washington is present today and represented by Ms. Ashley McMahan. And I would just ask Ms. McMahan to clarify that they are going forward on the allegations and the amended application.

THE COURT: Yes ma'am, Ms. McMahan.

MS. MCMAHAN: Yes, Your Honor, if it pleases the Court. Everything in the amended application we are going forward on. If you look at the original application where the attachments start. I will go through with you and let you know what, what we are striking and what we are going

forward on. So if you are looking at attachment one. The objection to the amendment of the indictment, we are not going forward on. Number two on the next page, failure to adequately investigate improper conduct, we are not going forward on. Three, also not going forward on. Four, five, six and seven are kind of a combination of what we stated in our amendments, in as much as they, you know, add to that, they are still what we are going forward on. Seven, I already included seven. Eight, of course, we will not be going forward on that or nine. And on page six, nothing going forward on page six. Page seven, if you look at the attachment on page seven, the top number two. That is kind of in combination with our amendments. And then number three, we will not be going forward on. And then attachment eight, 11C we are going forward on. And I believe the rest of the pages kind of relate to that number. So if Your Honor is ready then the Applicant calls Mr. Washington.

THE COURT: Okay.

MS. MCMAHAN: He has already been sworn in.

THE COURT: Yes, Mr. Washington, I remind you that you remain under oath. And, sir, please again let us know if you ever can't hear us. Okay. And speak loud enough and slowly so that we all can understand you.

DIRECT EXAMINATION

By Ms. McMahan:
Q Mr. Washington, did you file this post conviction relief application?
A Yes, ma'am.
Q And I filed the amendments for you, is that correct?
A Yes, ma'am.
Q And who were you represented by for these charges that you are challenging in your application?
A Charles Verner.
Q So tell me about Mr. Verner representing you. Were you in the detention center the whole time awaiting trial or were you out on bond?
A I was in the detention center held with no bond.
Q What did Mr. Verner tell you about not having a bond?
A It took me, I think eight months to even go in front of a Judge to even be considered for bond.
Q Okay and that was for your initial bond?
A Yes, that was the, not the regular court but the --
Q -- the Magistrate Court?
A It wasn't the Magistrate Court, it was the, per se, big court.
Q General Sessions?
A General Sessions, yes.
Q So when you went in front of the Judge to get the bond, was the bond denied?

A When I first went they didn't see me and the second time, I want to say, I want to say they didn't give me a bond.
Q Okay. So you couldn't have posted anything to get out even if you wanted to?
A If I could have got a bond, yeah, I could have posted.
Q Okay. And how many times did you see Mr. Verner while you were in the detention center?
A The first time I saw him was maybe six months and then, and then when I was going back and forth to the General Sessions, I think twice.
Q So when they would bring you for court, even though you may not have been seen by the Court that day, you had talked to Mr. Verner then?
A Yes, we would have a brief talk.
Q When did you guys start talking about your trial?
A Pretty much when they was at the, I didn't receive a bond and I was actually trying to relieve him of my counsel. And I had gotten some information from another lawyer. And that is when they went on ahead and, went on ahead and put me with the trial.
Q So you were trying to relieve Mr. Verner and get a private attorney?
A Yes. I tried to way before, actually my first

initial visit, I tried to get rid of him but they said I couldn't because I would have to have a paid lawyer.
Q Okay. So then you tried to get a private attorney but in the mean time the Solicitor went ahead and set it for a trial?
A Yeah, after I was, well, after I was trying to get a private attorney.
Q What did you and Mr. Verner talk about?
A Really, my, the first time I talked to him, the first thing that came out of his mouth, it was actually the wrong case. And I had to let him know about the case that changed me. And then after that he asked me about the place where I worked at, he asked me about the business hours. And right there was a big turnoff and I didn't feel comfortable then because my life is in, my life -- I feel like that is the least question that should have been asked.
Q So was it the question about the business hours that made you uncomfortable or was it the combination of the question of the business hours and the wrong case?
A Well, at first the wrong case. And then when he asked me about the business hours, that was another red flag.
Q Okay. Why were the business hours a red flag for you?

A I don't think that had anything to do with my case.
Q So you didn't think that was relevant to what the charge was?
A No. Because he was asking about, he was saying that he didn't know that it was open at that certain time, his office is right around the corner. If you really wanted to know all you have to do is walk 15 or 20 feet.
Q And which business was that?
A At Steven W's.
Q Okay. So is it a restaurant?
A Yes, I was the chief chef.
Q So you are in the detention center, you are waiting with Mr. Verner. So when you guys were setting it, you knew it was going to trial. How many times did you meet and what did you guys talk about?
A Like I said, the first time was six months. And that was like really, he was giving me a rundown of what was going on. It really was short and I was going back and forth to get a bond, he would step in and have a brief talk with me. And we were preparing for trial. We maybe talked, maybe 30 minutes, like I didn't, I didn't know the strategy or nothing, like I was going in blind. Plus me never being in trouble before out of my whole life. But me being, but him being my lawyer, I would say he should have my best interest.

Q So when you met you thought you were going in blind. Talk about that, tell me how you felt that way.
A That was my first time ever being in trouble and I didn't know, you know, how the system worked and questions that I needed to ask him. And it was certain questions that I did ask when they was trying to give me a plea. I asked him, you know, what do we think because I really didn't want to take the plea, (inaudible.) I asked him and he never really replied. And, you know, I just felt like I was just going in and --
Q -- so what did he tell you how court trials go. Anything? Did he talk about where you guys would sit in the courtroom?
A Yes, he told me where I would sit. You know, look at the Judge when I talk, whenever I am talking look at the Judge. Just be clear when I talk, that's all.
Q Okay. Did you guys talk about witnesses that you guys might, may call besides yourself?
A No. The witnesses that actually came on my behalf, they were called spur out of the moment. Well, I am pretty sure Ms. Tonya Dawkins, (phonetic), she was going to be there for me as a witness. But Candice Hopkins, like, we never discussed her even coming. It was spur of the moment like, Tonya Dawkins didn't even know until like 30, 20 minutes before trial.

Q You did not, you were not aware that Candice was going to be there to testify?
A I wasn't aware at all. I didn't even actually refer to even to be a part of the witnesses I had. I sent him, well, my fiancee sent him character witness letters and I was assuming that it is, you know, to call anybody, those people who actually knew the family, knew me and actually stayed in the same property.
Q Did he talk about how sometimes during a trial you may not want to get any character evidence and there may be other ways to go about doing that?
A No, he never stated that.
Q So during the trial, the trial starts, did he explain to you what the State had to prove to find you guilty?
A Yes, a reasonable doubt.
Q That the State had to find you guilty beyond a reasonable doubt that you committed this crime?
A Yes.
Q Okay. And did he say or did he do any type of explanation about CSC charges and how they are kind of tried, a little bit different than some of the other types of charges?
A No.
Q Did he tell you that the child was going to testify?
A No, no, I didn't, I didn't figure that out until I

think they, they did something later. It is not a test run, I know there is a proper legal name for it but a test run and they, I guess they found her competent to --

Q You mean at the beginning of the trial when they proffered her evidence, her testimony?

