

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

RECORD ON APPEAL

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SC Court of Appeals

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 1 (DVD OF FORENSIC INTERVIEW)

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
)
)
-VS-)
)
CARROL TREMAYNE)
WASHINGTON,)
)
DEFENDANT.)
_____)

CASE NO.: 2015-GS-36-0546

TRANSCRIPT OF RECORD

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

BEFORE:

THE HONORABLE DONALD B. HOCKER, JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

DALE SCOTT, DEPUTY SOLICITOR
TAYLOR DANIEL, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT :

CHARLES VERNER, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
State's 1	CD		X
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TRIAL DAY 1-02/29/16

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

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

1 Tremayne Washington did on or about May 3rd, 2012 to March
2 25, 2015 in Newberry County, being older than the victim,
3 willfully and unlawfully committed criminal sexual conduct
4 with a minor in the first degree, to wit, that the said
5 Defendant did engage in a sexual battery upon a person under
6 the age of 11 years, to wit, a one, Minor , date
7 of birth , in violation of Section 16-3-655,
8 subsection (a), subsection (1), Code of Laws for South
9 Carolina. And again, these are merely allegations and
10 nothing more.

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

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

19 (Whereupon, jury panel remains seated.)

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

24 (Whereupon, jury panel remains seated.)

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

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

15 (Whereupon, jury panel remains seated.)

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

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

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

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

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

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

17 (Whereupon, jury panel remains seated.)

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

23 (Whereupon, jury panel remains seated.)

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

1 this case?

2 (Whereupon, jury panel remains seated.)

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

6 (Whereupon, jury panel remains seated.)

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

13 (Whereupon, jury panel remains seated.)

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

20 (Whereupon, jury panel remains seated.)

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

1 (Whereupon, jury panel remains seated.)

2 THE COURT: Now, is there anyone who would like to
3 speak with me privately? If so, please stand.

4 (Whereupon, jury panel member stands.)

5 THE COURT: All right. We've got one. Come around,
6 please, sir.

7 JUROR Robert Hamilton: I worked with Brad Epps. I
8 worked at the Sheriff's Office for four years.

9 THE COURT: You were a deputy sheriff?

10 JUROR Robert Hamilton: Yes. I'm pretty familiar with
11 those guys.

12 THE COURT: I'm going to excuse you. Excuse him for
13 cause. Thank you. Stay with us. Anybody else?

14 Ladies and gentlemen of the jury panel -- okay. I've
15 got another question for you. Is there any member of the
16 jury panel either been a victim of an alleged sexual
17 assault, or anyone on the jury panel have a close friend or
18 family member who has been a victim of an alleged sexual
19 assault? If so, please stand.

20 (Whereupon, jury panel member stands.)

21 THE COURT: Let's do this. Just come down and speak
22 with me privately.

23 JUROR Bradley Eckhardt: It was my sister-in-law. She
24 was molested by her uncle.

25 THE COURT: The fact that your sister-in-law was

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

2 JUROR Bradley Eckhardt: I could not.

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

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

21 MR. SCOTT: No, Your Honor.

22 THE COURT: And likewise for the Defense?

23 MR. VERNER: No, Your Honor.

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

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

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

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

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

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

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

12 MR. SCOTT: Please present the juror.

13 MADAM CLERK: The Defense?

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

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

18 MR. SCOTT: Present the juror.

19 MADAM CLERK: The Defense?

20 MR. VERNER: Please seat Mr. Ott.

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

22 (Whereupon, juror takes seat in jury box.)

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

25 MR. SCOTT: Please present the juror.

1 MADAM CLERK: The Defense?

2 MR. VERNER: Please seat Ms. Thomas.

3 MADAM CLERK: Have a seat in the box.

4 (Whereupon, juror takes seat in jury box.)

5 MADAM CLERK: 12, Shykerra Burnside. What says the
6 State?

7 MR. SCOTT: Please present the juror.

8 MADAM CLERK: The Defense?

9 MR. VERNER: Please seat Ms. Burnside.

10 MADAM CLERK: Have a seat, please.

11 (Whereupon, juror takes seat in jury box.)

12 MADAM CLERK: 137, Kim Summer. What says the State?

13 MR. SCOTT: Please present the juror.

14 MADAM CLERK: The Defense?

15 MR. VERNER: From this case I would excuse Ms. Summer.

16 MADAM CLERK: 126, Doris Ann Shepard. What says the
17 State?

18 MR. SCOTT: Please present the juror.

19 MADAM CLERK: The Defense?

20 MR. VERNER: Please seat Ms. Shepard.

21 MADAM CLERK: Have a seat in the box.

22 (Whereupon, juror takes seat in jury box.)

23 MADAM CLERK: 118, Ronald Robinson. What says the
24 State?

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

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

3 MR. SCOTT: Please present the juror.

4 MADAM CLERK: The Defense?

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

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

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

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

12 MR. SCOTT: Please present the juror.

13 MADAM CLERK: The Defense?

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

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

16 MR. SCOTT: Please present the juror.

17 MADAM CLERK: The Defense?

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

19 MADAM CLERK: 76, Timothy Hudson.

20 MR. VERNER: 76?

21 MADAM CLERK: 76. What says the State?

22 MR. SCOTT: Present the juror.

23 MADAM CLERK: The Defense?

24 MR. VERNER: Please present Mr. Hudson.

25 MADAM CLERK: Have a seat, please.

1 (Whereupon, juror takes seat in jury box.)

2 MADAM CLERK: 34 Shandon Collins. What says the State?

3 MR. SCOTT: Please present the juror.

4 MADAM CLERK: The Defense?

5 MR. VERNER: From this case I'm going to excuse the
6 juror.

7 MADAM CLERK: 42, Christine Dezzani. What says the
8 State?

9 MR. SCOTT: Please present the juror.

10 MADAM CLERK: The Defense?

11 MR. VERNER: I'm sorry. What number?

12 MADAM CLERK: 42.

13 MR. VERNER: From this case I'll excuse Ms. Dezzani.

14 MADAM CLERK: Number 4, Lloyd Arrowood. What says the
15 State?

16 MR. SCOTT: Please present the juror.

17 MADAM CLERK: The Defense?

18 MR. SCOTT: Please seat Mr. Arrowood.

19 (Whereupon, juror takes a seat in jury box.)

20 MADAM CLERK: 127, Tasha Sim. What says the State?

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

22 MADAM CLERK: 41, Sharon Derrick. What says the
23 State?

24 MR. SCOTT: Present the juror.

25 MADAM CLERK: The Defense?

1 MR. SCOTT: Please seat Ms. Derrick.

2 (Whereupon, juror takes seat in jury box.)

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

5 MR. SCOTT: Please present the juror.

6 MADAM CLERK: The Defense?

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

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

11 MR. SCOTT: Please present the juror 149.

12 MADAM CLERK: The Defense?

13 MR. VERNER: Please present the juror.

14 (Whereupon, juror takes seat in jury box.)

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

16 MR. SCOTT: Present the juror.

17 MADAM CLERK: The Defense?

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

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

20 MR. SCOTT: Present the juror.

21 MADAM CLERK: The Defense?

22 MR. VERNER: Please seat Mr. Griffen.

23 (Whereupon, juror takes seat in jury box.)

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

25 MR. SCOTT: Present the juror.

1 MADAM CLERK: The Defense?

2 MR. VERNER: What number are we on?

3 MADAM CLERK: 43.

4 MR. VERNER: Please seat Mr. Dickert.

5 MADAM CLERK: Have a seat, please.

6 (Whereupon, juror takes seat in jury box.)

7 MADAM CLERK: 148 Norman Way. What says the State?

8 MR. SCOTT: Present the juror.

9 MADAM CLERK: The Defense?

10 MR. VERNER: Please seat Mr. Way.

11 MADAM CLERK: Have a seat in the box.

12 (Whereupon, juror takes seat in jury box.)

13 MADAM CLERK: 110, Troy Pridham. What says the State?

14 MR. SCOTT: Present the juror.

15 MADAM CLERK: The Defense?

16 MR. VERNER: Please have a seat, Mr. Pridham.

17 (Whereupon, juror takes a seat in jury box.)

18 MR. VERNER: Is that 12?

19 THE COURT: That's 12. Two alternates.

20 MADAM CLERK: 27, Charles Clary. What says the State?

21 MR. SCOTT: Present the alternate.

22 MR. VERNER: What's the number again, 27? Please seat
23 Mr. Clary.

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

25 (Whereupon, juror takes seat in jury box.)

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

3 MR. SCOTT: Please present the alternate.

4 MADAM CLERK: The Defense?

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

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

8 MR. SCOTT: Present the alternate.

9 MADAM CLERK: The Defense?

10 MR. VERNER: Please seat Ms. Fowler.

11 MADAM CLERK: Have a seat.

12 (Whereupon, juror takes seat in jury box.)

13 THE COURT: Okay, Madam Clerk, thank you very much.

14 Ladies and gentlemen, what I'm going to ask that you do is
15 follow the bailiff into the jury room and get kind of -- see
16 where you're going to be spending a little bit of time this
17 week. Also, introduce yourselves to each other and get to
18 know each other, for those who do not know everybody, and
19 we'll bring you back out in just a few minutes with further
20 instructions.

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

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

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

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

11 MR. SCOTT: No, Your Honor.

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

14 MR. VERNER: No, Your Honor.

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

1 instructions on what to do for tomorrow. Chances are it's
2 going to tell you to call back Tuesday after 6:00. But
3 again, we don't know that. So don't forget to call after
4 6:00 and it'll tell you what to do as concerns tomorrow.
5 Now, if it turns out to where there's no further jury
6 business to conduct this week then I won't have an
7 opportunity to see you folks again. But I hope sincerely
8 that if I don't see you again and you're not selected on
9 another jury this week that sometime in the future, whether
10 it's in Circuit Court or in some other court, Magistrate's
11 Court, City Court, that you'll have an opportunity to be
12 selected, because I think if that happens you'll find the
13 experience to be a very good one. So hopefully that
14 opportunity will come around for you sometime down the road.

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

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

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

19 (Whereupon, a sidebar was held.)

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

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

1 and I don't know how many of -- are you with the Defendants?

2 Are you Defendant's family or are you with another case?

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

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

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

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

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

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

1 with this evening.

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

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

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

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

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

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

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

12 MR. SCOTT: Yes, sir.

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

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

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

18 THE COURT: Thirty-two minutes?

19 MR. TAYLOR: Yes, sir.

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

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

BRAD EPPS-DIRECT EXAMINATION

25

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

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

8 THE COURT: Okay.

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

12 THE COURT: Is it Epps?

13 THE WITNESS: Yes, sir.

14 THE COURT: E-p-p-s?

15 THE WITNESS: Yes, sir.

16 THE COURT: Come around, Officer Epps.

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

19 In-Camera

20 DIRECT EXAMINATION

21 BY MR. SCOTT:

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

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

BRAD EPPS-DIRECT EXAMINATION

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

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

5 A Nicole Simms.

6 Q And who is she in relation to the victim?

7 A That's the victim's mother.

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

9 A Minor

10 Q And she was how old?

11 A Nine at the time the report was taken.

12 Q The general allegations were what?

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

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

20 A Carroll Washington.

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

23 A Yes. That nickname was Man.

24 Q Man, M-a-n?

25 A Yes.

BRAD EPPS-DIRECT EXAMINATION

27

1 Q In investigating the case who all did you speak with?

2 You said you got involved March 26th, 2015. Who did you

3 speak with about the allegations?

4 A I spoke with the victim's mother, Nicole. Then I got

5 in touch with Beyond Abuse to set up a forensic interview.

6 Then I got Mr. Washington in. Brought him in for an

7 interview.

8 Q When was that?

9 A That was 6/4 of 2015.

10 Q So you get involved March 26th, and then June 4th is,

11 when you first speak with him in person?

12 A That's correct.

13 Q So about two months after the complaint; is that right?

14 A That's correct.

15 Q What was going on during that two months?

16 A Setting up forensic interviews. From my understanding

17 the mother was having issues with work, getting to the

18 forensic interview. So I had to make other arrangements at

19 the ARC, or the Dickerson Center, so we could get set up

20 with the forensic interview.

21 Q So you were wanting to wait until after the forensic

22 interview was completed before you spoke with Mr.

23 Washington?

24 A Yes, that's correct.

25 Q Tell me -- and this wasn't -- was there a timeframe you

BRAD EPPS-DIRECT EXAMINATION

28

1 were looking at that these alleged assaults took place?

2 A Yes. That would have been May 2012 to the time the

3 victim was nine, probably sometime in 2015.

4 Q But the child was at least nine or younger during these
5 times in question?

6 A That's correct.

7 Q So on the date in June when you first speak with Mr.
8 Washington, where did you speak with him?

9 A I spoke with him at the Sheriff's Office. I spoke with
10 him by phone first, then told him he needed to come to the
11 Sheriff's Office and speak with me and he came to the
12 Sheriff's Office.

13 Q He voluntarily came to the Sheriff's Department?

14 A That's correct.

15 Q And did you tell him what the allegations were at that
16 time?

17 A Yes.

18 Q So was he under arrest when he got there?

19 A No, he was not.

20 Q Did -- well, was he read his Miranda warnings?

21 A He was not.

22 Q Why not?

23 A Because he wasn't under arrest.

24 Q Is it fair to say you were still investigating the
25 validity of these allegations?

BRAD EPPS-DIRECT EXAMINATION

29

1 A That's correct.

2 Q And tell me what -- what you talked about the first
3 time he came to the Sheriff's Office?

4 A More or less he was advised what was going on, what I
5 wanted him there for, and he was told of the allegations.
6 And he made mention that -- he was kind of speechless as to
7 why Minor would say this about him, and all the kids
8 gravitate towards him. And he went further on to say that
9 she was a fast little girl.

10 Q He said what? She was a fast little girl?

11 A She was a fast little girl.

12 Q A nine-year-old?

13 A That's correct.

14 Q Did he go into any detail about how she's a fast little
15 girl?

16 A He did not. No.

17 Q Well, did you tell him what the allegations were?
18 Specifically, I mean, what the victim said he had done?

19 A I don't know if it was specifically. He was just more
20 or less advised this is -- this is what was brought to my
21 attention via the forensic interview and this is what the
22 allegations are against you.

23 Q Well, you did mention the --

24 A Yes.

25 Q -- allegations, where there was some digital

BRAD EPPS-DIRECT EXAMINATION

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1 penetration maybe?

2 A Yes.

3 Q And what did he have to say about that?

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

6 Q Did you ask him about his nickname?

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

9 Q He said yes?

10 A That's correct.

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

13 A He did not.

14 Q Did he ask for a lawyer or anything?

15 A He did not.

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

18 A That's correct.

19 Q Had you threatened or intimidated him?

20 A No.

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

23 A He left.

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

25 A Yes, at a later date.

BRAD EPPS-DIRECT EXAMINATION

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1 Q When was that? I'm looking at page four of your
2 supplemental, June 10th. It's at the bottom of the page.

3 A That is correct. It was on June 10th.

4 Q What happened on June 10th?

5 A I picked him up from Caterpillar in Newberry and I took
6 him to SLED for a polygraph.

7 Q At some point though did you have a chance to speak
8 with him?

9 A Yes, I did.

10 Q And was he under arrest at that time?

11 A During -- on the way back, yes.

12 Q When you speak with him -- when did you speak with him?

13 A I spoke with him after the polygraph examiner spoke
14 with him.

15 Q Was he under arrest at that time?

16 A No.

17 Q Did he speak with you voluntarily at that time?

18 A He did.

19 Q What did he disclose at that time?

20 A More or less that -- I mean, he didn't understand why
21 he failed the polygraph. I asked him several questions
22 pertaining to the case, and he never let on anything as
23 incriminating himself as doing anything to the victim.

24 Q He was not -- could he have left freely at that time if
25 he had chosen to?

BRAD EPPS-DIRECT EXAMINATION

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1 A Midway through the interview I did tell him that he was
2 under arrest.

3 Q Did you ask him any questions after that?

4 A Not that I can remember. I know we spoke on the way
5 back and I didn't really ask him any questions pertaining to
6 the case.