A Yeah.

Q So when she got up to proffer her testimony, that is when you realized that she was going to testify?

A Yes.

Q Did you ever watch her forensic interview?

A You know, I didn't see none of that, I didn't see none of that until trial.

Q Okay. So during the trial a couple of things happened, one was Nicole Sims. How do you know Nicole Sims?

A That's my fiancee's cousin.

Q When she testified, in the transcript she testified that Mr. Verner had been her divorce attorney. Did you know that?

A No, I never knew that. That was a shock to me and I didn't, I didn't know that it was a actual conflict of interest at that time. I didn't know anything about it. I just thought it was -- it was amazing that I was telling him certain things that he actually knew beforehand and he never like let me know that, well, yeah, I have heard this

before or -- but I did bring up her name in a prior case, a long time ago, sort of the same subjects and he remembered who she was.

Q So there was some allegations against somebody else and you talked about Nicole Sims to Mr. Verner about that?

A Yeah, he remembered who she was, he admitted -- her assistant, I can't remember her name.

Q So when did he tell you he remembered who Nicole Sims was?

A This was the, I think before trial, I had to put on a suit and we are talking in the office. And that's when Dale Scott, I think that is his name, Dale Scott, he came to the office while me and him was talking. He pretty much interrupted me and his conversation trying to get me to plead to something that I didn't do so.

Q Okay. Let's back up a little bit --

A -- okay, I am sorry.

Q Get to these issues a little bit. So you said you had talked to Mr. Verner prior to trial?

A Yes.

Q About an incident that involved Ms. Sims that he had been aware of. Is that correct?

A Yes, he remembered it.

Q And how long ago was that incident?

A I want to say when she was a teen.

Q Okay. But he didn't remember her specifically to you?
A Yes, him and his assistant said --
Q -- so you are starting trial, it is the day of. I am assuming you are getting dressed out, you are talking to Mr. Verner in a room. Is that basically what happened?
A Yes.
Q And then Mr. Scott comes in?
A Yeah, he comes in.
Q Okay. So you are talking about a plea offer. Is that the first time you had heard about a plea offer from Mr. Scott or had there been another one?
A That was the second time.
Q Okay. So what was the first plea offer?
A The first plea was 15 years, non-violent; zero to 15 non-violent.
Q Okay. And you rejected that?
A Yes, ma'am.
Q And why did you reject that?
A I rejected it because I didn't do anything, you know, you have to serve time. So, I didn't, I felt like me being the person that I am, I just couldn't look at myself in the mirror every day knowing that I said that I had done something and I didn't do it.
Q Because you have got to go on the record and admit

that you did this?
A Yeah, which I didn't do, yes.
Q So he comes in the room, you were getting dressed out; Mr. Scott, and he talks about a plea offer again. What was that conversation?
A Oh, he asked me, I can't remember the exact questions. But he asked me a question which I can't remember. But it later came back up in trial and I can't remember what it was. I am sorry.
Q That's okay. What was the plea offer he gave you then?
A That was the first one. No, actually that was the second one. The first one, when they brought me in for the bond hearing, they offered me zero to 15 non-violent. When Dale came in, that was the second time and they offered me zero to 15 non-violent with a cap, no, eight years, zero to eight with a cap.
Q Okay. And you didn't take that one either?
A No, ma'am.
Q Was it for the same reason that you didn't take the first one?
A Yes, ma'am.
Q Okay. So also, at the beginning of the trial you are going through the jury qualifications and all of that and you are sitting with Mr. Verner. Tell us about the issue

with the juror that you did not want seated?
A It was a guy that I worked with at Caterpillar, excuse me, I would see this guy every day. I was surprised he didn't know me, maybe I gained weight, maybe I lost weight, I don't know. But I told Verner that I know him, he works with me. And the exact words that came out of his mouth is, that may possibly benefit you. But I didn't want that type of -- over my case to tell the truth and I didn't want that to go kind of calm a -- so I told him I didn't want him and before I could get it out of my mouth he went ahead and picked the juror.
Q And then you had some difficulty trying to remember who specifically that juror was. Do you have any recollection of who that might have been. Was it a male or a female?
A It was a male, white male. I am sort of leaning to Jody but I don't know if that is his name or not.
Q But you had a conversation with Mr. Verner about not putting this person on the jury?
A Yes.
Q And so when you were working at Caterpillar, what area of Caterpillar were you working in?
A At first I was working, was in the plant and then they brought a food service there and I was grill technician supervisor. And they would come in two times a

day to eat. And everything is pretty much hands on, five feet away from each other so I would see him every morning.

Q So is it kind of like what you think of a traditional cafeteria like somebody is going through the line every day?

A Yes, it is pretty much a little small cafe with beverages, food, buffet style food.

Q Okay. And so you didn't work directly with this person, did you, but he came through your line every day?

A Yes, he came through the line every day and everybody there knew me from the way I cook. And sometimes if you wanted anything special, like some days we would have omelettes, steak, certain things that wasn't on the buffet, they could ask me to make eggs overeasy. Or, you know, we would have scrambled on the line.

Q So if somebody hated scrambled eggs, they could ask you to make two eggs over medium?

A Yes, how ever they want their eggs, omelettes.

Q And then so you are sitting through the trial, you testify obviously. During the closing argument, what was it about Mr. Scott's closing argument that bothered you?

A Ma'am?

Q What was it about Mr. Scott's closing argument that bothered you?

A That bothered me? That he used a prior job that I had, that didn't have anything to do with my case. I felt like he put the fear in the community of Newberry by stating that they should find me guilty because of a prior job that I had when I had --

Q -- I am sorry, you kind of faded out at the end right there. You meant that is when you were, like long ago, driving an ice-cream truck?

A Yes, ma'am.

Q What, I mean were you concerned about some of the other things that Mr. Scott was saying during his closing argument about how, for example, some of the things that were mentioned in your amended application like, be the consciousness of the county, that kind of thing?

A Yeah, I remember him stating something about me playing video games. I remember him stating that. He was saying something about me being a child because I play video games which is so absurd. And at the same time he playing, that he was on his phone.

Q So he was playing on his phone during the trial?

A Yes.

Q You mean Mr. Scott was playing on his phone?

A Yes, Scott, Mr. Scott.

Q Is there anything else you want to tell Judge Hayes today?

A No, ma'am.
Q So answer any questions Ms. Schill has for you.
MR. WASHINGTON: Okay.
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

By Ms. Schill:
Q Mr. Washington, did Mr. Verner discuss the elements of the offense with you?
A Discuss the elements of evidence?
Q The elements of the offense with you?
A If you mean by how much time I could possibly get?
Q Okay. I mean the elements that the State would have to prove in order to find you guilty at trial. Did he review that with you?
A No, he didn't actually go over it with me. He made, during trial that had -- it had the typical thing that would call for that offense. I can't remember everything that he wrote down.
Q Okay. And I believe you just testified that he reviewed and discussed with you the possible sentence you were facing. Is that correct?
A The possible. Yeah, the first time when he came to the county, yeah, he told me.
Q Did you and Mr. Verner discuss defenses for a trial strategy?

A No, none whatsoever.
Q Did Mr. Verner talk to you about your constitutional rights that you had with going to trial such as your right to confront witnesses, right to remain silent or testify?
A No.
Q Okay. Sorry if you answered this before and I missed it. Can you explain to the Court how you came to know the victim and her family?
A I met Ms. Dawkins, me and her got into a relationship and that is how I met them.
Q Okay. And when did that relationship start?
A Let's see, around August of 2011 or '12, I am not really sure.
Q Okay. When was the first time you met the victim, the minor child?
A The first time, the first time I met them was -- before that I was driving the ice-cream truck and I met them. I didn't know who they were but I met them. The grandma used to come and buy stuff.
Q Would that have been around 2011 or after?
A Yeah, yeah. It was before me and Ms. Tonya --
Q -- do you have like an estimated timeframe for how much before you met the victim?
A Maybe, well maybe twice; maybe I met her, met them twice. But after that job, I ended that job.

Q Okay. You said, when Mr. Verner asked you about your business hours, it made you a little uncomfortable. Am I, did I understand that correctly. He asked you about your business hours, meaning the hours that you worked at your job?
A No, it wasn't pertaining to like the case or trying to break down a timeline. No, it was just a question asking me about the time so he can get something to eat.
Q So he could get something to eat, is that what you are saying?
A Get something to eat because the restaurant was right around the corner from his office. And he said he thought it was open a certain time, that he could go there and get something to eat. It wasn't like investigative type question or trying to get a timeline or anything.
Q Okay. So he was sort of trying to discuss a schedule with you, is that fair to say?
A No, if you want to say a schedule pertaining to my case; no, it wasn't, no.
Q Okay. I believe you testified before that you and Mr. Verner actually had a conversation during the jury selection about the jury you worked with. Is that right?
A Yes.
Q Okay. And I think I missed what Mr. Verner's response was. Can you repeat what Mr. Verner's response

was when you informed him?
A Well, it wasn't actually a conversation. Just spoke on my -- when I saw the juror I tapped him on the shoulder and told him that this guy works with me, we work at the same place, I see him all the time. And he told me that could benefit in the case. And I wasn't willing to take a chance like that, you know, just superstitious, you know, honestly.
Q Had you talked to this juror before?
A Yeah, plenty of times.
Q But my understanding is, you worked at the cafeteria and the juror would come through your line. Is that right?
A Yes.
Q Okay.
A It was a dining hall and a lot of the time they would come and just stand around and conversate.
Q Okay. And have you ever spoken with this person outside of work?
A All the time at work. In the parking lot but you know, we were at a retirement party one time. That is like the only time I would say outside of work besides the parking lot.
Q How many people were at this retirement party?
A Pretty much maybe, I would say a 100 people, all from

work.
Q So it was all from Caterpillar people?
A Yeah, Caterpillar and everything, the company that I worked for.
Q Okay. And you said you don't know the juror's name?
A I can't, no, no. I know he is a white male, I know that.
MS. SCHILL: That is all the questions I have, Your Honor.
THE COURT: Okay. Any redirect limited to what she went into?
MS. MCMAHAN: None, Your Honor.
THE COURT: Okay. All right.
MS. MCMAHAN: At this time the Applicant calls Mr. Verner.
THE COURT: Okay. Mr. Verner, if you will, I would like for you to raise your right hand, let me administer an oath.

Charles Verner, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. McMahan:
Q Mr. Verner, did you represent the Applicant?
A I did.
Q How many times did you meet with him prior to the

trial?
A I can't give you an exact number. He was arrested and in jail as of June of 2015. I actually first met him in July of 2015. My notes said I first met him on July 30th of 2015. And I properly would have had meetings with him every month or two, (inaudible). If nothing is going on and sometimes conveying messages to him. But the trial is in May of 2016, he was arrested on June of 2015. I, (inaudible) -- July of 2015. That is when I --
THE COURT: Let me interrupt just a second. Mr. Verner, you are chopping up in your audio. I don't know whether it is because you are facing the other way or what. But try to get a little bit closer to your, to the microphone, if you could.
COURT REPORTER: Judge, I did not get that last couple of sentences Charles said.
THE COURT: Mr. Verner, could y'all go back a couple of steps. I know she was asking about the times you met and you were explaining what information you had. Could you go back over that one more time.
A Mr. Washington was arrested in June of 2015. I first met him in July of 2015. I had some kind of interaction with him sometimes once a month, sometimes it could have been two or three times, once every two or three months. But the trial was in May of 2016. I first would have met

him in July of 2015. I probably met him sometimes more than once a month, sometimes as much as one or two or three months apart. But I know I would have met him in July and August. We had a hearing in October, his bond hearing was in January. I see I met him a couple of times in February when we were seriously negotiating with the prosecutors.

Q What were his initial charges because it looks like, based on the record and the transcript, that this was a direct indictment and he was arraigned at the time of the trial for CSC with a minor first. Is that correct?

A Right.

Q So what were his initial charges?

A Well, I mean the charge was always criminal sexual conduct. They may have bumped it up from a second degree to a first degree.

Q So I am trying to figure out, so if you have been charged with a CSC second he would have gone with a minor second, he would have gone before the Magistrate for a bond hearing. Is that correct?

A Well the Magistrate denied his bond. He had a bond hearing in front of the Magistrate, the Magistrate denied his bond. So he would have had at least a CSC second charge.

Q So it would have been a CSC with a minor second

charge initially?
A Yes.
Q Okay. That is what I am trying to figure out because if it had been a CSC with a minor first then you wouldn't have had, the Magistrate wouldn't have been able to set the bond, right?
A Second degree either. The Magistrate could set a bond for either one but also has the option to deny bond for either first degree or second degree.
Q Okay. So then the Magistrate denies the bond, obviously, could you had had it reviewed by the General Sessions Court soon after the bond was denied by the Magistrate or did you need to wait six months?
A No. Generally we do it this way. If the Magistrate just completely denies the bond we will go ahead and try to get, go ahead and get the General Sessions Court to schedule a bond hearing. Now if he has a bond set, either in Magistrate or General Sessions then, if it is a non-violent case typically our policy, our practice is to wait 90 days to reschedule a new hearing. And violent offenses like these would be typically to wait six months. But if I filed for a bond hearing in August and it was originally calendared to be heard in October, it did not actually occur until January and that was because of the court scheduling conflicts.

Q Okay. And does Newberry have court every month, like one week a month or is it kind of spaced out?
A The general is Newberry has one week of court a month, there may be one month that we don't but it is typically at least 11 of the 12 months we are in court.
Q Okay. So it is not like something you could just every day set, there is not criminal court every day there?
A No. Once, the general rule is it is once a month but there will be one or two, sometimes two months we don't have court but generally it is once a month.
Q Right. So you had a bond hearing you said in January of 2016, is that correct?
A That's right.
Q And bond was denied again, I am assuming, based on the fact that he was still at the detention center during the trial. Is that right?
A Judge Hocker denied his bond and gave him leave to, basically gave him six months to re--
Q --okay. But we didn't get to the six months because his case actually came to trial the very end of February and the beginning of March?
A Right. I thought it was May but may have been a little bit earlier.
Q I believe started on a Leap day, 2016.