7 Q When you put him under arrest would you have read his
8 Miranda warnings to him?

9 A I would have, but they were already advised to him.

10 Q Who advised him of them?

11 A The polygraph examiner.

12 Q Were you present when that occurred?

13 A I was looking through the -- there's a double-sided
14 window. I was there observing.

15 Q So you observed him receive his Miranda warnings?

16 A Correct.

17 Q Did he appear to understand them?

18 A He appeared to. That's correct.

19 Q Did you observe him, I guess, accept the fact that he
20 understood his Miranda warnings?

21 A That's correct.

22 Q How did he do so? Was it verbal?

23 A I think it was verbal and, if I remember correctly, he
24 signed the rights form. He initialed it.

25 Q But I guess at that time all he -- he didn't really

BRAD EPPS-DIRECT EXAMINATION

33

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

3 A That's correct.

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

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

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

12 THE COURT: That was in the first one?

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

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

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

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

24 MR. SCOTT: All right.

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

BRAD EPPS-DIRECT EXAMINATION

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1 there?

2 A I do.

3 Q Do you have the original?

4 A I do.

5 MR. SCOTT: Let me get that marked.

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

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

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

13 A That's correct.

14 Q You witnessed his polygraph?

15 A That's correct.

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

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

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

22 A That's correct.

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

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

BRAD EPPS-DIRECT EXAMINATION

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1 trial he'd get 50 years.

2 Q At some point did you -- let me show you State's No. 2.

3 At some point did you show the victim in this case a photo
4 lineup?

5 A That's correct.

6 Q And when was that?

7 A That was 6/3/2015.

8 Q Where was the victim shown the photo lineup?

9 A At the Sheriff's Office.

10 Q And was she with anyone?

11 A She was with her mother and her father.

12 Q Had you ever shown her any pictures before this?

13 A I have not.

14 Q And do you have a -- I guess, a general procedure you
15 do when you show a witness a photo lineup?

16 A If we had -- a lot of time we'll get them done by SLED
17 and that way nobody at the Sheriff's Office is doing it. So
18 I just got one done by SLED.

19 Q And how do you do that? Do you --

20 A Email. Send in a request. You send the person's
21 driver's license information. All their pertinent
22 information. What the charge is. And they send you a photo
23 lineup back with that person's picture on it.

24 Q What's the idea? To get five other individuals that
25 are similarly --

BRAD EPPS-DIRECT EXAMINATION

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1 A That's correct.

2 Q Similar characteristics, I guess? How did you get the
3 name Carroll Washington? Let me backtrack a little bit
4 again. She mentioned the nickname Man. How did you
5 associate Man with Carroll Washington?

6 A Well, when I first spoke with the mother she -- I
7 remember her telling me that his last name was Washington
8 and we from Clinton. So I went to the DMV and I searched
9 the last name Washington. And I asked the mother if she
10 could figure out what his first name was. And I want to say
11 she was able to give me a first name, and I got his picture
12 that way from the DMV online.

13 Q Do you know, there is a -- I guess a -- Carroll
14 Washington, do you know who his girlfriend was at the time?

15 A I did not.

16 Q Do you know now?

17 A I do.

18 Q And how is she related to the victim's mother?

19 A That is the victim's mother's cousin.

20 Q So Carroll Washington at the time was dating the
21 mother's cousin?

22 A That's correct.

23 Q So she provided the last name of Washington to you?

24 A The victim's mother. That's correct.

25 Q And when you requested this photo lineup, was it before

BRAD EPPS-DIRECT EXAMINATION

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1 or after you spoke with Mr. Washington?

2 A It was the day before.

3 Q Show us -- what procedure do you use -- I don't know,
4 maybe if I'm the victim, and this is your photo lineup.

5 I've got it marked as State's No. 2. How would you present
6 it to the victim, or the witness?

7 A Bring the victim in, bring the witness in, and have
8 them to identify the person who they saw or who had done
9 something to them.

10 Q Well, I mean, do you explain to her -- this is a nine-
11 year-old girl. Tell me what you explained to her. First of
12 all, is it face up like that or do you got it flipped upside
13 down or --

14 A Well, when I came in I was talking to her and told her
15 I had a photo lineup for her and see if she could identify
16 Man. And I showed it to her. I said, put a check beside
17 the person that -- Man, more or less. Put a check beside
18 his head. And she put a check beside his head.

19 Q So tell me, you would've said what? If you see Man in
20 this picture, show me, or what do you say to her?

21 A More or less just, I said, put a check beside Man's
22 head.

23 Q And how quickly was she able to do that?

24 A Pretty quickly.

25 Q Did she seem certain to you?

BRAD EPPS-DIRECT EXAMINATION

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1 A Yes.

2 Q Any suggestion whatsoever on which one she needed to
3 check?

4 A You mean like me telling her?

5 Q Or any suggestion?

6 A No.

7 Q Did you hold your finger close to the three slide on
8 here?

9 A I put it on the table and gave her a pen and she
10 checked it.

11 Q Did you have any follow-up questions after she checked
12 it?

13 A I did not.

14 MR. SCOTT: Your Honor, this is State's No. 2 which is
15 the lineup.

16 Q Did you refer to -- it wasn't -- you didn't have his
17 name beside it or anything. Was that exactly the lineup you
18 showed her?

19 A Correct.

20 Q And had she pretty much at that point only refer to him
21 as Man or did she refer to him as Carroll Washington or
22 anything like that?

23 A It was always Man.

24 Q So again, you would have -- what would you have said to
25 her when she came in and you presented the lineup to her?

BRAD EPPS-CROSS EXAMINATION

39

1 A Put a check beside Man, and that's what she did.

2 Q And did you tell her that he was definitely one of the
3 people on there?

4 A I did not. I didn't say anything. She asked -- more
5 or less stated that she didn't want to see him anymore and
6 she didn't want her cousin to get hurt after I showed her
7 the photo lineup.

8 Q You said she picked the three spot pretty fast. I
9 mean, can you give us an estimate how quick?

10 A I mean, once I told her who I needed -- who she needed
11 to identify, I put it on the desk and gave her the pen, she
12 put a check right beside his head.

13 Q Did you ask her how certain she was or anything like
14 that?

15 A I didn't.

16 Q That was the end of it right there?

17 A And like I said, she asked me -- more or less said that
18 she didn't want anybody to get hurt.

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

21 CROSS-EXAMINATION

22 BY MR. VERNER:

23 Q Investigator Epps, you first met with Carroll
24 Washington on June 4th?

25 A That's correct.

BRAD EPPS-CROSS EXAMINATION

40

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

3 A That's correct.

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

6 A That's correct.

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

9 A That's correct.

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

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

13 Q On the 10th?

14 A -- for the 10th.

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

17 A That's correct.

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

20 A I may.

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

23 A I did not.

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

BRAD EPPS-CROSS EXAMINATION

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

BRAD EPPS-CROSS EXAMINATION

42

1 back?

2 A He was more or less mentioning -- like I said, he was
3 ready to get it over with. Just ready to plea.

4 Q Was he surprised you arrested him on that same --
5 following the polygraph?

6 A I would say so.

7 Q Had he been told if he passes the polygraph that he
8 would not be charged?

9 A That is -- no.

10 Q So you all didn't represent anything.

11 MR. VERNER: Okay. Thank you.

12 THE COURT: Solicitor, anything in followup?

13 MR. SCOTT: Nothing, Your Honor. I think clearly the
14 first thing --

15 THE COURT: Before you make any argument, I'm going to
16 ask a couple of questions.

17 MR. SCOTT: Yes, sir.

18 THE COURT: Officer Epps?

19 THE WITNESS: Yes, Judge.

20 THE COURT: How many times did Minor tell you that
21 the Defendant abused her in some fashion?

22 THE WITNESS: Well, she never disclosed anything to me,
23 Your Honor. It was all to the -- the person who did the
24 forensic interview.

25 THE COURT: You never asked her?

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

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

4 THE WITNESS: That's correct, Your Honor.

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

7 THE WITNESS: That's correct, Your Honor.

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

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

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

17 THE WITNESS: No, Your Honor.

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

20 THE WITNESS: Yes, Your Honor.

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

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

1 Mañ.

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

4 THE WITNESS: No, Your Honor.

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

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

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

10 MR. VERNER: No, Your Honor.

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

12 THE WITNESS: Yes, Your Honor.

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

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

17 THE COURT: Who?

18 MR. SCOTT: Ethyl Simms.

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

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

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

23 THE WITNESS: My name is Ethyl Simms.

24 IN-CAMERA

25 DIRECT EXAMINATION

ETHYL SIMS-DIRECT EXAMINATION

45

- 1 BY MR. SCOTT:
- 2 Q Ms. Simms, where do you live?
- 3 A I stay in Whitmire.
- 4 Q And Minor is who to you?
- 5 A Minor my granddaughter.
- 6 Q And Carroll Washington, do you know him?
- 7 A He was a friend.
- 8 Q And where did he live?
- 9 A He live about three blocks from me. We live in an
- 10 apartment complex and he lived three apartments down from
- 11 me.
- 12 Q Who's his girlfriend?
- 13 A My cousin, Tonya.
- 14 Q And where does she live?
- 15 A They live together in the same complex.
- 16 Q Same complex but three buildings over is what you're
- 17 saying?
- 18 A Yes.
- 19 Q Three buildings or three rooms over?
- 20 A Three buildings.
- 21 Q And when would Minor come to visit you?
- 22 A Minor used to come and visit me -- they just all
- 23 three of them just come visit me often.
- 24 Q Often?
- 25 A Yep, until I didn't know -- Minor got to a point she

ETHYL SIMS-DIRECT EXAMINATION

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

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

4 THE WITNESS: Okay.

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

10 Q Very often she would come up to Whitmire?

11 A Uh-huh.

12 Q And she lives where?

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

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

16 A Yeah.

17 Q Would she spend the night?

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

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

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

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

25 A No.

ETHYL SIMS-DIRECT EXAMINATION

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- 1 Q Did he live in that apartment with Tonya?
- 2 A Who? Carroll?
- 3 Q Carroll Washington?
- 4 A Yeah, he did. They lived together.
- 5 Q Well, let me ask you. Do you see Carroll Washington?
- 6 A Well, sure.
- 7 Q Somebody you're familiar with?
- 8 A Yes.
- 9 Q --And you say he lives with Tonya?
- 10 A Yes.
- 11 Q And now, I'm going to ask you again. Did you ever see
- 12 Minor going over to that apartment that Mr. Washington
- 13 lived in?
- 14 A Yeah, they go back and forth. It's a bunch of kids
- 15 would go back and forth. It wasn't just Minor.
- 16 Q And what would they do over at that apartment? I'm
- 17 talking about Tonya and Carroll Washington.
- 18 A They play games. They watch TV. Sometimes they be
- 19 dancing.
- 20 Q Did Mr. Washington ever come over to your apartment?
- 21 A Every once -- he'd come over every once in a while.
- 22 Q Would you say in front of you, your observation, did
- 23 Minor have contact with Mr. Washington more than one
- 24 occasion?
- 25 A Yeah, because all -- all the kids would consider him as

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

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

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

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

11 A Yeah.

12 Q -- be face to face sometimes?

13 A They all did. They all of them, Minor , S.S. ,

14 N.T. . All my grands did. And other kids on the block
15 did, too.

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

18 CROSS-EXAMINATION

19 BY MR. VERNER:

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

22 A Yeah.

23 Q What kind of names?

24 A Called him old man and all this. That's all they did.

25 But Minor didn't talk like the youngest does. Like that's

ETHYL SIMS-CROSS EXAMINATION

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1 the youngest girl. She really --

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

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

6 Q What kind of phrases would she call him?

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

9 MR. VERNER: Thank you.

10 THE COURT: Solicitor?

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

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

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

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

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

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

20 THE WITNESS: Everybody called him Man.

21 THE COURT: Now, how many times -- as I understand it,
22 the allegations are from the period of time to sometime in
23 2012 to sometime in 2015.

24 THE WITNESS: Uh-huh.

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

ETHYL SIMS-CROSS EXAMINATION

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

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

9 THE COURT: You'd see them a lot.

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

12 THE WITNESS: I mean, she --

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

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

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

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

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

1 times have you actually seen the victim at --

2 THE WITNESS: Well, Minor -

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

4 THE WITNESS: Okay.

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

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

11 THE COURT: You've seen them?

12 THE WITNESS: Yeah.

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

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

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

17 THE COURT: How are you, Minor ?

18 THE WITNESS: Good.

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

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

23 THE WITNESS: Ten.

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

25 THE WITNESS: Conder Elementary Integrated Magnet

1 School.

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

7 THE WITNESS: Conder Elementary Integrated Magnet
8 School.

9 THE COURT: Where's that at?

10 THE WITNESS: Columbia.

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

12 THE WITNESS: (Nonverbal response.)

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

16 THE WITNESS: (Nonverbal response.)

17 THE COURT: Is that a yes?

18 THE WITNESS: Yes.

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

21 THE WITNESS: Yes.

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

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

Minor

-DIRECT EXAMINATION

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

3 THE WITNESS: Bad consequence.

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

6 THE WITNESS: Uh-huh.

7 THE COURT: Is that a yes?

8 THE WITNESS: Yes.

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

12 IN-CAMERA

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q Minor, do you remember me?

16 A Uh-huh.

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

18 A Yes.

19 Q Have you been watching movies?

20 A Uh-huh.

21 Q What did you watch?

22 A Goofy.

23 Q Goofy? Is that all we had?

24 A Yeah. I was watching that movie.

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

Minor

-DIRECT EXAMINATION

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1 right?

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

6 Q You got to get out of school today?

7 A I kind of was happy.

8 Q You were kind of happy?

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

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

13 A Okay.

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

16 A My grandma.

17 Q What do you call her?

18 A Granny Pooh.

19 Q Granny Pooh?

20 A Uh-huh.

21 Q And then is that your mother there?

22 A Uh-huh.

23 Q And who's that guy in the middle?

24 A My daddy.

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

Minor

-DIRECT EXAMINATION

55

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

3 A Uh-huh.

4 Q Where does Granny Pooh live?

5 A In Whitmire.

6 Q And did you used to go visit her sometimes?

7 A A lot.

8 Q Did you like going to see Granny Pooh?

9 A Yeah.

10 Q Did she do fun stuff up there with you?

11 A Yeah.

12 Q And who would take you up there?

13 A My mommy.

14 Q And do you have any cousins up there?

15 A (Nonverbal response.)

16 Q Who are they?

17 A D.D. , and -

18 THE COURT: Speak up, please.

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

20 Q Just a bunch of them?

21 A Uh-huh.

22 Q And some of them your age?

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

Minor

-DIRECT EXAMINATION

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1 always like be one year apart from me.

2 Q Okay. So sometimes y'all would be the same age but

3 they're a few months younger than you maybe. Is one of the

4 named Tonya or --

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

6 Q A little bit louder.

7 A That's one of my aunts.

8 Q Oh, your aunts. And Tonya, who is her boyfriend? Do

9 you know who Tonya's boyfriend is?

10 A (Nonverbal response.)

11 Q Who is that?

12 A Over there.

13 Q What do you call him?

14 A Man.

15 Q Does Tonya have any little children?

16 A D.D. .

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

18 D.D. .

19 A D.D. .

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

21 A Uh-huh.

22 Q What kind of games do you all play?

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

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

25 that?

Minor

-DIRECT EXAMINATION

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- 1 A Hide and go seek?
- 2 Q Yeah, where do you play that?
- 3 A Sometimes we go outside and sometimes we stay in the
- 4 house.
- 5 Q Who's house?
- 6 A Tonya's.
- 7 Q Whose?
- 8 A Tonya's.
- 9 Q Tonya's. Do you want any water or anything?
- 10 A Huh?
- 11 Q You want some water or anything like that?
- 12 A No. I'm just kind of nervous.
- 13 Q That's all right. I am, too. When was the last time
- 14 you went up there and played hide and go seek with D.D. ?
- 15 A It's kind of rusty, but I remember playing with him --
- 16 like I remember it was like -- like -- it was like a week
- 17 ago before I told my mom.
- 18 Q You told -- a week before you told your mom the thing
- 19 about why we're here?
- 20 A (Nonverbal response.)
- 21 Q Okay. Well, let me backup though. You all played hide
- 22 and go seek. You said sometimes you all played inside, and
- 23 you said you all play where?
- 24 A We hide a lot and like in Tonya's room. Sometimes we
- 25 play in like D.D. , like in a different room.