A Okay.
Q So what did you guys talk about when you were getting ready for the trial?
A I think obviously the allegations, the punishment, trying to work it out. My notes also show, because he was an inmate his girlfriend was fairly active in trying to help him and coordinate his witnesses. But he is charged with criminal sexual conduct with a minor so obviously what we are talking about is -- (inaudible), about is, what is your side of it and can we work it out.
THE COURT: Okay, I missed part of that answer, it seemed to be a significant answer. The part about what you talked to him about first.
A Well, I think she just asked me in general what were some things I talked about. And obviously the evidence against him would be, the evidence that the State has against you. It was largely, I hate saying he said, she said case but it is largely a witness, child witness case with one other child witness who sort of said they saw it and then not much beyond that other than the forensic evaluation of the child. But obviously we talked about the allegations against him, the consequences if he was found guilty, what the penalties could be. And because this wasn't a very heavy evidence case the only, I do remember was talking about why mother could have made

these allegations against him. You know, what would be her motive. If it didn't happen why would she say this, because of anger. But and obviously, you know, in general trial rights but I guess the first few months we were just trying to kind of lay out what happened, what is your defense, can we work it out. But we are, within a month or two of we know we are going for trial, we will sit down and actually talk about this is what is going to happen at trial. But the, obviously, you know, you have got a right to a trial and let the prosecutor prove the case. But the first few months is just more what happened, did you do it. That type of questions.

Q So when did you decide to call Nicole Sims, no, you didn't, Nicole Sims, I am sorry. When did Candice Lively come up on the scene as a possible witness?

A Ms. Lively would be the mother of one of the other children at the party where this incident was alleged to have happened. Candice would have largely been just a character witness and well, he didn't do it to my child type witness.

Q Would she also been sort of like, I didn't see it happen kind of thing?

A That's right. I wasn't aware that anything happened at the party. But she was largely a mother of another child who was not alleged to have been involved in

improper touching who would have been at the party.
Q And were you aware, at the time of the trial, that Ms. Lively had had that prior lying, cheating, stealing conviction?
A Probably not.
Q And let's just go back to Nicole Sims. Nicole Sims is the mother of the victim, correct?
THE COURT: Give me one second. Ms. McMahan, your client is waving. Mr. Washington, I need to let you know, anything that you say during this process is not protected by the attorney/client relationship or privilege. So if you need to speak with your lawyer and you think it is something significant we might need to take a break. But otherwise, you could not just participate in a conversation with your client, I mean with your attorney.
MR. WASHINGTON: I was just wondering was the names that they are saying is wrong. I think it was --
THE COURT: Why don't you save that and talk to your lawyer about that.
MR. WASHINGTON: Okay.
THE COURT: Thank you.
Q So, Mr. Verner, we are talking about Nicole Sims and she was the mom of the victim?
A Correct.
Q Is the mom of the victim?

A Yes.
Q What had been your prior dealings with Ms. Sims?
A Apparently and I have reviewed it but apparently she came in in 2006. I don't have much of a private practice beyond criminal defense for the public defender. But I did sometimes do low income uncontested divorces. She apparently, I did an uncontested divorce or helped her in late 2006, 2007. At that time she had a different name, she was known by Nicole Thompson.
Q And when you were in the trial, I guess you didn't recognize her initially as one of your prior client's?
A I did not recognize her name. In the incident report she is listed as Nicole Sims. When I represented her she was Nicole Thompson and I had not spoken to her or seen her, I didn't know her prior to representation and I would not have seen her for about six or seven years. And it would have been a relatively event free, no contest, uncontested divorce. She did have the child victim at the time I represented her. But custody was not really an issue for the non-contested divorce. In fact that had already been scheduled by a prior hearing.
Q Well, and obviously I can't really get into what you two discussed because of attorney/client privilege. But she did, on the record, indicate that you had represented her in the past. And that when you were talking about

other allegations, I guess, to other people or asking her about them she indicated that you would have known about those because you were her lawyer. Do you recall that during the trial?

A That was the first time I had even a vague recollection of her, was when she brought that up. I have looked back at my notes of her divorce which are scant. But Mr. Washington was not involved with her when I would have known her in 2006, 2007. She had an uncontested divorce. It is very well, I am very likely to have asked her about her relationship with the child's father, about how y'all are getting along. But for the most part custody had already been set out by the Family court and we just basically did the divorce for her, no property, no dispute about custody.

Q Okay. You did ask her during the trial, were you married to Christopher Thompson, do you remember that?

A Yes.

Q Okay. So at some point you did represent her?

A Yes, I represented her.

Q But during the trial you didn't ask to take a break to double check any of those records or ask for any type of mistrial given that there could have possibly been a conflict because you had represented her in a divorce?

A No.

Q Okay. Did you have a discussion with Mr. Washington about that, like after the trial, after this day about Ms. Sims?
A I can't remember. After her testimony the -- I did not remember Ms. Sims until she actually said that you had represented me in my divorce, you should have known about this or something to that effect.
Q Okay.
A So I certainly would not have spoken to Mr. Washington about what I knew about Nicole Sims because I didn't recognize her or remember her, a relationship with her. I do remember being caught off guard when she answered that way.
Q And but, so like, during, you know, during a break or anything you guys didn't have a discussion about her or him asking you, hey, did you really represent her or anything like that?
A No, I am fairly sure he did not but it is very likely, I may --
Q Do you remember talking to Mr. Washington during the jury selection about him not wanting that particular juror on the trial, I mean on the jury?
A I don't have an independent memory of that but the, generally the way we strike jury's is this way. The client sits besides me, I give the client a notepad.

After the State decides whether to strike or seat a juror I will briefly, again, tell the client where the client, where the potential juror works, knowing the party, the police officer, any answers during voir dire. If you definitely want the juror on the jury panel go ahead and put a check and I will go ahead and seat the jury. If you definitely, (inaudible), strongly do not want the jury put -- put an X, to strike that juror. But for the most part if you don't have any strong feelings you just are going to rely on me to use my own --

MS. SCHILL: Your Honor, sorry to interrupt. I didn't catch a lot of that. I don't know if it is me.

THE COURT: Mr. Verner, you were chopping up and at least I was getting maybe every third word was cutting out. So if you could go back and explain to us that process about the jury selection or what you advised the client. Just repeat the question, Ms. McMahan.

A Okay. Maybe I am a little bit too close to the microphone. Can you hear me a little bit better, Ms. McMahan?

Q Yeah, I can hear you now.

A Okay.

Q You were saying essentially that Mr. Washington sat beside you during jury voir dire, in picking the jury. And you would have given him a notepad and told him, you

know, if you want this juror I guess put a checkmark by their name. If you don't want this particular juror put an X by their name. Otherwise you just assume that anybody that has no check or no X is game to be on the jury. Is that correct?