Minor

-DIRECT EXAMINATION

58

- 1 Q Sometimes Tonya's room, sometimes D.D. ' room? And do
2 you know -- did anybody else sleep in Tonya's room?
- 3 A (Nonverbal response.)
- 4 Q Who was that? What's his name again?
- 5 A Man.
- 6 Q Man. Did other people call him that?
- 7 A Yes.
- 8 Q Did you know him by any other name?
- 9 A (Nonverbal response.)
- 10 Q Just Man?
- 11 A (Nonverbal response.)
- 12 Q Did you ever pick at him and call him names or
13 anything?
- 14 A (Nonverbal response.)
- 15 Q Just Man?
- 16 A (Nonverbal response.)
- 17 Q But you would play hide and go seek in Man's house
18 sometimes? Yes or no? Is that --
- 19 A Not like in his house, but in Tonya's house.
- 20 Q In Tonya's house. But did you ever see Man in Tonya's
21 house?
- 22 A (Nonverbal response.)
- 23 Q What does that mean, yes or no?
- 24 A Yes.
- 25 Q What was he doing over there?

Minor

-DIRECT EXAMINATION

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1 A It's almost like he stays there.

2 Q So he may have lived there? You just don't know?

3 A I don't know. I know he like -- I see him every time I
4 go there.

5 Q You see him every time you go down to Tonya's house?
6 Every time?

7 A (Nonverbal response.)

8 Q Is that yes or no?

9 A Yes.

10 Q Do you understand if I ask you how often would you go
11 to Granny Pooh's house up in Whitmire?

12 A It's too much to count.

13 Q Too much to count?

14 A Yeah.

15 Q Because you like to go there so much?

16 A (Nonverbal response.)

17 Q And then whenever you would go to Granny Pooh's house
18 did you always try to go over and see D.D. ?

19 A Yeah. Sometimes I just stay outside. Sometimes I go
20 to other peoples' houses.

21 Q How many times do you think you've been to D.D.
22 house?

23 A I think -- I've been there a lot and I -- really
24 sometimes just go in there and to play games and --

25 THE COURT: I can't hear. Minor , it's really

Minor

-DIRECT EXAMINATION

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- 1 important that you get as close as you can to that
2 microphone. You don't have to touch it, but get as close to
3 it as you can because we have to hear what you have to say.
4 Okay? Okay? So get really close with the microphone.
- 5 Q Don't be nervous. Be brave. Speak loud.
- 6 A It's like a long time ago. Like I been there before he
7 was there. I know that. But --
- 8 Q You used to go there a lot before Man started coming
9 around?
- 10 A Yeah.
- 11 Q How many times do you think you went to Tonya's
12 apartment when Man was there?
- 13 A I'd say about -- I don't know, but I've been there nine
14 times. Nine times --
- 15 Q Nine times is what you're saying?
- 16 A I think I just -- I just really forgot.
- 17 Q That's all right. You think it was more than once?
- 18 A Yeah.
- 19 Q Do you think it was more than twice?
- 20 A Yeah.
- 21 Q More than three times?
- 22 A Yeah.
- 23 Q Do you think you've been in the same room with Man more
24 than 10 times?
- 25 A Huh-uh.

Minor

-DIRECT EXAMINATION

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- 1 Q No? More than five times?
- 2 A I think about five.
- 3 Q You think about five times you've been in the same
- 4 apartment with Man?
- 5 A I think five. But sometimes I kind of get confused,
- 6 like if it's four or five.
- 7 Q Let me ask you this. You know -- you remember you had
- 8 to tell your mom some things that happened with Man?
- 9 A Yes.
- 10 Q Were those good things or bad things to you?
- 11 A Like kind of scary.
- 12 Q How many different times did scary things happen
- 13 between you and Man?
- 14 A I think like four times.
- 15 Q So how many times?
- 16 A Four.
- 17 Q Four times scary things happened? Four different
- 18 times?
- 19 A (Nonverbal response.)
- 20 Q And that was four times with Man?
- 21 A Yes.
- 22 Q All right. And so you had seen his face a few times;
- 23 is that right?
- 24 A Yeah.
- 25 Q At least four times. At least four times?

Minor

-DIRECT EXAMINATION

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1 A Yeah.

2 Q Was it daytime, or did you have -- you know, like you
3 can see my face pretty good right now. Were you able to see
4 his face as good as you can see my face whenever you'd see
5 him?

6 A At nighttime it was kind of hard, but in the daytime it
7 would be easy.

8 Q At nighttime sometimes it's hard but daytime it's easy?

9 A (Nonverbal response.)

10 Q Do you have any trouble recognizing Man?

11 A Yeah, like in the dark. I usually stay there a lot
12 after dark, so it's like every time I walk beside -- it's
13 going to be like --

14 Q Louder.

15 A It's like we say shadow. Like the dark, like it wasn't
16 that easy to see him.

17 Q When the scary things happened could you tell who was
18 doing the scary things to you?

19 A Yeah. Sometimes the lights was on.

20 Q Sometimes the lights was on? All right. Do you see --
21 let me ask somebody else. Do you see Man here? He's not
22 looking right now. Do you see Man here?

23 A Yeah.

24 Q Can you point to him?

25 A Over there.

Minor

-DIRECT EXAMINATION

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1 (Whereupon, witness identified the Defendant.)

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

4 A Yes.

5 Q Do you recognize him?

6 A Uh-huh.

7 Q How many times have you seen him?

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

10 Q Louder.

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

13 Q He told you which one do you see?

14 A Uh-huh.

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

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

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

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

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

24 Q Is that right, Minor ?

25 A Yes.

Minor

-DIRECT EXAMINATION

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1 Q Talk loud so I don't have to repeat you so I don't run
2 out of breath and lose my voice. You talk loud enough for
3 them to hear you. So he showed you a picture, and what did
4 he say to you?

5 A He said which one do you recognize.

6 Q And was there one on there that you recognized?

7 A Yes.

8 Q And who was it?

9 A Him.

10 Q And who is that?

11 A Man.

12 Q Did you -- was it kind of -- were you sure that was him
13 in the picture?

14 A Yes.

15 Q You didn't just close your eyes and pick one and guess
16 or anything like that?

17 A No.

18 Q How sure were you that that was Man in that picture?

19 A Because I see him a lot, so I know his face.

20 Q Say that one more time and say it loud. Just what you
21 told me.

22 A I see him a lot and I recognized him once I just saw
23 the pictures.

24 Q Okay. You see him a lot so you recognized him when you
25 seen the picture. I'm going to show you something, if I can

Minor

-DIRECT EXAMINATION

65

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

3 A Yes.

4 Q What is that?

5 A The pictures he showed me.

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

8 A Which one did you recognize.

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

10 A I pointed at this one.

11 Q That one right there?

12 A Yeah.

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

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

16 Q Is that what you did?

17 A Yeah.

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

20 A Yeah.

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

25 A Okay.

Minor

-DIRECT EXAMINATION

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1 MR. SCOTT: Thank you.

2 THE COURT: Mr. Verner.

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

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

7 THE WITNESS: Yes.

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

10 THE WITNESS: Yes.

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

13 MR. SCOTT: Yes, sir.

14 THE COURT: You can just go on back. Thank you.

15 Anything further from the State?

16 MR. SCOTT: No, Your Honor.

17 THE COURT: Anything further from the Defense?

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

19 THE COURT: All right.

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

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

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

22 Are you ready for *Biggers*?

23 THE COURT: Right. On the ID.

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

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

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

15 MR. VERNER: May it please the Court, Your Honor. The
16 -- I don't really challenge -- I agree that there's probably
17 enough evidence to support the *Biggers* identification. The
18 June 4th interview, Your Honor, is clearly without any
19 Miranda. The U.S. Supreme Court recently -- that there is
20 no harmless error. That there either has to be a Miranda
21 once a suspect has been identified. He was clearly
22 interviewed as the result of a criminal allegation. But
23 there's no question that there's no Miranda before the June
24 4th. That there's no exception. That is a bright line U.S.
25 Supreme Court rule. It has to be Miranda.

1 THE COURT: What case is that, Mr. Verner, that -

2 MR. VERNER: I will cite that, Your Honor, before the
3 end. But the U.S. Supreme Court within the last three
4 years has made Miranda a bright line test. There's no
5 harmless error or malice. It's either been given or it
6 hasn't. He's clearly identified as a suspect of a crime.
7 The -- and I will give the Court that citation possibly by
8 11:00.

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

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

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

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

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

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

4 Anything else we need to take up this afternoon?

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

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

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

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

18 (Whereupon, the proceeding concluded for the evening.)

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

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

25 MR. SCOTT: Yes. Inexplicably he was charged with

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

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

5 THE CLERK: Yes, sir.

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

8 THE COURT: Why is that?

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

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

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

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

20 MR. VERNER: Thank you.

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

23 (Whereupon, Defendant's raises right hand.)

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

1 Carrol Tremayne Washington, stand per the indicted. At the
2 Court of General Sessions convened on the 9th day of
3 October, 2015 the grand jurors of Newberry County present
4 upon their oath that Carrol Tremayne Washington did on or
5 about May 3rd, 2012 to March 25th, 2015 in Newberry County,
6 being older than the victim, willfully and unlawfully
7 committed criminal sexual conduct with a minor in the first
8 degree. To wit, that the said Defendant did engage in
9 sexual battery upon a person under the age of 11 years, to
10 wit, one Minor , date of birth , in
11 violation of Section 16-3-655(a)(1) of the South Carolina
12 Code of Laws 1976 as amended, against the peace and dignity
13 of the State and contrary to the statute in such cases made
14 and provided. And that's signed Daniel Taylor, Assistant
15 Solicitor.

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

19 THE DEFENDANT: Not guilty.

20 MADAM CLERK: How will you be tried?

21 THE DEFENDANT: By a jury.

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

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Thank you very much. Gentlemen, we

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

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

1 without the admonishing of the rights of the Fifth
2 Amendment.

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

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

21 THE COURT: The ride back.

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

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

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

10 MR. VERNER: Thank you, Your Honor.

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

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

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

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

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

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

4 MR. VERNER: Thank you.

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

7 MR. SCOTT: No, Your Honor.

8 THE COURT: From the Defense?

9 MR. VERNER: No, Your Honor.

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

12 THE COURT: Do what, Solicitor?

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

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

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

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

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

24 (Whereupon, the Jury was sworn.)

25 MADAM CLERK: Thank you. You may be seated.

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

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

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

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

25 Ladies and gentlemen, this courtroom is a place of

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

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

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

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

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

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

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

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

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

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

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

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

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

15 MR. DANIEL: No, Your Honor.

16 THE COURT: And from the Defense?

17 MR. VERNER: None, Your Honor.

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

24 Solicitor Daniel, are you ready, sir?

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

1 Court.

2 THE COURT: Yes, sir.

3 OPENING STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

8 MR. VERNER: May it please the Court.

9 THE COURT: Certainly.

10 OPENING STATEMENT.

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

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

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

1 said, you know, jurors might be inclined to expect a lot of
2 evidence. Well, you're not going to have that in this case.
3 You're going to have a paucity of evidence. The Solicitor
4 mentions that the witness' testimony does not need to be
5 corroborated. That is true. One person's word is enough to
6 send someone to prison if 12 people agree. That there is no
7 other reasonable way that this story could have happened but
8 this one witness, even if it's he said, she said. It's not
9 just a child who doesn't have to be corroborated. An adult
10 doesn't have to be corroborated. But they have to be
11 completely believed. But if you're going to convict
12 somebody on the basis of just one witness they better be
13 thoroughly believed. And I think the Solicitor -- the
14 interesting thing he said is that I don't know what
15 happened. I promise you I don't know what happened. But
16 I'm an attorney. I get in after the game's already started.
17 You don't know what happened today. Today is March 1st,
18 2016. These allegations, they're saying, may have occurred
19 anywhere from May 2nd of 2012 to March 25th of 2015. I
20 submit to you that date is completely arbitrary. That's
21 just what the Officer filled in. As we don't know when it
22 happened, but we're just going to put in a large period of
23 time. That's how that date comes in there.

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

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

ETHYL SIMMS-DIRECT EXAMINATION

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

16 Thank you, Your Honor.

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

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

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

22

23 MADAM CLERK: Please state your name.

24 THE WITNESS: My name is Ethyl Simms.

25

DIRECT EXAMINATION

ETHYL SIMMS-DIRECT EXAMINATION

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1 BY MR. SCOTT:

2 Q Ms. Simms, where do you live?

3 A Whitmire.

4 Q And where in Whitmire do you live?

5 A Apartment.

6 Q What's it called?

7 A .

8 Q Apartments?

9 A Yes.

10 Q Who do you live there with?

11 A With my brother.

12 Q And what building do you live in?

13 A I live in building.

14 Q Building ?

15 A Uh-huh.

16 Q That part of Whitmire, is that Newberry County?

17 A Yes.

18 Q How many buildings are at Apartments?

19 A It about seven, eight buildings.

20 Q How long have you lived there?

21 A I'd say about 20.

22 Q Two years?

23 A Twenty years.

24 Q Oh, 20 years.

25 A Uh-huh.

ETHYL SIMMS-DIRECT EXAMINATION

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- 1 Q Who is Minor ?
- 2 A She's my granddaughter.
- 3 Q Your granddaughter?
- 4 A Yes.
- 5 Q And who is Nicole Simms?
- 6 A She's my daughter.
- 7 Q Scoot a little bit closer.
- 8 A Okay.
- 9 Q Is this Nicole Simms right here?
- 10 A Yes.
- 11 Q She's your daughter?
- 12 A Yes, she is.
- 13 Q And Minor is her daughter?
- 14 A Yes.
- 15 Q Did Minor ever come up to Whitmire to visit you?
- 16 A Oh, she used to come up to visit me all the time.
- 17 Q When would that be? Just certain weekends or what?
- 18 A Sometimes she come to stay the weekend, when she out of
- 19 school. Sometime she come to stay in the weekend.
- 20 Q So summer break?
- 21 A Yes.
- 22 Q Maybe Christmas break?
- 23 A Yes. I get to see them all the time.
- 24 Q What does she call you?
- 25 A Granny Pooh.

ETHYL SIMMS-DIRECT EXAMINATION

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1 Q Granny Pooh. How would she come up to Whitmire to
2 visit with you?

3 A Her parents bring her.

4 Q Nicole would drive her up from --

5 A Yeah.

6 Q Where does she live?

7 A She stays in Columbia.

8 Q So Nicole would bring her up from Columbia to stay with
9 you in Whitmire?

10 A Yes.

11 Q Did you know -- who's Tonya?

12 A That's my second cousin.

13 Q Your second cousin?

14 A Yes.

15 Q What's Tonya's last name?

16 A Dawkins.

17 Q Dawkins?

18 A Yes.

19 Q Tonya Dawkins. Is she in the courtroom?

20 A Yes, she is.

21 Q Where is she?

22 A She's --

23 Q Raising her hand?

24 A Yeah, that's her.

25 Q She's your second cousin.

ETHYL SIMMS-DIRECT EXAMINATION

101

- 1 A Yes.
- 2 Q And where does she live?
- 3 A I think Tonya stay in building.
- 4 Q Building ?
- 5 A Yes, I think so.
- 6 Q In Apartments?
- 7 A Wait a minute. Let me get it straight. She stay in .
- 8 She stay in apartment.
- 9 Q -- as in ?
- 10 A Yes.
- 11 Q So is that the building next to yours?
- 12 A No, that's -- like it got a little space between us.
- 13 Like a driveway. That's -- that's how far we stay away from
- 14 each other.
- 15 Q Well, how long would it take you if you walked out of
- 16 your apartment and walked over to Tonya's apartment?
- 17 A I'd say about less than five minutes.
- 18 Q Who does she live there with?
- 19 A Her son and her friend.
- 20 Q Who's her friend?
- 21 A Man.
- 22 Q Man?
- 23 A Man.
- 24 Q Is that a nickname?
- 25 A Yes.