A Pretty much. I don't have an independent memory of seating the jury with Mr. Washington. But generally I tell my client, after the State has made their selection of seating or not seating a juror I will turn to my client and say, this potential juror, John Doe, works at Caterpillar plant or where ever they work. Their spouse works at so and so. They, if they would have answered something during voir dire I would have said this is the one who said they know so and so. But I will ask my client, if you definitely want the person on your jury put a check. If you definitely do not want the juror put an X and if you don't have any strong feelings either way then I will just have to use my own judgment on this juror. That is the system I have used for years and I don't have any reason to think that I would not have used it with Mr. Washington. He talks about the, this potential juror would have been a coworker of his. And it is very likely I would have said, well, that can be a good thing if you think he likes you. But we would have had some kind of discussion on that and I would not have sat a juror that a

client had said that I don't want on the jury unless we were out of strikes.
Q I believe you used nine strikes if the record reflects it correctly. Just to follow-up. So during voir dire you would have the printout, I guess, from the clerk that says kind of the basic information they have?
A Right. And I would have heard the voir dire of them asking where they work and if they knew any of the witnesses.
Q And whether or not they could be impartial?
A Right.
Q Okay. And so none of that obviously rang a bell to you about this particular person or anybody for that matter saying they couldn't be impartial or anything like that?
A No. I think, when that juror indicated he knew Mr. Washington, you know, we clearly, we had a discussion, you know, that that could help you if you think he likes you. If you don't get along with him, but clearly we had a discussion on whether or not to seat him. If Mr. Washington had said, I don't want that juror on the panel I would have struck him, I would not have sat a juror over the objections of a client.
Q And while voir dire was going on and the jurors are standing up and talking about where they work and all of

that jazz, you were taking notes on that, on the clerk sheet about who they are, where they work, it was not listed?

A Yeah, yes ma'am, I would have been taken notes, yes ma'am. But more during the venire, during the voir dire than -- would have been taking notes during the actual selection other than marking strikes.

Q Do you recall if Judge Hocker did any additional voir dire or if you asked for any additional voir dire?

A I doubt Judge Hocker did additional voir dire. We typically ask if potential jurors are in any organization such as SADD, MADD, CAVE, that type. Off of the top of my head I don't remember asking for additional voir dire.

Q Okay. So let's go to the closing argument by Mr. Scott. Obviously I have, on the amended application I kind of drew your attention to some of the things that he said during closing that we believe reflects the Golden Rule of the type argument. Any of those in the amended application, did you see any reason to object to Dale's closing argument or anything like this?

A No and I don't -- the amended PCR application on closing arguments, Mr. Scott can push the envelope on opening arguments and closing arguments. I have looked over all of the, and apparently I also looked over my trial notes yesterday with Ms. Schill and I wrote down

several of what I thought Mr. Scott had said that were aggressive prosecutorial statements. But individually and collectively I did not see any statements the prosecutor made that that clearly crossed the lines in terms of appealing to the jury's passions or putting themselves in the place of the victim. He made some comments about you are the conscious of Newberry County and I agree with that statement. I don't think that that puts them in the place of the victim or unfairly inflames their passions when he says that you have been selected to speak for the county. So I think Mr. Scott can get close to the line and I understand that sometimes, even if you are lightly tapping with the hammer, he lightly tapped with the same place, at some point you do damage. But I did not see, from my review of the amended PCR, where any of the statements individually are clearly improper and I did not see collectively where they crossed the line either.

Q Is there anything else you need to tell the Court today?

A Not that important. When Mr. Washington, I looked over my notes. When Mr. Washington talks, when I first met him in July I did ask him about his employment at Steven W's restaurant. My notes show that that was when I was screening him for qualifications for the public defender. I asked him where he worked. I think the

questions about what were the hours of the Steven W's, I would consider that just small talk. Me saying, oh, I like that restaurant but every time I go there it is closed or what are the hours. But I think that that was probably during the initial screening of are you employed and then the rest of it would be kind of small talk. Oh yeah, I know that restaurant, I like that restaurant. Collectively or individually I did not think that Mr. Scott got an unfair advantage or inflamed the jury in his arguments. I guess if I had any concerns about this case it would be the, Ms. Nicole Sims.

Q Okay, I have nothing further. Answer any questions Ms. Schill may have.

THE COURT: Yes, ma'am.

CROSS-EXAMINATION

By Ms. Schill:

Q How long have you been practicing law?

A I graduated USC law school in 1995 and received my license in 1995. I have been the full-time public defender for Newberry County since 2005. I was a public defender in Greenwood for about five years prior to that. So basically I have been doing criminal defense as a public defender since 2000.

Q Okay. Did you and Mr. Washington discuss the elements of the offenses prior to trial?

A At some point we would have prior to trial. Like I said, in the beginning, I am not using legal term. I am just saying, here is what they are saying you did. What happened and tell me your side. But, you know, we will talk about going to trial if you have a trial. But in terms of actually sitting down and saying these are the processes of a trial, that is typically -- in the beginning it is just saying, you know, going through discovery, here is what they are saying you did.

Q Okay. And I believe you testified that you recall going over the possible sentences with Mr. Washington. Is that right?

A Yes. The State had made several definitive offers to him in January and February.

Q And did you and Mr. Washington discuss his constitutional rights as it pertains to a trial, his right to confront witnesses?

A Yes.

Q Okay. I know you had started to talk about discovery. Did you and Mr. Washington review all of the discovery together prior to trial?

A Yes. My notes show, he was arrested in June of 2015. I first met him in July of 2015. The State provided discovery in September of 2015. The, so we had the State's case from September of 2015 up until his trial

date, early February.
Q Does that include the forensic interview, did Mr. Washington see that?
A Yes. I think the -- sometimes the forensic interview videos don't come with the initial discovery. I was trying to see specifically if they came together or -- it looks like the forensic, the written forensic report would have come with the initial discovery package.
Q Okay. But to summarize, Mr. Washington did review that with you?
A He would have had the written forensic from the very beginning or from no later than September. I am not exactly sure about the video but that could have been January or February.
Q But you would have discussed the contents of the video with him, is that fair to say?
A Right.
Q Okay. Did you and Mr. Washington discuss the possible defenses and trial strategy?
A Yes.
Q Okay. Did you have an overall trial strategy that you can articulate?
A Not a good one. I do remember Mr. Washington was not a particularly hands on type client. You know, you did have to kind of coax him to talk and part of that was

because he had never been in trouble. I hadn't represented him before, I had no prior, a lot of my clients I have met before. The good thing for Mr. Washington was, this was the first time I had been representing him in a criminal matter. I do remember he was not particularly talkative or helpful. He wasn't hostile, he wasn't hard to work with but he was just kind of a quiet client. The little girl made the allegation and Mr. Washington's defense was, you know, she is lying. She is just the type of little girl who lies because she is out of control.

Q So it is fair to say that your trial strategy was sort of attacking the State's case particularly as it pertains to the victim's testimony?