ETHYL SIMMS-DIRECT EXAMINATION

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1 Q Do you know Man's real name?

2 A Well, I just recently learned it was Carrol. I do not
3 know. Only thing I used to call him, Man.

4 Q That's a nickname that people call him?

5 A I guess.

6 Q You heard other people call him that?

7 A Yes.

8 Q Do you see Man in the courtroom?

9 A I sure do.

10 Q Can you point to him?

11 A I'm looking at him right now.

12 (Whereupon, witness identifies the Defendant.)

13 Q And you know his name to now be what?

14 A Now I know his name to be Carrol Washington.

15 Q And how long have you known Carrol Washington?

16 A Ever since she -- well, I met him first time he was the
17 ice cream man. He used to drive around and sell ice cream
18 to the kids.

19 Q What now?

20 A Ice cream man.

21 Q He drives an ice cream truck?

22 A He was when I first met Man.

23 Q And how long ago was that?

24 A It been several years now.

25 Q So you've known him for several years?

ETHYL SIMMS-DIRECT EXAMINATION

103

1 A Uh-huh.

2 Q Do you know how many years?

3 A Oh, I don't know how long and Tonya been talking.

4 About three or four years, I guess.

5 Q So that's the job he does is a ice cream truck?

6 A That was one of his jobs.

7 Q What's his other jobs?

8 A He had -- he had several other jobs. I couldn't name

9 them all.

10 Q But you're telling me that he lives over in Building

11 with Tonya Dawkins?

12 A Yes.

13 Q How do you -- who told you his name was Man? Did he

14 tell you that?

15 A That's how I first met Man. He had introduced himself

16 as Man.

17 Q He said just call me Man?

18 A No. He just -- they just said Man, so I done call him

19 Man. I didn't ask him what his real name was or otherwise.

20 Q But you heard other people call him that, too?

21 A Yeah.

22 Q What is Tonya's boy's name?

23 A D.D.

24 Q D.D. ?

25 A Uh-huh.

ETHYL SIMMS-DIRECT EXAMINATION

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1 Q And that's him sitting there with his --

2 A Yes, that's him.

3 Q When Minor used to come up to your house -- does she
4 come there anymore?

5 A Does she come anymore? I see her every so often, but
6 she don't never stays no more.

7 Q So she doesn't stay up in Whitmire anymore with you?

8 A She won't stay.

9 Q ---Back when she used to go up there and stay what-kind of
10 things would she do? Who would she play with?

11 A She loved to play with D.D.

12 Q They were buddies?

13 A Oh, yeah. They was real close.

14 Q Are there other little children, neighbors --

15 A Yes.

16 Q -- in the apartment complex?

17 A Yes.

18 Q And what kind of things did you watch the kids do
19 together?

20 A Oh, they loved to play. They played tag and all kinds
21 of games. They get out there and play on D.D.
22 basketball. They do a lot together.

23 Q Did they ever come to your apartment and play?

24 A Sometime they come, unless they want something to
25 drink. I always have snacks for them.

ETHYL SIMMS-DIRECT EXAMINATION

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1 Q To your knowledge, did they go to Tonya's apartment?

2 A Oh, they loved to go to Tonya. They did. They really
3 did love to go to Tonya's.

4 Q So they were over there a lot?

5 A Oh, yeah. They loved to be around Tonya.

6 Q So Tonya is what to Minor ? Is she kind of like an
7 aunt? I guess she's really a cousin, but --

8 A I don't know what. But they loved Tonya.

9 Q And you know what kind of things Minor would do over
10 at Tonya's apartment?

11 A Yeah, Tonya -- they play games and all that stuff.

12 They play everything. Tonya -- Tonya be dancing with them.

13 They have a good time over at Tonya.

14 Q And did Tonya and Man come over to your apartment very
15 often?

16 A Not that often. Every once in a while, but not often
17 at all.

18 Q Did you ever go over to Tonya's apartment with Minor ?

19 A I used to go over there. Minor used to stay there
20 while I walk -- since it wasn't full. So I go back home
21 and, you know.

22 Q You'd walk Minor over there and then leave her?

23 A Minor used to carry herself. She at the age, and I
24 taught her to watch out for cars. It ain't -- Minor over
25 Tonya. D come and get them, or either they go get D. That

ETHYL SIMMS-CROSS EXAMINATION

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1 how it used to be.

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

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

7 Q How old is Minor now?

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

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

11 THE WITNESS: Yes.

12 THE COURT: Cross-examination, Mr. Verner?

13 MR. VERNER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. VERNER:

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

18 A Yes.

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

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

22 Q Are they multifamily units, or each one would have one
23 --

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

ETHYL SIMMS-CROSS EXAMINATION

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- 1 Q Do you know who Josephine is?
- 2 A Yeah, that's my sister.
- 3 Q She also lives in that community, too, doesn't she?
- 4 A She stay right beside Tonya Dawkins.
- 5 Q That's right. She actually is a next-door neighbor of
- 6 Ms. Tonya's?
- 7 A Yes, she was.
- 8 Q And you would see her sometimes on the porch talking to
- 9 Tonya?
- 10 A I see my sister every day.
- 11 Q Do you know the name of -- your daughter, Nicole, lives
- 12 in Columbia, right?
- 13 A Yes, she does.
- 14 Q And how many children does Nicole have?
- 15 A Nicole got three daughters.
- 16 Q Three daughters?
- 17 A Yes, she does.
- 18 Q Who is the oldest of the three?
- 19 A N. .
- 20 Q N.T. ?
- 21 A Yes.
- 22 Q How old is N.T. ?
- 23 A N.T. is 15.
- 24 Q Fifteen now?
- 25 A Yes, she is.

ETHYL SIMMS-CROSS EXAMINATION

108

- 1 Q Now, who's the middle child?
- 2 A Min .
- 3 Q Minor ?
- 4 A Yes, she is.
- 5 Q And that's the Minor involved in this case?
- 6 A Yes, she is.
- 7 Q And Minor is 10 or 11 now?
- 8 A Ten, be 11 next -- in .
- 9 Q And then the baby is who?
- 10 A S.S. . S.S. .
- 11 Q S.S. . How old is S.S. ?
- 12 A S.S. is nine.
- 13 Q Nine. Would all three of the girls --
- 14 A Yes, they do.
-
- 15 Q -- come to see you?
- 16 A They do. All three.
- 17 Q But they go to school at this time in Columbia?
- 18 A Yeah.
- 19 Q And that's been that way for the last few years at
- 20 least?
- 21 A Yes.
- 22 Q So it's less likely that they would be coming to see
- 23 you during the school days, right?
- 24 A No, they don't come on school day. They come on like
- 25 weekend or their breaks. School breaks.

ETHYL SIMMS-CROSS EXAMINATION

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1 Q So I take it when they're in like the spring break and
2 summer break they possibly go spend more time with you?

3 A Oh, yes. That's what I enjoy.

4 Q And then on weekends they would spend a little bit less
5 time?

6 A Yes.

7 Q Maybe that day and spend the night?

8 A Yes.

9 Q Would Nicole with them and spend the night?

10 A No. Nicole didn't have to spend the night. I'm the
11 grandma. The grandma.

12 Q Primarily they were left in your control?

13 A Yes, they was.

14 Q Now, is it just you? Are you the only adult in your
15 home?

16 A No.

17 Q Who else?

18 A Back then I was.

19 Q From 2012 to 2015 you were the only adult in your home?

20 A No, from 2014.

21 Q Who lived in Ms. Tonya's home with Carrol and Tonya?

22 A Her son.

23 Q Just the three of them?

24 A Yes.

25 Q Were there other kids in that community?

ETHYL SIMMS-CROSS EXAMINATION

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1 A It was -- every kid loved Tonya house.

2 Q Tonya's place was kind of the hangout for the kids on
3 weekends?

4 A Some -- yes.

5 Q And Tonya was a stay at home mother, right?

6 A No, she was working.

7 Q Was she working at that time?

8 A She was working.

9 Q Do you recall where?

10 A She was working.

11 Q But you don't remember where at that time?

12 A No.

13 Q Do you know if she worked on weekends at that time?

14 A I never known Tonya do work on the weekend.

15 Q Usually they'll be an adult in the home?

16 A What home?

17 Q With the Dawkins. With Carrol's home, usually there
18 would be an adult there when the kids were there, right?

19 A I don't deal with Tonya house everyday. I couldn't
20 answer that, no. Because sometime -- most time we be
21 sitting on the front porch talking.

22 Q That's usually when the kids were playing and the
23 parents would hang out on the front porch and supervise?

24 A With everybody kids.

25 Q And sometimes it was you, and sometimes it was your

ETHYL SIMMS-CROSS EXAMINATION

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1 sister, Josephine?

2 A Yeah.

3 Q And Tonya would sit out there?

4 A We all would sit out there. That was our exciting
5 thing for us to do, sit on the porch and talk.

6 Q Would some of the other mothers come?

7 A No. It was just us three.

8 Q Most of the time it was just the three of you?

9 A Just about every time it would be just us three.

10 That's how we are.

11 Q Were there any other fathers who came?

12 A No.

13 Q And how often would you -- or how often would the
14 children go to play at Carrol and Tonya's home?

15 A Just about every time they come they plays.

16 Q Just every day that they were with you pretty much
17 they'd spend some portion of the day playing outside?

18 A Yes.

19 Q Would the kids primarily play out?

20 A Well, the kids would be in and out, in and out.

21 Q Is there any kind of like playground set?

22 A No.

23 Q No. So there's no central place for them to --

24 A No. It be in and out or they come over to my house.

25 Q How long -- over what period of time had they been

ETHYL SIMMS-CROSS EXAMINATION

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

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

9 Q What about the other girls?

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

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

14 A Minor -

15 Q She stopped coming to your house?

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

18 Q Was that the summer of 2014 or --

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

21 Q I'm just asking when was --

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

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

ETHYL SIMMS-CROSS EXAMINATION

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

2 THE WITNESS: Okay.

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

5 THE WITNESS: Okay.

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

9 THE WITNESS: Uh-huh.

10 Q So Minor had stopped coming to your house sometime in
11 2014?

12 A Yes.

13 Q But the other two girls kept coming?

14 A No.

15 Q They all stopped coming?

16 A Yes.

17 Q And that was in 2014?

18 A Yes.

19 Q Do you recall, did they come -- see you at Christmas
20 2014?

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

23 Q So sometime after 2014 the regular visits stopped?

24 A Yeah.

25 MR. VERNER: Thank you, Ms. Ethyl.

NICOLE SIMMS-DIRECT EXAMINATION

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1 THE WITNESS: You're welcome.

2 THE COURT: Anything on redirect, Solicitor?

3 MR. SCOTT: No, Your Honor.

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

6 THE WITNESS: You're welcome.

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

9 THE COURT: Would the State call its next witness.

10 MR. SCOTT: Nicole Simms.

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

13 MADAM CLERK: Please state your name.

14 THE WITNESS: Nicole Simms.

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

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

19 A Yes, sir.

20 Q And Minor is your daughter; is that right?

21 A Yeah, that's my middle daughter.

22 Q How old is she now?

23 A She's 10.

24 Q When's her birthday?

25 A

NICOLE SIMMS-DIRECT EXAMINATION

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1 Q ?

2 A Yes.

3 Q You all live in Columbia?

4 A Yes, sir.

5 Q We just heard sometimes that -- do you recall it used
6 to be a practice of you taking the girls up to stay with
7 your mother in Whitmire?

8 A Yes, sir. For holidays or if I had to work over I
9 asked my mom to watch the kids for me, because me and
10 Matthew, we work second shift and we did overtime and
11 everything.

12 MR. SCOTT: Can the jury hear these answers?

13 Q Can you speak up? Because I guess this vent is blowing
14 down and it's a little bit hard to hear.

15 A My mother used to watch the kids on holidays when me
16 and Matt had to work overtime.

17 Q And what about just weekends?

18 A Some weekends, because they wanted to come down and
19 play with their cousins.

20 Q So would the children ask to go see their grandmother?

21 A Yes, sir.

22 Q And that was something that they enjoyed doing?

23 A Yes, sir.

24 Q Do you recall a time when Minor just didn't want to
25 go anymore?

NICOLE SIMMS-DIRECT EXAMINATION

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

3 Q March or April of 2014?

4 A Yes.

5 Q Or '15?

6 A 2014. I'm sorry.

7 Q 2014?

8 A Yes. Because she started having behavior problems.

9 She would cry. She started acting -- problems at school and
10 everything. Grades started dropping and everything. I
11 really didn't know what was going on with Minor at that
12 time.

13 Q And did you ask her about it?

14 A No, sir. I didn't. But I remember it was like in

15 April 2015. I was on the phone talking to my cousin Tonya,
16 because I was getting ready to get married and I wanted her
17 to be one of my maid of honor. While I was in the process
18 talking and everything, Minor came to me and said, momma,
19 I got something --

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

23 THE COURT: Sustained.

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

NICOLE SIMMS-DIRECT EXAMINATION

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1 A She told me the reason why.

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

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

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

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

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

15 A She was crying.

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

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

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

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

NICOLE SIMMS-DIRECT EXAMINATION

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

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

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

7 MR. VERNER: That's another leading.

8 THE COURT: Sustained. Repeat your question,
9 Solicitor.

10 Q You're the mother. I can't put words in your mouth.

11 Tell us about Minor Tell the jury what they're going to
12 hear when she comes in here and testifies.

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

14 Q Is she going to be loud and --

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

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

21 MR. SCOTT: Right.

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

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

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

NICOLE SIMMS-DIRECT EXAMINATION

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1 I can't ask it any clearer.

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

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

10 Q Ms. Simms, Minor 's your daughter?

11 A Yes, sir.

12 Q Would you please describe her demeanor.

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

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

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

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

NICOLE SIMMS-DIRECT EXAMINATION

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1 was it something that gradually happened?

2 A It gradually happened.

3 Q And then at some point you said she just said she
4 didn't want to go to Whitmire anymore?

5 A Yes, sir. She cried.

6 Q And without saying what she said, did she tell you
7 something?

8 A Yes, sir.

9 ~~Q And as a result of her telling you that did you contact~~
10 law enforcement?

11 A Yes, sir.

12 Q Do you remember about when that was that she told you
13 that thing that made you call law enforcement?

14 A I remember around probably like March, April of 2015.

15 Q Had she been -- I guess she'd been up to your mother's
16 home in Whitmire.

17 A We come and stop by, but we don't stay long. But
18 that's every blue moon that we actually stay or stop by.

19 Q Well, I mean, back when things -- you would go up there
20 more regularly.

21 A Yes.

22 Q So you were familiar with your mother's apartment?

23 A Yes.

24 Q How many rooms did she have in her apartment?

25 A She has two bedrooms.

NICOLE SIMMS-DIRECT EXAMINATION

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1 Q And then, I guess, a livingroom and a kitchen?

2 A Yes, sir.

3 Q And had you ever -- Tonya, you said you were in the
4 process of asking her to be in your wedding?

5 A Yes. She was also giving me advice on everything. She
6 was like a sister, best friend.

7 Q You all were close?

8 A Yes.

9 Q Had you ever been to her apartment?

10 A Yes, sir.

11 Q Describe her apartment.

12 A Three bedrooms. Her's was a three bedroom apartment.

13 Q So hers was a little bit bigger?

14 A Yes, sir.

15 Q Who lived there with her?

16 A Her son. And then she met Mr. Washington and he moved
17 in.

18 Q How many times have you met Mr. Washington?

19 A Like every time when I came while I dropped my kids
20 off. Like I said, he was like family, too.

21 Q You were close with him and Tonya. Is that what you're
22 saying?

23 A If Tonya loved him, then it was all right with me.

24 Q You all had never had any disagreements or anything?

25 A No, sir.

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1 Q Had he ever told you anything that made you concerned?

2 A No, sir.

3 Q Did you know him by any nicknames or anything?

4 A Like I just realized his name was Carrol Washington. I
5 always know him as Man.

6 Q Man?

7 A Man. Yes, sir. I first met him when he was driving
8 the ice cream truck.

9 Q He drove an ice cream truck?-----

10 A Yes, sir.

11 Q Did you know him to have any other jobs?

12 A He had jobs off and on. But keeping a full-time job,
13 no.

14 Q And did you -- were you aware of Minor going to their
15 home and playing?

16 A They always -- that was -- every weekend my daughter
17 was wanting to go there and play video games or dance. It
18 was always something exciting at Tonya's house.

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

21 THE COURT: Any cross-examination?

22 MR. VERNER: Thank you.

23 CROSS-EXAMINATION

24 BY MR. VERNER:

25 Q Ms. Simms, you live in Columbia?

NICOLE SIMMS-CROSS EXAMINATION

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

NICOLE SIMMS-CROSS EXAMINATION

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1 together?

2 A No, sir. See, every other weekend Minor and my
3 oldest daughter had to be with their father. So there was
4 like two months -- two weeks -- two weekends with their
5 father and two weekends with me every month.

6 Q And in some of these weekends that you would -- who is
7 Minor's father?

8 A Christopher Michael Thompson.

9 Q Christopher Thompson?

10 A Yes.

11 Q And he is also the older child's daughter -- father?

12 Sorry.

13 A Yes.

14 Q And he's got court ordered visitation every other
15 weekend?

16 A Yes.

17 Q So half the time the children were with him on the
18 weekends?

19 A Yes.

20 Q And where does he live?

21 A Columbia.

22 Q He's also in Columbia?

23 A Yes, sir.

24 Q I'm not going to ask you your address. But what part
25 of Columbia? Do you live on the Irmo side or kind of

NICOLE SIMMS-CROSS EXAMINATION

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1 downtown or --

2 A The northeast side.

3 Q The northeast side?

4 A Yes, sir.

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

7 A Yes, sir.

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

10 A Yes, sir.

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

13 A Yes, sir.

14 Q When?

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

17 Q Your --

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

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

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

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

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

NICOLE SIMMS-CROSS EXAMINATION

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1 don't have that good relationship. You should know.

2 Q Do you know how he found out?

3 A Because I told him about it.

4 Q And Investigator Epps gave you a forensic evaluation of
5 the child, correct?

6 A Yes, sir.

7 Q On April 27th?

8 A Yes, sir. I think so.

9 Q And you did not go to that one?

10 A I had just started a job and I couldn't get off.

11 Q There's an allegation that your child had been molested
12 and you don't take her to a forensic evaluation?

13 A Mr. Verner.

14 Q Yes, ma'am.

15 A I have a daughter that's special needs.

16 Q I apologize. I don't mean to be mean. I just didn't
17 understand what you were saying.

18 A And I need a job to support my family at that time and
19 had just start. Trust me, that when I found out that my
20 daughter was molested then it bothered me.

21 Q I understand that. But you missed the first --

22 A Not on purpose, because I needed a job.

23 Q Were you aware that your kids would hide in the closet
24 sometimes before -- not wanting to go see their father?

25 A My child used to cry all the time. And the reason why

NICOLE SIMMS-REDIRECT EXAMINATION

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

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

8 A Mr. Verner.

9 Q Yes, ma'am. Please answer yes or no and then you can
10 explain however you want to. Did you tell Investigator Epps
11 --

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

17 Q But the --

18 A You do recall. I got papers.

19 Q When was that?

20 A I don't remember the time of it. Why don't you go get
21 --

22 Q Were you married to Christopher Thompson?

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

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

NICOLE SIMMS-REDIRECT EXAMINATION

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1 that in minute. Is did you tell Investigator --

2 A I did not mention anything.

3 THE COURT: All right. Ms. Witness, Mr. Verner,

4 please, please don't talk over each other. Okay? Mr.

5 Verner, ask your question. Ms. Simms -- Simms, right?

6 Wait for Mr. Verner to completely finish his question before

7 you answer. Okay? Do that for me, please.

8 Q My question is simply this. Did you tell Investigator

9 Epps, when he asked you about the children hiding in the

10 closet from their father, that the older daughter had been

11 molested by a family member?

12 A No. I stated that my oldest daughter did make an

13 exaggeration about something happening to her little sister

14 when they was over their house -- father house. My oldest

15 daughter, especially me, no one's not going to mess with

16 her.

17 MR. VERNER: Thank you, Ms. Simms.

18 THE COURT: Anything on redirect, Solicitor?

19 REDIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q Mr. Verner was asking you about some exposure of abuse

22 from Minor ? Minor told you she was abused?

23 A No. My daughter, N.T. , and my mom was there. I was

24 in his office that day because we was going through a

25 custody battle between Minor and N.T. father. And when

NICOLE SIMMS-REDIRECT EXAMINATION

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

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

4 A Yes.

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

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

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

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

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

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

19 Q In whose house with who?

20 A Tonya.

21 Q In Tonya's house?

22 A Yes.

23 Q With who?

24 A With Man.

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

NICOLE SIMMS-REDIRECT EXAMINATION

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1 when these things happened to her?

2 A Yes.

3 MR. SCOTT: Thank you.

4 THE COURT: Recross?

5 MR. VERNER: No questions, Your Honor.

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

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

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

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

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

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

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

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

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

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

5 MADAM CLERK: Please state your name.

6 THE WITNESS: Brad Epps.

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

10 MR. VERNER: Without objection.

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

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

14 DIRECT EXAMINATION

15 BY MR. DANIEL:

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

18 A That's correct.

19 Q And you are a detective investigator?

20 A Yes.

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

22 A Been with the Sheriff's Office since 2010.

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

25 A That's correct.

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1 Q Did you receive a report on or about that time
2 regarding an individual by the name of Carrol Washington?

3 A That's correct.

4 Q Tell us how that came about.

5 A The mother, Nicole, of the victim filed a report on
6 3/25 of '15 saying that her daughter --

7 Q Speak up a little bit what you just -- we couldn't hear
8 you.

9 A Nicole Simms, the victim's mother, filed a report on
10 3/25 --

11 MR. VERNER: Respectfully, is he testifying what was
12 told to him, or what he told or --

13 THE COURT: He asked -- yeah. So far it's okay. The
14 filing of the report. Now, I understand where you're coming

15 from if he's going to go further or not. I don't know
16 what's going to be brought out. Thank you.

17 Q You may continue.

18 A Filed a report stating that her daughter -- she was
19 making arrangements for her daughter to go stay with her
20 grandmother in Whitmire and her daughter made the statement,
21 "I don't want to go. That man's a rapist."

22 MR. VERNER: Your Honor, I object to -- it's unclear
23 whether that's a statement to him, or whether he's
24 testifying what he's heard from other people. And then
25 there's the hearsay question. I would ask that that be

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1 stricken.

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

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

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

14 A That's correct.

15 Q This is late March of 2015?

16 A That's correct.

17 Q And the report did involve her daughter?

18 A That's correct.

19 Q Being touched inappropriately in some way?

20 A That's correct.

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

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

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

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1 A That's correct.

2 Q And who was the suspect you were investigating?

3 A The name that I as given was Carrol, but they called
4 him Man and -- or the last name.

5 Q And what address did you have for this Carrol
6 Washington?

7 A I didn't get -- well, I didn't get an address right
8 offhand. After the mother provided me with some more
9 information I was able to get an address.

10 Q And an incident had taken place with Ms. Simms'
11 daughter, correct?

12 A That's correct.

13 Q And where did this incident occur?

14 A

15 Q Is that an apartment complex?

16 A That's correct.

17 Q That's in Whitmire?

18 A That's correct.

19 Q In Newberry County? And this incident, what time did
20 it take place?

21 MR. VERNER: Your Honor, I object. He's not asking the
22 witness what the witness saw, did, investigated. He's
23 basically asking him -- he's telling the witness to read the
24 report in the record and the witness has to have personal
25 knowledge and testify what I did, what I saw, what I said,

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

3 THE COURT: Sustained.

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

6 A Set up a forensic interview.

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

8 A Minor

9 Q And that was the alleged victim?

10 A That's correct.

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

13 A I believe nine or 10.

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

16 A That's correct.

17 Q Tell us what that is.

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

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

24 A That's correct.

25 Q And you scheduled a forensic interview that has

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1 specialization in this area?

2 A That's correct.

3 Q And, I guess, when was the forensic interview
4 conducted?

5 A The forensic interview was conducted on 5/27/15.

6 Q And where was that done?

7 A That was the Dickerson Center, or the ARC. One of the
8 two.

9 Q Is that a children's advocacy center?

10 A That's correct.

11 Q And that's in Columbia?

12 A Yes.

13 Q May 27th, 2015 when that's done? Did you receive the
14 forensic interviewer's report?

15 A That's correct.

16 Q Was it a taped interview?

17 A That's correct.

18 Q Did you receive a copy of that?

19 A I did.

20 Q Tell us what happens next in the course of the
21 investigation.

22 A I got further information on who Man was. Did a photo
23 lineup with his picture in it and called Ms. Simms and had
24 her to bring Minor to the Sheriff's Office.

25 Q You said you did a photo -- you generated a photo

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

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1 A That's correct.

2 Q And did Minor identify Man?

3 A That's correct.

4 Q And she put a checkmark by which one?

5 A Picture number three.

6 Q Is that a checkmark beside kind of near the temple?

7 A That's correct.

8 Q Right here, the checkmark?

9 A That's correct.

10 Q Minor checked that?

11 A Yes.

12 Q So all those men are black males with similar haircuts?

13 A Yes.

14 Q Did you make any suggestive remarks to Minor which
15 one she should select?

16 A No.

17 Q And how sure was she that that person she identified as
18 Man was the suspect?

19 A I didn't ask her how sure she was. I just let her
20 check it and didn't say anything else.

21 Q It's your understanding that the victim was familiar
22 with this individual?

23 A That's correct.

24 Q So it's not like an unknown suspect she's identified?

25 A No.

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

4 A It was 6/4/15.

5 Q Tell us how that came about.

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

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

18 THE COURT: As concerns this first interview?

19 MR. VERNER: Yes, sir.

20 THE COURT: I thought I had --

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

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

25 Q Investigator Epps, so you first call Carrol Washington

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1 on June 4th of 2015, correct?

2 A That's correct.

3 Q You called him on the phone?

4 A That's correct.

5 Q And you told him the case you were investigating?

6 A Not over the phone I didn't. I just told him, hey,
7 this is Sergeant Epps. I need you to come to the Sheriff's
8 Office. I need to talk with you.

9 Q You left it vague?

10 A I just left it vague.

11 Q And does Mr. Washington come in that day?

12 A Yes.

13 Q Voluntarily came into the Sheriff's Office?

14 A That's correct.

15 Q So he wasn't -- he wasn't taken into custody?

16 A No.

17 Q Approximately what time did he arrive?

18 A It was in the afternoon. I don't know the exact time.

19 Q And he wasn't taken into custody. Did you feel the
20 need to read him his Miranda rights?

21 A No.

22 Q Tell us what happened next.

23 A Captain -- like I said, Captain Dennis more or less
24 advised him, hey, this is the allegation being made. And
25 said he was speechless. Didn't understand why Minor was

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

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

5 A At their residence in Whitmire.

6 Q At Mr. Washington's residence?

7 A That's it.

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

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

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

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

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

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

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

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1 the interview?

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

4 Q What part -- what part of the body?

5 A Her butt, or anus area.

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

7 A Yes.

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

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

13 Q Elaborate on your understanding of fast little girl.

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

19 Q And this -- that's been testified to that Minor

20 Minor 's birthday was of , correct?

21 A That's correct.

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

24 A That's correct.

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

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1 place in your office?

2 A No. We have a -- we have an interview room at the
3 Sheriff's Office.

4 Q And, I guess, any other relevant statements he made
5 during this investigation?

6 A I asked him if they called him Man and he said yes,
7 which was the nickname that I was given originally.

8 Q So Carrol Washington is his legal name, correct?

9 A Yes.

10 Q And he's saying that he does go by Man?

11 A That's correct.

12 Q That's an established nickname for him? How long did
13 this interview last roughly?

14 A Maybe 30, 45 minutes.

15 Q And at the conclusion of the interview what happened?
16 Was he free to leave at that point?

17 A That's correct.

18 Q Tell us any other things you did in the course of this
19 investigation. You set up the forensic interview, correct?

20 A That's correct.

21 Q You interviewed Mr. Washington?

22 A That's correct.

23 Q Did you obtain arrest warrants for Mr. Washington?

24 A I did.

25 Q And what date did you actually take Mr. Washington into

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1 custody?

2 A That was 6/10 of '15 when I took him into custody.

3 Q So about a week after that initial interview?

4 A That's correct.

5 Q You served those arrest warrants on him?

6 A That's correct.

7 Q Were you able in the course of your investigation to
8 identify any eyewitnesses you may have seen?

9 A Yes. S.B.

10 Q And you did make contact with --

11 A I spoke with the mother. I never was able to speak
12 with the little girl.

13 MR. DANIEL: No further questions. Please answer any
14 questions Mr. Verner has.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. VERNER:

18 Q Investigator Epps, is it fair to say that initially you
19 had arranged for the child to be examined within a month of
20 the allegation --

21 A That's correct.

22 Q -- being brought to you?

23 A I'd say it was roughly that timeframe.

24 Q And I'm sure you actually requested it even sooner than
25 that but it takes a while before the --

BRAD EPPS-CROSS EXAMINATION

145

1 A Well, it depends on what appointments they have
2 available, because sometimes they're backed up, sometimes
3 they're not.

4 Q And is it your recollection that the mother did not
5 attend the first -- or bring the child or attend the first
6 evaluation?

7 A That's correct. It was my understanding she was having
8 some issues with work as far as getting off.

9 Q So you rescheduled it for June, correct?

10 A That's correct.

11 Q Or late May, June?

12 A I know I rescheduled it, but I don't remember exactly
13 what month it was.

14 Q Do you know who Minor 's father is?

15 A I met him. One day he came to the office. I don't
16 remember his name though.

17 Q Well, can you tell me about him? So you did meet with
18 him at the Sheriff's Department?

19 A That's correct.

20 Q Can you tell me about that meeting? Is it fair to say
21 he was not aware of the allegations until he came to you to
22 confirm the allegations?

23 A Well, I think he was made aware, like you said. But I
24 think he was just coming to confirm the allegations --

25 Q Did he -- I'm sorry. I didn't let you finish.

BRAD EPPS-CROSS EXAMINATION

146

1 A I'm done.

2 Q Did he tell you who had told him about the allegations?

3 MR. DANIEL: Your Honor, I would object to the
4 relevancy and hearsay.

5 THE COURT: Well, it may be relevant, but it would
6 constitute hearsay. I'll sustain the objection.

7 Q Did you explain the allegations to the father?

8 A That's correct.

9 Q And you made him a copy of the incident report?

10 A I didn't give him one, no. That's not correct.

11 Q You don't recall giving him one?

12 A No, I did not give him one.

13 Q Did he take any kind of statements or get him to tell
14 you what he knew about the facts?

15 A No.

16 Q And when was the -- when did the father come to meet
17 with you? Is it fair to say around June 10th?

18 A Let me look and see. I don't want to tell you wrong.

19 Q I did speak with him. As to what time it was I
20 couldn't tell you.

21 MR. VERNER: May I approach, Your Honor?

22 THE COURT: Sure can.

23 Q Because these things take a long time to report
24 sometimes you make notes prior to Court?

25 A I try to.

BRAD EPPS-CROSS EXAMINATION

147

1 Q Is it fair to say on June 12th the father came to the
2 Sheriff's Department to ask about the allegations?

3 A That's correct.

4 Q Did he appear to know what was going on at all with the
5 case?

6 A To a degree. I think he understood what had been --
7 what the accusations were.

8 Q Did he -- are you sure you didn't give him a copy of
9 the report?

10 A He had already had a copy.

11 Q Is it possible -- it says, "The victim's father got a
12 copy of the report." That was not from you?

13 A That was not from me.

14 Q If a parent had come about an allegation with their
15 child, would the Sheriff's Department give them a copy of
16 the --

17 A He'd have to go pay for it. He'd have to pay --

18 Q Fill out the paperwork?

19 A He'd have to pay for it.

20 Q But they will give it to the parents if they ask for
21 it?

22 A Yes. Before I got to the front where he was he had
23 already gotten a copy of the report.

24 Q I'm just curious. On the six -- the photograph that
25 the child identified of Carrol Washington, she checkmarked

BRAD EPPS-CROSS EXAMINATION

148

1 his --

2 A That's correct.

3 Q She said that was a copy of -- of Carrol's face?

4 A That's correct.

5 Q Now, for an adult do they typically checkmark it or do
6 they typically sign their name or initial it?

7 A Some people don't like signing their name because they
8 feel like if it comes to court whoever identified them we'll
9 know, hey, that's such and such's signature. So I just had
10 her put a checkmark.