A This case ended up basically, the defense would have been, she is a young child. And it is a he said, she said case and it is just not, it is hard to convict somebody for this type crime based on this child's testimony. But we didn't have any, you know, there wasn't a lot of other hard evidence or other witnesses, you know, that we could use because it was a he said, she said type case. And the only real issue was, was the child victim a credible witness. I think what hurt us at trial was -- what I remember most about this case was the other child witness testified a lot more forcefully than we thought that that

child was going to.
Q Okay.
A And that is when -- I do remember being struck by the child witness, not the victim but the other witness was a lot more --
Q And did you discuss the possible witnesses --
THE COURT: Okay, I have got to interrupt. I missed that last part.
A I did not know that the second child witness was going to give such a comprehensive testimony prior to trial. In my opinion that is the witness that broke our back would be the child witness, who was just a very strong witness for the State.
Q Did you discuss the witnesses that you possibly were going to call in the event that you decided to present a case or a defense?
A Yes.
Q Okay. And so you and Mr. Washington had discussed -- I want to make sure I get the name right here, Ms. Candice Hopkins?
A Yes.
Q And the purpose of her testimony?
A He thought she would be a character witness but largely her testimony from my interest point was that she didn't testify she saw anything unusual happen at the

party.
Q Okay. And did you also discuss Tonya Dawkins, I believe that was the other witness?
A Tonya was Mr. Washington's girlfriend at the time he was arrested. And she came in frequently to talk about his case with me to try to help him out. But she was his girlfriend at the time of the incident. She wasn't really a fact witness for the allegations. But she would also be kind of a character witness in terms of, I wouldn't -- this would be something to be out of character for him.
Q But Ms., just to be clear for the record, you and, did you and Mr. Washington discuss these witnesses before calling them?
A Yes.
Q Okay. I am going to the individual allegations in the amended application now. So I believe you testified that the divorce proceedings for which you represented Ms. Sims was pretty straightforward. Was it straightforward in the case?
A She also had custody of the child who was the child victim in this case. But custody had already been decided in some kind of prior Family court action. And though technically it is something that I would have addressed in her representation but it wasn't challenged. It was just an uncontested divorce with custody of a child but it

wasn't contested.
Q Okay. Just to be clear for the record, Mr. Washington was not a party in this case. Is that right, in the divorce case?
A No, he was not a party and he would not have had any involvement at all. I don't know if he even knew her at that time.
Q Okay. Was, do you consider Ms. Sims a major witness in Mr. Washington's criminal case?
A Factually, testimony wise no. But, yes, the mother of a child victim is a major witness. I considered the mother of a child victim in a sex case, I go ahead and list her as the victim of the crime, father too. So the mother of a child victim I treat on equal footing as the actual victim herself. So, yes, she is essentially the victim. Testimony wise, she was not a very important witness.
Q Based on your prior testimony, is it fair to say that the victim and the other witness child would have been the star witness for the State in this case?
A The substantive witnesses were the child victim and there was another child in the bathroom when the incident was alleged to have happened who gave a fairly strong corroborating --
Q -- okay. And just so it is clear for the record.

Did you have any ongoing contact with Ms. Sims between the time you represented her for her divorce proceedings and the time Mr. Washington's case commenced?
A To the best of my knowledge I would not have spoken to her or seen her since early 2007. I don't know her, don't recognize her. I am now kind of aware of the name but the, I would have not have had any kind of relationship with her for about six or seven years.
Q Okay. Did you sort of present an alternate theory with respect to the case, in particularly as it pertains to the victim's father? Did I interpret the record right?
A Well, the only, the answer is yes because the only real defense in this case is, it didn't happen and the child is either mistaken or being malicious in testimony. But either she was abused, it would --
MS. SCHILL: I am sorry, I didn't catch that.
THE COURT: Yes, we got the word that she was being abused and then you, then everything stopped. Let's take a break. We are having some technical difficulties. Everybody is going to take about a five minute break. Take a deep breath and maybe slow the machines down. We will get everybody back in in about five minutes.
MS. SCHILL: Thank you.
(Whereupon, a short break was taken.)
THE COURT: Okay, hopefully the internet and the

technology stuff is softened, we can pick up more of Mr. Verner's testimony. But yes ma'am, you want to continue on?

CONTINUE CROSS-EXAMINATION

By Ms. Schill:

Q Yes, I will kind of repeat the last question. I had asked Mr. Verner about whether he was, was his strategy at trial was presenting an alternate theory as it relates to the victim's father.

A Well, you didn't say as it relates -- can you hear me?

Q Yeah.

A I didn't hear you say as it relates to the victim's father in your question. We did go over with Mr. Washington that he was saying that if there was prior abuse it could have happened from somebody else, some other family member. I don't know that we would have said that there was any sexual abuse by the victim's father, Christopher Thompson, though. But I do think that we, Carrol and I did talk about that the other people may have molested or either physically abused that child.

Q Okay. I guess I will go over the second allegation regarding the statements during the Solicitor's closing argument. Some general, do you object to each and every possible objectionable statement made during an opening

and closing statement?
A I have no problems objecting during a prosecutor's opening statement if I think he crosses a line. In general, you have to evaluate whether it is really worth an objection and then making the jury focus on what was just said. But if I thought the prosecutor clearly made an argument that was inflaming the jury, that is one of my cardinal rules that I will object to. If I think it is just something that probably shouldn't have been said but in the grand scheme of things that the jury won't focus on or didn't clearly violate the lines then I would not -- and I think most attorneys and I certainly try not to object during a closing argument or opening argument if I think that there is a fair interpretation of the Solicitor's argument.
Q Okay. And I know you were speaking primarily about the Golden Rule type arguments. What about the statement regarding the credibility of the witness. There were a couple of quotes on page three of four of the amended application sort of discussing the victim, her testimony.
A Very simple. I looked at those statements from the prosecutor and I, it is my opinion that the Solicitor is not vouching for the credibility of the witness.
Q Okay. So just to summarize, you reviewed all the quotes in the amended application and you did not believe

they were, were inappropriate such that you would have objected to them?

A I wrote down some of the prosecutor's statements that I felt were kind of, in the scheme of things, unfair and I typically do that. In my notes I put big circles around them that reminds me that that is something I need to clear up with the juror. But I looked at the statements in the amended PCR that Mr. Washington objects to and I do not believe, in my opinion, that they clearly inflame the jury by saying that you are the conscience, you are the representatives of the community, just did not put them in the position of victims. In attacking the credibility of the child victim, I don't think that the prosecutor, by saying that children can be credible witnesses is largely how I interpret the prosecutor's statements. But he did not say anything like we have, I have examined this child's story and it is correct or he is not arguing that he has vouched for or corroborated the statements of the victim. So I do not think that he is bolstering or corroborating the victim witness testimony.

Q And when you referred to, the fact that you had circled or written down a few of the comments, was that an indication that you just sort of addressed those in your own closing argument?

A Or in, whenever the Solicitor says something that I

don't object to but either factually puts an argument on the facts, I will sometimes write it down and put a big circle on it so that when I review my notes for either cross-examination or closing, that I have addressed them.

Q Okay. Moving on to the third amended allegation. Was it, did I understand your testimony that you were saying you definitely had a recollection of how, the conversation with Mr. Washington about the juror who worked with him at Caterpillar?

A I have got a vague recollection of the juror. I can still see that potential juror in my mind, but I don't remember the substance of the conversation with Mr. Washington other than the, most assuredly I would have said, you know, if he is a coworker, did you get along with him, could that be something good or, you know, is it somebody that you did not like at work. But that would be a very typical thing I would say.

Q Okay. So had Mr. Washington said, put the little X on the paper or otherwise informed you he did not want the juror on this jury you would have stricken the juror. Is that a fair summary of your testimony?

A I would not put a juror on the panel if the client said I don't want that juror on the panel unless I was out of strikes.

Q Okay. To your knowledge, based on the record, no

perspective juror indicated that he or she had a business relationship with Mr. Washington. Is that a fair assessment of the record?

A Other than the coworker?

Q Yeah. Was there a juror who responded affirmatively to the question about having a business relationship or a close, personal relationship with Mr. Washington?

A I can't remember off the top of my head but I doubt it, I would say no other than the coworker. I do kind of vaguely remember, there are always potential members of the panel who either know a cop or investigator or the mother or worked at a certain location.

Q Yes, sorry. I should have been more specific. I am referring specifically to the juror who potentially worked with Mr. Washington at Caterpillar?

A Again, I have got a vague, I know what he looks like in my mind but I don't remember the substantive conversation but I would have said, you know, does he like you, do you think you have got a good relationship with him or is he somebody that we need to stay away from.

MS. SCHILL: I think those are all the questions I have, Your Honor.

THE COURT: Any redirect limited to what she went into?

MS. MCMAHAN: Just briefly, thank you.

REDIRECT EXAMINATION

By Ms. McMahan:

Q Mr. Verner, going back to the witnesses you had to testify. Did you have anybody else subpoenaed to testify besides those two?

A 20.

Q You had 20 people subpoenaed?

A No, just give me a second.

Q Oh, okay.

A The only witnesses, I spoke to Carrol Washington about coming were his girlfriend, Tonya Dawkins; potentially Candice Hopkins. There was a Tanzeneka Brooks and a Jackie Dominick, were other witnesses I would have had some -- those were the only witnesses we had listed as, for the case.

Q What was the conversation you had with Mr. Washington about testifying at the trial?

A Well, basically, obviously I would make it clear that it is the client's, it is entirely his choice, not mine, whether he wants to testify or not. But typically I would say we don't have to make that decision until after we hear the State's case. But I largely leave that up to the client in a he said, she said case, I would, I can't remember specifically what I would have told Mr. Washington but I almost always felt a witness in a he

said, she said case, that I think the jury would like to hear your side of it. But I leave the decision to testify or not entirely up to the client's decision.

Q Back to the forensic video. You said you probably got it sometime in January but you had initially, had gotten the report, the forensic report which is the summary of what was said in the forensic interview. When you get the forensic video in how do you show it to somebody that is in the detention center. Do you have that ability?

A Well, at that time, in 2016 the, they would bring in the police, the Solicitor would bring in groups of clients at a time to the Court House for me to go over the discovery with. So even if they weren't scheduled for a plea or a trial they would typically bring in 12 inmates at a time. And cases I could work out by plea we could go ahead and work out by plea. But for the client's, the benefit of that was, you know, we had the files from the State and I could call in individual clients into my office. And when I was not in court I could use that time to speak to clients actually in my office in the Court House. And that they would just bring in 12 clients at a time just primarily for the benefit of the public defender to be able to speak to as many clients as possible while available.

Q So when that would happen is court going on at the same time?
A Sometimes.
Q But sometimes they would bring them over when there is no court to see if you can talk to people?
A For court, that was during -- when they would bring in 12 inmates that is almost always during court. But that would not necessarily mean that, if another lawyer was trying a case or there was, you know, court wouldn't start until 2:00 o'clock or something like that, they would still be bringing inmates into the Court House to speak to.
Q So they would bring them in that morning even if court didn't start until 2:00?
A Right. I am either in court during pleas or trying cases or I am back in my office talking to clients.
Q So would it had been during one of these time periods that you would have showed him the forensic interview?
A I am almost positive he would not have seen the forensic interview video until he was actually at the Court House and that was probably, it is very possible he didn't see that until February of 2016, early February. I don't remember her forensic being a very substantive interview but the, but he would have gotten the report of the forensic in September. It is very possible he did not

actually watch the video until early February.
Q Okay. So you also said, okay, Mr. Washington alluded earlier that you had made a board in the trial, I guess, of what the State had to prove. Do you remember doing that?
A Not in this case. But it is very possible I would have used some demonstrative type.
Q So typically when you do that kind of thing are you listing the elements that the State has to prove or just something you want the jury to focus on?
A Generally it is something that I want the jury to focus on. But the, sometimes I do do it on the elements of a crime but generally it would be something, time matters or geographic reasons. But the, I do them for elements but rarely I would typically do them for timeframes or geography or what the evidence is that they have given you.
Q He also indicated that he had been given two plea offers. He didn't want to accept them because he wasn't guilty but he also didn't want to admit his guilt during the plea. Was there any discussion with Dale about a possibility of an Alford plea or was just the concept of a plea offer just off the table all together?
A The initial, the offer was zero to eight years under CSC third non-violent, he would be out today. Judge

Hocker does not take Alford pleas, he does not -- and you can't do a no contest plea on a felony. But the, Judge Hocker adamantly does not accept Alford pleas and more so on sexual offenses, where he will do the sex offense registry.

Q Judge Hocker was the Chief Administrative Judge then or was he just the Judge that was getting assigned to you guys the most? I mean I know it was five years ago.

A When I was reviewing the file I saw something that Judge Hocker was Chief Administrative Judge at that time. I think on the bond paperwork I saw something where he had indicated he was the Chief Administrative Judge. More often than not Judge Hocker has been the Chief Administrative Judge for General Sessions in the Eighth Circuit. And so, and I am pretty sure where I saw something where he was Chief Administrative Judge.

Q Okay. Did you ever have a conversation with Mr. Washington about asking or talking to Nicole Sims about why she kept bringing the victim over to the house, to Mr. Washington's house, even after she had made these allegations but before an arrest or anything happened to Mr. Washington?

A Yes. Yes, I think that was part of our defense was this allegation happened, why did the mother allow the children to still come in the neighborhood or see, be

exposed to him.
Q Okay. And earlier you said that you consider the mother of a child victim to be essentially the victim?
A I think parentis loco, or I think -- when I am writing down the case I include the victim's mother and father as the victim. Sometimes you have a step-mom or mother will not believe the child victim. But I consider the parents of a child in a sex case to be the victims.
Q And so essentially you represented Ms. Sims so you, by based on your testimony you essentially represented the victim, in the loco parentis?
A That legal step but the, but I clearly represented a material witness or an important witness which would be the mother and she would certainly had been adversarial.
Q The rules of ethics for lawyers in South Carolina, do you recall if there is any rule of case law that specifically says that a conflict of interest goes away after a period of time?
A Ms. Schill and I did, I spoke in this case, I think Ms. Schill called me yesterday or the day before to discuss the allegations in the amended complaint. We did pull up or I did pull up the professional rules of responsibility, in particular those of the conflict section to see if any specifically applied. I don't know that there is any that specifically talks about they go

away after a certain period of time, I would be surprised. I don't think how long ago the representation happened. I think it is a factor but I don't think there is a rule that specifically talks about that.