11 Q But you don't typically try to get them to initial so
12 you can corroborate who's --

13 A Like I said, most people don't feel comfortable doing
14 that, because they feel like whoever the suspect is may know
15 that they circled their picture, wrote their initials inside
16 their picture.

17 Q Well, I guess the point of my question, do you know
18 whether Minor could write her name?

19 A I don't.

20 Q Did you speak to Ms. Simms' the child's mother, about
21 the children hiding in the closet before going to visit the
22 father?

23 A Yes, that was brought -- that was brought to my
24 attention and I asked her about it.

25 Q Did she indicate to you that was because that the older

BRAD EPPS-CROSS EXAMINATION

149

1 child had been abused by a family member?

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

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

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

11 A Yes.

12 Q And she confirmed that that was --

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

14 THE COURT: Nature of your objection?

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

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

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

22 A That is correct.

23 Q Did you investigate the nature of that abuse?

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

BRAD EPPS-CROSS EXAMINATION

150

1 Q Did she tell you that at the time or is that something
2 you heard today?

3 A That's something she told me at the time.

4 Q But you did not put that in your report at the time?

5 A I did not.

6 Q Did she give you a timeframe of when that abuse was
7 going on?

8 A She did not.

9 Q Did she give you any factual details of what the
10 alleged abuse was?

11 A Just that it was -- it wasn't any type of sexual abuse.
12 It was more or less the child being picked on by another
13 family member.

14 Q Are you sure about that?

15 A That was my understanding.

16 Q Is it possible that -- you were in court when the
17 mother testified today?

18 A Yes.

19 Q She indicated that she was saying that the middle
20 child, Minor , was the one that -- could you have misheard
21 which child was saying --

22 A All I was told was that one of the children were being
23 -- was being abused or assaulted somehow. I'm not sure
24 which child was being referred to when I was told this
25 information.

BRAD EPPS-CROSS EXAMINATION

151

1 Q Now, when you called Carrol Washington to come to the
2 Sheriff's Department to speak with you on June 4th he did
3 come that same day, didn't he?

4 A That's correct.

5 Q Did he come with anybody else that you recall?

6 A He came by himself.

7 Q At the time you called him and asked him to come you
8 had not told him why? Just we need to speak to you?

9 A That's correct.

10 Q And then you gave him the nature of the allegations
11 once he was at the complex?

12 A That's correct.

13 Q Is that in the Newberry County Sheriff's Office?

14 A Yes.

15 Q And I assume -- were you dressed fairly similar to what
16 you are today?

17 A Same thing.

18 Q And I believe you said that it was also Captain Dennis
19 with you?

20 A That's correct.

21 Q Anybody else that you remember?

22 A I want to say that Investigator Womack came in.

23 Q May have been another investigator?

24 A Yeah. I think I went out and he came in.

25 Q Would you call yourself -- but you were the lead

BRAD EPPS-CROSS EXAMINATION

152

1 investigator?

2 A That is correct.

3 Q As far as the allegations the child made, you never

4 actually spoke with Minor about the allegations? You have

5 relied on the social workers and those people that actually

6 did that part of it?

7 A That's correct.

8 Q But the allegations you were trying to rely on were

9 what the other people were telling you had happened?

10 A From the forensic interview, yes.

11 Q And from the mother, Nicole?

12 A No. Just from the forensic interview.

13 Q At the time you called Carrol Washington to come to the

14 Sheriff's Department you were aware that he was a suspect in

15 a criminal sexual conduct with a child under 10? Ten and

16 under, right?

17 A That's correct.

18 Q Is it fair for me to characterize that as a severe or a

19 serious charge?

20 A I would say so.

21 Q Why wouldn't you read his Miranda rights advising him

22 that you were investigating him as a suspect in a crime

23 prior to --

24 A Because he wasn't under arrest.

25 Q But he was in the Sheriff's Department complex?

BRAD EPPS-CROSS EXAMINATION

153

- 1 A That's correct. Not in custody.
- 2 Q And he was the suspect in a rape case?
- 3 A That is correct.
- 4 Q I'm not at all saying -- you can correct me. But I
- 5 would assume you would be armed while you were talking to
- 6 him?
- 7 A That's correct.
- 8 Q You would have the authority to arrest him at that
- 9 point?
- 10 A That's correct.
- 11 Q And you're inside the Sheriff's Department complex?
- 12 A Yes.
- 13 Q And he denied improperly touching the child?
- 14 A That's correct.
- 15 Q But he said that he does play with the children?
- 16 A That's correct.
- 17 Q And he indicated to you that he felt that the child was
- 18 a fast little girl?
- 19 A That is correct.
- 20 Q And by fast, it would be fair for a reasonable person
- 21 to infer that means promiscuous or sexually active?
- 22 A That was always the way it was explained to me.
- 23 Q Did he indicate to you the child acted inappropriately
- 24 before? Other instances where the child may have acted
- 25 inappropriate?

BRAD EPPS-CROSS EXAMINATION

154

1 A Yeah. It was -- yes.

2 Q Who else did you -- who else did you interview? Tonya
3 Dawkins also lived in the home?

4 A That's correct.

5 Q And you also interviewed her?

6 A Yes. She came up to the Sheriff's Office and wanted to
7 speak to me one day. That's correct.

8 Q Did you contact her or did she contact you?

9 A I think I originally called her to try to get a phone
10 number for Carol.

11 Q Who else did you call? Who else did you speak to in
12 the neighborhood? There was a next-door neighbor named Ms.
13 -- was it Joyce? There was a next-door neighbor named
14 Josephine who's the child's great-aunt. Did you interview
15 her?

16 A I did not.

17 Q Did you interview any other -- parents of the other
18 children?

19 A I did not.

20 Q Were you aware where Mr. Washington worked at that
21 time?

22 A Not until the day he came to the Sheriff's Office.

23 Q But you picked him up from work at Caterpillar?

24 A I don't think he was working. That's where I met him.

25 MR. VERNER: One second, Your Honor.

BRAD EPPS-CROSS EXAMINATION

155

1 THE COURT: Sure.

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

5 A That's correct.

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

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

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

12 A That's correct.

13 Q Were you the affiant in this case?

14 A That's correct.

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

17 A That came from the forensic interview.

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

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

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

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

25 Q Were you aware that the child had largely stopped going

BRAD EPPS-REDIRECT EXAMINATION

156

1 to Whitmire from Columbia as of March of 2014?

2 A I was not aware.

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

5 THE COURT: Any redirect, Solicitor?

6 MR. DANIEL: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. DANIEL:

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

11 A That's correct.

12 Q That's where you got your range --

13 A That's correct.

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

16 A Yes.

17 MR. DANIEL: Nothing further.

18 MR. VERNER: Just a recross on that.

19 THE COURT: Yes, sir.

20 RECROSS-EXAMINATION

21 BY MR. VERNER:

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

BRAD EPPS-RECROSS EXAMINATION

157

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

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

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

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

9 Q Yes, sir.

10 A No.

11 MR. VERNER: Okay.

12 THE COURT: Thank you, Officer, for your testimony.

13 You can step down.

14 THE WITNESS: Yes, sir.

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

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

18 THE COURT: Solicitor.

19 (Whereupon, a sidebar was held.)

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

S.B.

-DIRECT EXAMINATION

158

1 moment.

2 (Whereupon, the jury exited the courtroom at 11:48

3 a.m.)

4 S.B. , having first been

5 duly sworn, testified as follows:

6 THE COURT: Hey, S.B. .

7 THE WITNESS: Hey.

8 THE COURT: How are you?

9 THE WITNESS: Good.

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

12 THE WITNESS: Thank you.

13 THE COURT: How old are you?

14 THE WITNESS: Nine. I mean, 10.

15 THE COURT: Ten?

16 THE WITNESS: I'm thinking about my birthday.

17 THE COURT: When is your birthday?

18 THE WITNESS: .

19 THE COURT: And where do you go to school?

20 THE WITNESS: Whitmire.

21 THE COURT: Whitmire Elementary?

22 THE WITNESS: (Nonverbal response.)

23 THE COURT: And who's your teacher?

24 THE WITNESS: Ms. Martin.

25 THE COURT: Do you like her?

S.B.

-DIRECT EXAMINATION

159

1 THE WITNESS: She's nice.

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

3 THE WITNESS: I make Honor Roll.

4 THE COURT: You made the Honor Roll? Very good.

5 Congratulations. Let me ask you some questions. Do you

6 know the difference between right and wrong?

7 THE WITNESS: (Nonverbal response.)

8 THE COURT: Is that a yes?

9 THE WITNESS: Yes.

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

12 THE WITNESS: Yes.

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

15 THE WITNESS: They would go to jail.

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

18 THE WITNESS: Yes.

19 THE COURT: Any questions of competency from the State?

20 MR. SCOTT: No, Your Honor.

21 THE COURT: From the Defense?

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

25 THE COURT: She was listed. It was --

S.B.

-DIRECT EXAMINATION

160

1 MR. VERNER: Handwritten --

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

4 THE WITNESS: S.B.

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

7 THE WITNESS: What does testify mean?

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

13 THE WITNESS: (Nonverbal response.)

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

19 THE WITNESS: (Nonverbal response.)

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

21 THE WITNESS: Yes.

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

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

S.B.

-DIRECT EXAMINATION

161

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

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q What is your name?

7 A S.B. .

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

9 A S.B. .

10 Q How old are you S.B. ?

11 A Ten.

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

13 A Yes.

14 Q Let me guess. ?

15 A Yes.

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

17 A Yes.

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

19 A Apartments.

20 Q And who do you live there with?

21 A My momma and step-daddy.

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

23 A Yes.

24 Q Do you know a little girl named Minor ?

25 A Yes.

S.B.

-DIRECT EXAMINATION

162

- 1 Q How do you know her?
- 2 A She's my friend.
- 3 Q Does she live up there in those apartments?
- 4 A No.
- 5 Q Did she used to come visit you sometimes?
- 6 A Her grandma's.
- 7 Q Her grandma's? Do you know her grandma?
- 8 A Yes.
- 9 Q Do you see her here?
- 10 A Yes.
- 11 Q Where?
- 12 A Right there.
- 13 Q With the pink shirt here?
- 14 A Yes.
- 15 Q Do you know -- who is Man? Do you know somebody you
- 16 call Man?
- 17 A Right there.
- 18 (Whereupon, witness identified the Defendant.)
- 19 Q How do you know him?
- 20 A Over Tonya's.
- 21 Q From Tonya's?
- 22 A Yes.
- 23 Q Have you ever been with Man and Minor at the same
- 24 time?
- 25 A Playing at Tonya's.

S.B. -DIRECT EXAMINATION

163

- 1 Q Playing what?
- 2 A Playing at Tonya's, hide and seek.
- 3 Q Playing at Tonya's house, okay. Have you been with
- 4 them more than once together?
- 5 A Like with Tonya?
- 6 Q Or with Man and Minor . Have you been with those two
- 7 together before more than once?
- 8 A Playing, yeah, like games and stuff?
- 9 Q Uh-huh.
- 10 A Yes.
- 11 Q Tell me about what was the time -- explain the time you
- 12 saw Man and Minor in the bathroom together.
- 13 MR. VERNER: Your Honor, that's a leading question on a
- 14 particularly vulnerable witness.
- 15 THE COURT: Right. I sustain. Rephrase your question,
- 16 Solicitor.
- 17 Q Have you ever seen Man and Minor together?
- 18 A We were playing hide and seek and I came downstairs and
- 19 I ran fast and they were both in the bathroom.
- 20 Q Tell me if what I heard was correct. You ran fast
- 21 downstairs and you saw them in the bathroom together?
- 22 A Yes.
- 23 Q Have you ever seen them in a bathroom together before?
- 24 A No. Like what time?
- 25 Q Any time?

S.B.

-DIRECT EXAMINATION

164

1 A Playing a game. Like we was running downstairs to play
2 hide and seek.

3 Q Did you play hide and go seek a lot of times with Man?

4 A No.

5 Q Were there any other men at Apartments that
6 would play hide and go seek with you?

7 A Like grown men?

8 Q Yeah.

9 A No.

10 Q Just Man?

11 A (Nonverbal response.)

12 Q Any other time you saw Minor and Man alone together
13 that you remember?

14 A Remember what?

15 Q Do you remember any other time seeing Man and Minor
16 alone together?

17 A Yes.

18 Q Would you tell me about that?

19 A I was downstairs and then I saw them both in the
20 bathroom, because I was counting. I was it.

21 Q Any other time besides that time? Was that the one
22 time you saw them together in the bathrooms?

23 A Yes.

24 MR. SCOTT: Okay. Thank you. Answer any -- wait, you
25 can't get down yet though. Answer any questions this man

S.B. -DIRECT EXAMINATION

165

1 has for you. Okay?

2 THE WITNESS: Okay.

3 MR. SCOTT: Thank you.

4 THE COURT: May I see the lawyers for just a second?

5 Let's do this. Ladies and gentlemen of the jury, we're
6 going to take a very, very short break, but I'm going to ask
7 that you go to the jury room. Don't begin any discussions
8 about this case, and we'll get you back out shortly.

9 (Whereupon, the jury exited the courtroom.)

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

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

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

25 MS. SIMMS: Yes, sir.

S.B.

-CROSS EXAMINATION

166

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

3 Bring the jury out, please.

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

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

6 Mr. Verner, cross-examination.

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

8 THE COURT: Sure.

9 ----- CROSS-EXAMINATION

10 BY MR. VERNER:

11 Q Hello, S.B.

12 A Hello.

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

14 ?

15 A Yes.

16 Q what?

17 A .

18 Q . The day after Valentine's Day?

19 A Yes.

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

21 A Yes.

22 Q Did you have a lot of your friends --

23 A Yes.

24 Q -- with you there?

25 A Yes.

S.B.

-CROSS EXAMINATION

167

1 Q And not everybody's got kids, so not everybody might
2 know what HiWire is, what kind of place is HiWire?

3 A Trampoline.

4 Q It's a big indoor facility that's got a bunch of
5 trampolines for kids, right?

6 A Yes.

7 Q And probably for your birthday they had a separate area
8 with tables and whatnot that you had your cake and presents?

9 A Yes.

10 Q Now, did you live in -- where do you live, S.B. ?

11 A Apartments.

12 Q Who do you live near? Do you live near Ms. Tonya?

13 A I live near Tonya, and this other girl, but I don't
14 know her name.

15 Q Are there a lot of kids in that area?

16 A A good bit.

17 Q There are plenty of kids for you to play with?

18 A A little bit.

19 Q Where are some of the houses that you all would play?
20 When you all would get together as a crowd on the weekends
21 where do you all like to play?

22 A Like outside and over Tonya's.

23 Q Do you ever play at Tonya's house? Do you know who
24 Tonya Dawkins is?

25 A Yes.

S.B.

-CROSS EXAMINATION

168

1 Q Do you recognize her from your neighborhood?

2 A Yes.

3 Q Which lady is she?

4 A The one beside her.

5 Q What color is her top?

6 A White.

7 Q And who is sitting next to her?

8 A Her son.

9 Q I'm sorry?

10 A Her son.

11 Q Her son? Is he a friends of yours?

12 A Yes.

13 Q What's his name?

14 A D.D.

15 Q D.D. And he lived with Man -- who you call Man and

16 Tonya, and he lived with them, right?

17 A Yes.

18 Q And did you ever go over there and play?

19 A Yes.

20 Q Was it just you and D.D. , or how many kids would go
21 over and play with Tonya?

22 A A good bit. Like Tamara, me, D.D. and some other
23 people.

24 Q So that -- I guess on some days there would be more
25 kids and on some days there would be fewer kids, right?

S.B.

-CROSS EXAMINATION

169

- 1 A Yes.
- 2 Q About how often would you all go and play at Ms.
- 3 Dawkins and Carrol -- Man's house?
- 4 A I play with D all the time.
- 5 Q All the time? What are some of the games that -- and
- 6 by D I'm assuming you mean the kid your age? The boy your
- 7 age?
- 8 A Yes.
- 9 Q What are some of the things you all like to play?
- 10 A The PS4 and --
- 11 Q PS4 is like a video game?
- 12 A Yes.
- 13 Q Okay. What else do you like to play?
- 14 A The Xbox and play other games; basketball, tree house,
- 15 and Survivor and stuff like that.
- 16 Q Now, I think you told Mr. Scott sometimes you all
- 17 played hide and seek?
- 18 A Yes.
- 19 Q Was that several of the kids playing or just you and --
- 20 who would play hide and seek?
- 21 A Sometimes a lot and sometimes not a lot.
- 22 Q It just depended on --
- 23 A Yeah.
- 24 Q -- what the other kids wanted to play?
- 25 A Yeah.

S.B.

-CROSS EXAMINATION

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1 Q Now, were you kids left unattended or were there
2 grownups in the house with you?

3 A Grownups in the house.

4 Q Now, who were some of the parents and the grownups who
5 would stay there, too?

6 A Tonya.

7 Q Let me ask you. I think you identified the lady in the
8 pink shirt?

9 A Yes.

10 Q And is she friends with Ms. Nicole?

11 A Yes.

12 Q In fact, you were with them when they were talking
13 about these cases in the past, weren't you?

14 A Yes.

15 Q And you know what a policeman is, don't you?

16 A Yes.

17 Q Have you ever spoken to a policeman about this case?

18 A Yes, on the phone.

19 Q On the phone? How long ago was that?

20 A I can't remember.

21 Q Was it this week or could it have been a long time ago?

22 A A long time ago.

23 Q So you do remember speaking to somebody who said he was
24 a police officer?

25 A Yeah.

S.B.

-CROSS EXAMINATION

171

1 Q And when you would play hide and seek where -- would
2 any of the grownups play hide and seek with you or was that
3 just the kids?

4 A One grownup.

5 Q Who was that?

6 A Man.

7 Q So Mr. Washington, whose nickname was Man, he'd play
8 sometimes with you kids?

9 A Yes.

10 Q Was he the type of grownup that would play with kids?

11 A Yes.

12 Q Was he grumpy or was he like enjoyed being with the
13 kids?

14 A Enjoyed being with the kids.

15 Q And one of the games he'd play with you is hide and
16 seek?

17 A Hide and seek and some other games like basketball and
18 stuff, too.

19 Q Basketball? Did he ever play like tag or chase,
20 anything like that?

21 A No.

22 Q Would he ever like roughhouse with the kids?

23 A Like try to roll over?

24 Q Like pretend wrestling or anything like that?

25 A With D. Not me.

S.B.

-CROSS EXAMINATION

172

1 Q Okay. More with D. But you've seen him roughhouse
2 more with the boy?

3 A Yeah.

4 Q His son, D, but not you?

5 A Not me.

6 Q And you are Minor 's -- pretty much are the same age,
7 aren't you?

8 A Uh-huh. I just turned 10.

9 Q Ten. And she's 10, too, right?

10 A Yes.

11 Q Now, have you all ever lived and gone to the same
12 school together or you just know her from the --

13 A She used to go to Whitmire. Now she lives somewhere
14 else.

15 Q So a couple years before she moved away you all were
16 friends in school?

17 A We still are friends, but she moved away.

18 Q And she moved to Columbia?

19 A Yes.

20 Q And I think you testified to Mr. Scott that when you
21 saw people in the bathroom and you were it. I guess that
22 means that you're the one that has to go find the other
23 kids?

24 A Yeah. I had to count.

25 Q And I apologize. I'm going to go back just one more

S.B.

-CROSS EXAMINATION

173

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

3 A Sometimes.

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

5 A Sometimes, yeah.

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

10 A No.

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

12 A Yes.

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

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

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

20 A Yeah.

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

23 A Yes.

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

S.B.

-CROSS EXAMINATION

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1 A Yes.

2 Q Did your mom ever come down and sit on the porch or
3 hang out with them?

4 A No.

5 Q So she wouldn't come, but some of the other mothers in
6 the neighborhood would come?

7 A Yes.

8 Q So it wasn't a situation where the kids were just
9 running around without anybody telling them what to do, was
10 it?

11 A Always like outside playing game like on the porches.

12 Q Right. But usually there was a parent?

13 A Yes.

14 Q Does this place have a -- where you live is there like
15 a playground or a central area where the kids would play?

16 A The field.

17 Q There's a field?

18 A Yes.

19 Q Is that like a football field or a baseball field, or
20 is it just like a big open meadow where you all can like run
21 around?

22 A A big -- a big -- a meadow.

23 MR. VERNER: Thank you for being here, S.B. . If Mr.
24 Scott or Mr. Daniel have any questions. They get one more
25 chance to ask you some more questions.

S.B.

-CROSS EXAMINATION

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1 THE COURT: Anything on redirect?

2 MR. SCOTT: No, sir.

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

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

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

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

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

21 (Whereupon, a lunch recess was held from 12:10 p.m. to
22 1:17 p.m.)

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

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

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

9 THE COURT: What says the Defense?

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

12 MR. SCOTT: The affirmative -- vacated --

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

15 THE COURT: Right.

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

18 THE COURT: Right.

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

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

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

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

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

17 THE COURT: Right. Not on that point.

18 MR. VERNER: Yes. Just the --

19 THE COURT: Your objection is based on what?

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

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

10 THE COURT: Right.

11 MR. VERNER: -- and the confrontation clause.

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

17 MR. VERNER: Yes, sir.

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

20 MR. VERNER: No, Your Honor.

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

22 MR. SCOTT: No, Your Honor.

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

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

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1 p.m.)

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

3 Solicitor, are you ready?

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

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

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

9 MADAM CLERK: State your name, please.

10 THE WITNESS: Trina Elfering.

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

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

13 DIRECT EXAMINATION

14 BY MR. DANIEL:

15 Q Ms. Elfering, where are you employed?

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

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

19 --

20 A It's a nonprofit agency.

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

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

25 Q And what specifically -- what specifically is your

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1 role?

2 A I'm the director of forensic services.

3 Q And what are your job duties as director of forensic
4 services?

5 A I do forensic interviewing and I supervise the other
6 forensic interviewers.

7 Q What is a forensic interview?

8 A It's a non-biased, unleading investigative tool used
9 for reported child abuse.

10 Q So you receive referrals from law enforcement agencies
11 to review --

12 A Correct.

13 Q And did you have a chance to conduct an interview on
14 May 27th of 2015?

15 A I did.

16 Q And who was the subject of that interview?

17 A Minor

18 Q And where did you interview her?

19 A At our child advocacy center in West Columbia.

20 Q And was this interview recorded?

21 A It was. It was recorded on DVD.

22 Q I'm going to hand you what's been marked for ID
23 purposes State's No. 1. Do you recognize that?

24 A Yes. That's a copy of the interview.

25 Q And you've had a chance to view it?

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1 A I have.

2 Q And you conducted this interview?

3 A I did.

4 MR. DANIEL: Your Honor, at this time I'd offer State's
5 No. 1 for admission into evidence.

6 THE COURT: Okay. Let me see the lawyers for just a
7 second, please.

8 (Whereupon, a sidebar was held.)

9 THE COURT: Mr. Foreman, ladies and gentlemen of the
10 jury, before we proceed further there's one brief matter
11 that we need to take up outside your presence. Thank you
12 for your patience and understanding in us having to do this
13 on occasion. But if you'll go back to the jury room. And
14 again, no discussions among yourselves about anything
15 related to this case, and we'll get you back out very
16 shortly.

17 (Whereupon, the jury exited the courtroom at 1:37 p.m.)

18 THE COURT: Okay, Solicitor. If you want to cover that
19 area we just discussed at sidebar.

20 IN-CAMERA

21 DIRECT EXAMINATION

22 BY MR. DANIEL:

23 Q Ms. Elfering, explain some of your credentials, your
24 background. What occupations you've had in the past.

25 A Okay. I have a Bachelor's degree in criminal justice

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

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

12 A Between 300, 350.

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

15 A Starting at the beginning --

16 Q Yes.

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

19 Q Everything.

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

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

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

13 A Yes.

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

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

18 Q You obtained a Master's in criminal --

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

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

23 CROSS-EXAMINATION

24 BY MR. VERNER:

25 Q What college did you attend for undergraduate?

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1 A University of South Carolina.

2 Q What was your major? Your undergraduate?

3 A Criminal justice. I think it was liberal arts with an
4 emphasis in criminal justice.

5 MR. VERNER: No more questions, Your Honor.

6 THE COURT: Concerning the admissibility of the
7 interview I'm going to find that it is admissible pursuant
8 to Section 17-23-175, based upon this in-camera brief
9 hearing. Also, the Court's already viewing of the video in
10 its entirety I make the following findings for the record.
11 That the child's out of court statement was given in
12 response to certain questions posed to her by this
13 interviewer. That the interview was audio and videoed
14 recorded in its entirety. The fact that the child, as
15 indicated by the State, will testify at this trial and be
16 subject to cross-examination by the Defense. I find that
17 the out of court statement does contain the guarantee of
18 trustworthiness. I further find that the statements made by
19 the child were not elicited by leading questions by this
20 interviewer. That this interviewer has been properly
21 trained and conducted such interviews. That the child's
22 statement does contain an account detailed, at least to the
23 extent or based upon her age of the alleged offense. I find
24 that the statement has internal coherence. I find that the
25 child at the time the interview was given was under the age

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

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

6 MR. DANIEL: Yes, Your Honor.

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

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

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

14 (Whereupon, a brief pause was held.)

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

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

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

21 MR. DANIEL: Thank you, Your Honor.

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

24 A Yes.

25 Q And what agency referred you to Minor

?

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1 A Newberry County Sheriff's Office.

2 Q And who brought Ms. Thompson to the interview?

3 A Her mother did.

4 Q And what is Minor 's date of birth?

5 A

6 MR. DANIEL: Your Honor, at this time I offer --

7 'permission to publish?

8 THE COURT: Okay.

9 MR. VERNER: Subject to my earlier objection.

10 THE COURT: Yes, sir.

11 (Whereupon, State's Exhibit No. 1, videotaped

12 interview, was published for the jury.)

13 Q Ms. Elfering, that was about a 30 minute video?

14 A Yes.

15 Q According to my notes -- according to my notes, about

16 19 minutes in you had, it looks like, Minor circle

17 something.

18 A Correct.

19 Q And what was that?

20 A I used an anatomical drawing to help identify what the

21 child is talking about. I had her circle privacy for me.

22 Q I'm going to show you what's been marked for ID

23 purposes as State's No. 3. And do you recognize that?

24 A I do.

25 Q Tell us what that is.

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

3 Q And Minor circled that?

4 A She did.

5 Q And what part of the body was circled?

6 A The buttocks.

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

9 A Yes.

10 Q Any specific part of the buttocks?

11 A She circled the buttocks and --

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

14 THE COURT: What say the Defense?

15 MR. VERNER: May I see it?

16 THE COURT: Sure, yeah.

17 MR. VERNER: Subject to general objection.

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

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

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

24 A Yes.

25 Q Ms. Elfering, approximately how many of those

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1 interviews we just watched have you done?

2 A About -- between 300 and 350.

3 Q Just like the one we just watched?

4 A Correct.

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

7 A No.

8 Q Your background?

9 A I have a Bachelor's degree in criminal justice from the
10 University of South Carolina and a Master's degree in social
11 work. I'm a licensed social worker. Licensed at the
12 Master's level. So I have an LMSW. I originally worked at
13 DSS as a Child Protective Services investigator, and then as
14 a Child Protective Services supervisor for about eight
15 years. After that I went to work for the South Carolina

16 Network of Children's Advocacy Centers and set up a
17 statewide peer review program for forensic interviewers and
18 implemented that program so that interviewers could be
19 reviewed by their peers. After that I went to work for the
20 Dickerson Children Advocacy Center where I work now.

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

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

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1 child psychology.

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

5 MR. DANIEL: Yes, sir. Your Honor.

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

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

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

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

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

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

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

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1 THE COURT: Okay.

2 (Whereupon a brief pause was held.)

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

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

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

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

20 MR. DANIEL: No, sir.

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

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

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

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

8 Solicitor, you may proceed.

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

10 THE COURT: Mr. Verner, any cross?

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

13 CROSS-EXAMINATION

14 BY MR. VERNER:

15 Q Is it Ms. Elfering or Dr. Elfering?

16 A Ms.

17 Q And again, your Bachelor degree was in what?

18 A In liberal arts with an emphasis on criminal justice.

19 Q And you work at the Dickerson Center?

20 A Yes.

21 Q Who are the common clients at the Dickerson Center?

22 A Children. We serve children.

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

25 A Law enforcement.

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1 Q So your primary client, I understand, is the child
2 first. But law enforcement provides the cases or the
3 investigations?

4 A Correct.

5 Q I assume you have testified in probably many
6 courthouses before?

7 A Actually in General Sessions court. This court just
8 two or three times. Family court lots.

9 Q And that was probably when you were a DSS investigator?

10 A Correct.

11 Q Did Minor , when she circled the butt, did she seem to
12 -- it's fair -- I call it butt. Is that fair to say if you
13 circled the butt on the child?

14 A Yes.

15 Q And she had the option of circling her breasts or her
16 genital area? By genital I mean the vagina area.

17 A Yes.

18 Q And it appears that you were familiar with her general
19 living arrangements prior to the video turning on. So you
20 must have had some kind of pre-discussions with either
21 Minor or with her mother?

22 A Her mother.

23 Q And were you privy to any kind of reports or of other
24 documentation, or was just the mother was the first you
25 learned the case?

TRINA ELFERING-CROSS EXAMINATION

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1 A No. We're given an intake form from the Sheriff's
2 Department which includes usually the first incident report
3 that law enforcement generates.

4 Q So you do get some police report, and then you
5 interview the mother and then you interview the child?

6 A Correct.

7 Q Did the mother indicate to you prior to your forensic
8 evaluation any other abuse of the child --

9 A No.

10 Q -- or other siblings?

11 A No. And generally we don't ask questions. Our
12 interview with the mother is to get consent to do the
13 interview and to go over the developmental questionnaire
14 about the child.

15 Q Is it fair to say that there's -- you were able to
16 listen to the video being played for the jury?

17 A Yes.

18 Q Were you able to understand the child clearly
19 throughout the tape?

20 A Throughout -- today when I listened?

21 Q Today.

22 A There were some areas that I couldn't.

23 Q It seemed to me your habit was to repeat certain parts
24 of the allegations that the child made. Was that to make it
25 more audible for someone watching the videotape or --

TRINA ELFERING-CROSS EXAMINATION

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1 A To make it more audible and -- yes, to make it more
2 audible.

3 Q Whenever you came across the child indicated a point
4 that you thought was interesting to you, you would repeat
5 that testimony to either emphasize or make sure it's clearly
6 on the videotape?

7 A To make sure that I was understanding what the child
8 was saying.

9 Q Now, my understanding is that you did not do any kind
10 of -- that beyond the forensic interview of the child, that
11 you didn't go interview witnesses or that type of
12 investigation?