Q And so before the trial, how soon before the trial did you get an inkling that Ms. Sims was going to be called as a witness?

A I would assume that a victim of a child, sexual victim would be called as a witness from day one.

Q And you alluded to the fact that you asked her if she was married to Chris Thompson in the trial transcript. So how would you have put those two together during the trial. I mean, I am asking because, let me back up. I am asking this because earlier you said, you know, the father and the mother are technically the victim, the parents of the victim. And so you would have known Christopher Thompson was the father of the victim just based on the police reports and all of that. Is that correct?

A He was a non-custodial father of the victim who didn't have an active role in the child's life. I don't think he is listed as a victim. I don't think he is even in the incident reports. But at some point we would have known that the child, we certainly know that the child has a father even when their parents are separated or divorced. I was looking at my notes when I interviewed

Mr. Washington and my notes talking about the case and we really, I have got notes where I write down the names of every potential witness, Christopher Thompson's name never came up as a active person. We just took him as a non-custodial father who has a not very active role in this child's life.

Q He lived in a different state, didn't he?

A He was a non-factor as far as the child was concerned in terms of, I don't think his name shows up in the incident report.

Q -- okay, but at some point you knew his name, isn't that right?

A Yes, certainly at some point I would have known his name but it is clear --

Q -- so my point being, if you knew his name, you had a list of all the possible witnesses and everything, do you sit down and run a conflict check on them prior to trial typically or is it usually just kind of go on, like I recognize this name for representing them before kind of thing?

A Well, you know the technology is better today than it was in 2015 to run a conflict check. The first screen is obviously, do I recognize the name. And, again, she did have a different name at the time I represented her, she was going by her maiden name of Thompson when I

represented her. And in the incident report she shows up as Nicole Sims. So she would not have had the same name.

Q Christopher Thompson would have been the opposing party in the divorce, right?

A Right. But at some point the, you can tell, it is half, the lawyer recognizing the name and then seeing if her name is on any of the prior cases you have got in the system. This one is a tough one because she was under a different name from my representation.

Q And typically the State doesn't necessary give you the official witness list until the morning of the trial. Is that correct or does Dale give it to you earlier?

A No, they don't really, they don't give me the witness list until trial actually starts. But when we are actually on set, where we know we are going to trial I will insist that the State at least orally tell me who their witnesses are coming before the written one is given to me. But Ms. Sims was a, the mother of the victim, the custodial mother of the victim I recognized as a witness from day one.

And I am seeing some things indicating that maybe the video is questionable?

THE COURT: The video might be difficult but the audio I think is still coming in just fine.

MS. MCMAHAN: I can still hear everyone, I just can't

see anyone, I can see myself but I can't see anybody.
Q Okay, Mr. Verner, hold on, my train of thought just got slapped a little bit because of the technical difficulties. So how would you have known during trial that Christopher Thompson is the person she had been married to? Would it be just because it had been referenced before that this was the child's father?
A Yes, but I mean I didn't know Christopher Thompson. That name means nothing to me. I recognize the children's last name is Thompson. But I don't really have any reason why I would have known Christopher Thompson's name. It was an uncontested divorce so I wouldn't have even encountered him then.
Q So during the trial when she and when I mean she, Nicole Sims, indicates to you, you would know, you was my divorce attorney. Then you asked her, were you married to Christopher Thompson. Is that kind of when it jelled a little bit in your mind, that you had been involved with these two people before?
A I mean, I did not remember her until she said you would know, you were my lawyer. And then that is what, my first occasion that she had been a prior client. And the name, Christopher Thompson, does not mean anything to me now or would not have meant anything to me then. So obviously I must have been aware of the father and I think

we had discussed, you know, prior use of the children. But the name, Christopher Thompson, would not have jogged my memory to remember her.

Q Even as, so you wouldn't necessarily remember the opposing party in a divorce that you represented?

A I think I must have been just putting two and two together. She would know, you were my former attorney. And then I was aware that Christopher Thompson was the father of the child from the talkings with my client, evidence. So I think I am probably just putting one and one together, you know, you said you are my client, I know you used to be married to Christopher Thompson. And so I think I was just putting that kind of together, one plus one, you know, as kind of -- is this the one you are talking about, you know, is the marriage you are talking about. But I had no knowledge of any Christopher Thompson that would have jogged my memory.

Q Okay. So his name, itself, did not ring a bell to you?

A Other, I know what me and Mr. Washington would have talked about Mr. Thompson.

Q Yeah.

A I mean so I was aware of his name --

Q -- other than being the dad to the victim, his name wasn't anything that really made you think anything other

than being involved in this case?
A Right. He is somebody I would have never met before, would have never have spoken to before. He was a nominal, he was a Defendant in a case I tried or no default divorce. But I think I was just putting one and one together. You said you are my client and I know that you, the father, of the child is Chris Thompson. So I just think I just kind of pieced it together at the time.
MS. MCMAHAN: I have no further questions, Your Honor.
THE COURT: Ms. Schill, Counsel went longer on redirect. Do you have anything, any new issues that you need to address?
MS. SCHILL: Your Honor, I don't think so.
THE COURT: Thank you. Any reason that Mr. Verner can be excused? If the State wishes to recall you just be around.
MR. VERNER: I will stay. I apologize, Your Honor, long before this system was used for hearings, I think I asked somebody to set me up a video account.
THE COURT: Okay.
MR. VERNER: And I have tried faithfully to get Charles Verner replaced for Verminator.
THE COURT: You stick with that story, we will go with it, that is fine. Thank you very much. Is the

Applicant ready to call their next witness?

MS. MCMAHAN: Your Honor, we are planning on recalling Mr. Washington. Other than that, that is everything I have.

THE COURT: Okay. And your, for scheduling purposes, you anticipate this to be lengthy examination?

MS. MCMAHAN: No.

THE COURT: Mr. Washington, I need to remind you that you remain under oath. Do you understand that?

MR. WASHINGTON: Yes, sir.

THE COURT: Thank you very much, yes ma'am.

DIRECT EXAMINATION

By Ms. McMahan:

Q Mr. Washington, earlier you indicated there was some confusion with some of the names, do you mind clarifying that for the Court?

A The Candice Hopkins, I forgot the name what he said it was, but it is Candice Hopkins.

Q Okay. I believe I might have said or Mr. Verner may have said Candice Lively who is not Candice Hopkins who is another attorney in South Carolina. So I apologize for that. And conversations about Christopher Thompson that you guys had, do you remember what they revolved around?

A I first told the investigator, when he first talked to me, I told the investigator about that situation. And