13 A No.

14 Q Your role in the case is basically just giving the
15 child kind of a neutral place to disclose facts to a neutral
16 party?

17 A Correct.

18 Q And you do have some training kind of in helping open
19 up the child to make the child more --

20 A Yes.

21 Q Were you aware if there were any kind of medical
22 examinations of the child?

23 A Not that I'm aware of.

24 Q You're not aware of whether the child was taken to see
25 a doctor or a gynecologist, OB/GYN?

TRINA ELFERING-REDIRECT EXAMINATION

195

1 A I do not know.

2 Q It wasn't real audible for me, but there was something
3 about the child falling over his knee or getting hit by his
4 knee that she was reluctant to disclose. Was that clear to
5 you what you -- what the nature of that injury was?

6 A No. She said something about his knee hitting her
7 stomach area.

8 Q She seemed to think that was important though when she
9 was telling it to you, didn't she?

10 A Yes.

11 Q Are you able to -- the nature of the allegation was
12 just that I -- either I fell over his leg while it was out
13 or he hit me in the stomach with the knee?

14 A I think it -- if I recall correctly, she said during a
15 football game, or they were playing football or something.

16 Q And, in fact, she said when she got hurt she was scared
17 to go play with him anymore. Is that a fair
18 characterization?

19 A I did not hear that today. I'm not sure.

20 MR. VERNER: Thank you, Ms. Elfering. That State has
21 any more followup questions.

22 THE COURT: Any redirect?

23 MR. DANIEL: Briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. DANIEL:

Minor

-DIRECT EXAMINATION

196

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

3 A I did.

4 Q Did you refer Minor for any therapy services?

5 A I did.

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

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

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

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

18 THE WITNESS: Thank you.

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

21 MR. SCOTT: Minor , Your Honor.

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

24 MADAM CLERK: Give us your name.

25 THE WITNESS: Minor .

Minor

-DIRECT EXAMINATION

197

1 MADAM CLERK: Your full name.

2 THE WITNESS: Minor

3 MADAM CLERK: Thank you.

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

8 DIRECT EXAMINATION

9 BY MR. SCOTT:

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

11 A Yes.

12 Q Okay. How old are you?

13 A Ten.

14 Q When did you turn 10?

15 A

16 Q What grade are you in?

17 A Fifth.

18 Q Fifth grade. What's the school?

19 A Conder Elementary Integrated Magnet School.

20 Q Conder Integrated?

21 A Conder Elementary Integrated Magnet School.

22 Q Conder Integrated Math Elementary School?

23 A Magnet School.

24 Q Where is that?

25 A In Columbia.

Minor

-DIRECT EXAMINATION

198

- 1 Q And you said Magnet School?
- 2 A Yes.
- 3 Q Do you see your mom here today?
- 4 A Yes.
- 5 Q Can you see her?
- 6 A (Nonverbal response.)
- 7 Q Do you see your grandmother?
- 8 A Yes.
- 9 Q Do you know where we are?
- 10 A Yes.
- 11 Q What is this place?
- 12 A The courtroom.
- 13 Q Who's that guy beside you?
- 14 A The judge.
- 15 Q And do you know why we're here?
- 16 A Yes.
- 17 Q Do you remember, when did you used to go see your
- 18 grandmother?
- 19 A Like the week before I told my mom.
- 20 Q The week before you told your mom?
- 21 A Yes.
- 22 Q Do you go see your grandmother very much anymore?
- 23 A Sometimes, like one --
- 24 Q Louder.
- 25 A Just like I stay there for one. Like I go there once a

Minor

-DIRECT EXAMINATION

199

1 month, like --

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

4 A Like I go there once a month.

5 Q Once a month is when you used to go?

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

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

9 A Yes.

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

12 A A lot.

13 Q A lot. What do you call your grandma?

14 A Now I just call her grandma.

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

17 A Yes.

18 Q What did you used to call her?

19 A Granny Pooh.

20 Q Granny Pooh? And you love your Granny Pooh?

21 A Yeah.

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

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

Minor

-DIRECT EXAMINATION

200

1 Q Say it louder, girl.

2 A I used to go outside, and maybe I stay inside. Before
3 this happened I usually go to D.D. house.

4 Q D.D. ' house?

5 A Yes.

6 Q And that was at Whitmire?

7 A Yes.

8 Q Tell me about -- first of all, tell me about where your
9 grandma lived in Whitmire.

10 A It's like -- you'll see a white house when you're in
11 Whitmire. You won't see apartments unless you turn to the
12 left.

13 Q She lived in apartments?

14 A Yes.

15 Q And you just talked about D.D. . Who's he?

16 A My cousin.

17 Q He's your cousin? Who's his momma?

18 A Tonya.

19 Q Tonya?

20 A Yeah.

21 Q Who else lives with D.D. and Tonya?

22 A Man.

23 Q Man, okay. Did you know Man? Did you know him pretty
24 well when you used to go see your grandma?

25 A Yes.

Minor

-DIRECT EXAMINATION

201

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

3 A Yes.

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

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

8 Q Five apartments to the left?

9 A Yes.

10 Q Could you walk there from your grandma's?

11 A Yes.

12 Q Did you do that sometimes?

13 A A lot.

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

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

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

20 A Uh-huh.

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

22 A Yes.

23 Q When's the last time you saw her?

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

Minor

-DIRECT EXAMINATION

202

1 Q Is that a different S.B. than the one that was here
2 today?

3 A It was the same person.

4 Q Oh, that's the same one?

5 A Yes.

6 Q And you would play with her in Whitmire?

7 A Yes.

8 Q Did all the kids come and play in grandma's apartment
9 sometimes?

10 A We would like come like a little bit, but mostly at
11 D.D. ' house.

12 Q Mostly at D.D. ' is what you said?

13 A House, yeah.

14 Q What now?

15 A It's like sometimes they'll be at my grandma's house,
16 but mostly they met at D.D. ' house.

17 Q Sometimes at grandma's but mostly at D.D. '. Tell me
18 one more time -- I don't know if I asked you. But what kind
19 of stuff did you all do at D.D. ' house? What kind of
20 games?

21 A Mostly we play hide and go seek and play on his Wii U.

22 Q Wii U?

23 A Yeah.

24 Q That's a video game system?

25 A Yes.

Minor

-DIRECT EXAMINATION

203

- 1 Q And who would be there when you would be at D.D.
2 house?
- 3 A S.B. , my little sister, and Man, and Tonya.
- 4 Q S.B. , your little sister, Man, and Tonya?
- 5 A Yes.
- 6 Q What kind of games did Man play with you guys?
- 7 A He's mainly just play the Wii U with us.
- 8 Q Did he ever play hide and go seek with you?
- 9 A I think that was just once.
- 10 Q Once, okay. Did something happen that time when you
11 played hide and go seek with him?
- 12 A Yes.
- 13 Q Will you tell us what happened?
- 14 A I guess S.B. was it, so --
- 15 Q Do you need a little glass of water or something?
- 16 A Yeah.
- 17 Q You do?
- 18 (Whereupon, witness receives water.)
- 19 A S.B. was like down the stairs. She had to pick up a
20 picture that she actually had knocked down. And Man took me
21 to the bathroom.
- 22 Q Man took you to the bathroom?
- 23 A Yes.
- 24 Q Minor can you tell us what happened in the bathroom?
- 25 A I'm kind of afraid to.

Minor

-DIRECT EXAMINATION

204

1 Q Don't be afraid. You've got to be brave today.

2 A Okay.

3 MR. VERNER: Your Honor, I would ask that -- that's a
4 coaching statement and that's kind of corroborating,
5 cheering on the victim to testify.

6 THE COURT: I agree. But just take your time Minor
7 and just speak up loudly. Okay?

8 THE WITNESS: Yes, sir.

9 A He touched me inappropriately.

10 Q What was inappropriate? Can you tell me why it was
11 inappropriate?

12 A Because he touched my heinie.

13 Q He touched your heinie?

14 A Yes.

15 Q Would you tell me was it on the outside of your pants
16 or was it under your pants?

17 A Under my pants.

18 Q Minor , was it -- do you know the difference between
19 inside and outside of something?

20 A Yes.

21 Q You do? Show me the outside of that tissue box. Show
22 that to the jury the outside. What you understand the
23 outside of the tissue box would be.

24 A The outside (demonstrating).

25 Q Can you put your hand on the inside of it?

Minor

-DIRECT EXAMINATION

205

- 1 A (Demonstrating).
- 2 Q Okay. So that's the difference between the outside and
- 3 the inside?
- 4 A Yes.
- 5 Q When he touched your heinie did he touch the outside of
- 6 it?
- 7 A Yes.
- 8 Q Did he touch any other part of it?
- 9 A Now that I think about it, no.
- 10 Q No? Minor what was -- where did he touch your
- 11 heinie?
- 12 A In the -- inside of my pants.
- 13 Q Inside of your pants, okay. Once he touched the inside
- 14 under your pants what part of your heinie did he touch was
- 15 the question.
- 16 A Mostly the outside.
- 17 Q Mostly? What was the other part that he touched?
- 18 A Once he did it -- I felt pressure on my heinie, so I
- 19 thought the inside.
- 20 Q Did it feel like he touched the inside?
- 21 A Yes.
- 22 Q What did you say, you felt pressure?
- 23 A Yes.
- 24 Q Can you help me understand what that meant?
- 25 A Like -- I felt like -- like -- I felt like a lot of --

Minor

-DIRECT EXAMINATION

206

1 I felt like hard.

2 Q You felt what?

3 A Hard. It felt hard.

4 Q It felt hard?

5 A Yes.

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

8 A Weird.

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

13 A Yes.

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

16 A It felt like it.

17 Q That's how it felt to you?

18 A Yes.

19 Q And you said it felt like pressure?

20 A Yes.

21 Q And what do you mean it felt hard?

22 A Like I could feel like his --

23 THE COURT: Speak up, please, Minor

24 THE WITNESS: Yes, sir.

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

Minor

-DIRECT EXAMINATION

207

- 1 cold.
- 2 Q The pressure felt -- did you feel the pressure on the
- 3 inside of your heinie or the outside?
- 4 A Like it felt like the question that you asked me.
- 5 Q Yeah. The toilet paper thing?
- 6 A Yeah.
- 7 Q It felt like what?
- 8 A Like when I'm wiping my heinie.
- 9 Q If felt like when you wipe your heinie? Okay. How
- 10 many times did that happen where he put his hand on the
- 11 inside of your heinie?
- 12 A I think twice.
- 13 Q I'm sorry.
- 14 A Twice.
- 15 Q You talked about the one time was in the bathroom?
- 16 A Yes.
- 17 Q And do you know how old you were when that happened?
- 18 A Eight.
- 19 Q And do you remember where the other one happened?
- 20 A I kind of like forgot.
- 21 Q What, girl?
- 22 A I kind of forgot.
- 23 Q Do you remember about how old you were?
- 24 A Yes.
- 25 Q How old?

Minor

-DIRECT EXAMINATION

208

1 A The second time was like one month before I turned
2 nine.

3 Q One month before you turned nine was the second time?

4 A Yes.

5 Q So you were eight both times it happened?

6 A Yeah.

7 Q The first time was in the bathroom at Tonya's house.

8 Where were you the second time it happened?

9 A It happened in her bedroom.

10 Q In her bedroom?

11 A Yes.

12 Q And who did it that time?

13 A Man.

14 Q Was anybody else in the room when this happened?

15 A It was like kids there, but they was mostly downstairs.

16 Q So there were kids in the apartment but they were
17 downstairs?

18 A Yes.

19 Q But who was in the room when you were in the bedroom
20 with Man? Who else was there?

21 A I know that Tamara was going to ask me a question, so
22 she came in.

23 Q So she came in after it happened?

24 A Before.

25 Q Before. And what was her name?

Minor

-DIRECT EXAMINATION

209

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

Minor

-DIRECT EXAMINATION

210

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

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

4 THE COURT: Take her out for just a second, please.

5 And, of course, no discussion about her testimony. I know
6 you won't.

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

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

14 MS. SIMMS: Yes, sir. I apologize.

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

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

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

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

Minor

-DIRECT EXAMINATION

211

1 -- you call can have a seat, and let me just kind of offer
2 another explanation to the mother. The reason why I'm so
3 adamant about the conduct, your conduct, or anybody else's
4 conduct for that matter, is that we -- we do not want a
5 verdict based upon emotion. So if we create, either
6 intentionally or otherwise, an emotional situation -- I
7 mean, this is emotional anyway just because of the
8 allegations. But if you do things that we can refrain from
9 then that lessens the emotion, because we want a verdict
10 based upon the facts and evidence and law in this case. We
11 don't want the jury to return a verdict as based solely on
12 emotion. So that's why I'm so adamant about the conduct
13 that must take place in this courtroom. I want a verdict
14 that is fair, just and reasonable to both sides based upon
15 the facts and evidence and law in this case and on nothing
16 else.

17 Madam Bailiff, if you'll bring the child out first,
18 please.

19 MR. SCOTT: Judge, we spoke a little bit. I think she
20 was just on autopilot.

21 THE COURT: I understand. It's not that I don't
22 understand. Okay?

23 MR. SCOTT: Yes, sir.

24 THE COURT: I want you to know that.

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

Minor

-DIRECT EXAMINATION

212

1 THE COURT: Are you ready to get started?

2 THE WITNESS: Yes, sir.

3 THE COURT: Are you going to speak loud?

4 THE WITNESS: Yes.

5 THE COURT: Madam Bailiff, if you'd bring the jury out,
6 please.

7 (Whereupon, the jury entered the courtroom at 3:10
8 p.m.)

9 THE COURT: Let the record reflect the jury is back in.
10 Solicitor, are you ready to proceed with your direct
11 examination?

12 MR. SCOTT: Yes, Your Honor.

13 Q Minor , we talked about the one time in the bathroom
14 in Whitmire, and then we were talking about another time
15 that happened in Tonya's bedroom. Would you tell us about
16 that time, please?

17 A He...

18 Q Let me ask you. Who was in the bedroom?

19 A Man, me, and before Tamara was there, but she left.

20 Q You got a little bit more quiet on me. You were louder
21 before. Tell me, you, Man and who?

22 A Tamara.

23 Q Tamara. And what happened after Tamara left?

24 A He forced me to...

25 Q Minor , I can't hear you, girl. What happened after

Minor

-DIRECT EXAMINATION

213

- 1 Tamara left?
- 2 A He forced me to pull my pants down.
- 3 Q He forced you to pull your pants down?
- 4 A Yes.
- 5 Q Minor , did he touch you that time?
- 6 A He was just looking at me.
- 7 Q Do you know how long he sat there looking at you?
- 8 A It was just a couple of minutes and I just left.
- 9 Q Did he say anything to you?
- 10 A No.
- 11 Q Did you say you were going to tell on him?
- 12 A I was too afraid to.
- 13 Q Did he say anything about telling?
- 14 A The first time, yes.
- 15 Q The first time in the bathroom?
- 16 A Yeah.
- 17 Q What did he say?
- 18 A If I tell -- if -- he would tell on me.
- 19 Q He was going to tell on you?
- 20 A Yes.
- 21 Q For doing what?
- 22 A Like it was a time when I was playing hide and go seek.
- 23 I was wearing, like, the pants that tied to the back and it
- 24 got caught in the blanket when we was playing.
- 25 Q Wait a minute. I heard part of that. You were playing

Minor

-DIRECT EXAMINATION

214

1 hide and go seek with pants that tied in the back?

2 MR. VERNER: Your Honor, I object. Respectfully, I
3 understand she's a little bit hard to understand, but it's
4 improper for the Solicitor to repeat the comments, and it's
5 getting to be almost every time. And I understand she's
6 hard to understand. But my understanding is it's improper
7 for a lawyer to repeat the answer for the witness.

8 THE COURT: Well, maybe in some situations. I'm going
9 to allow it. But make sure, Minor, when Solicitor Scott
10 repeats what he thinks that you said, make sure he says it
11 correctly, and if he doesn't, then you tell him. Okay?

12 THE WITNESS: Yes, sir.

13 THE COURT: At this point in time I'm going to overrule
14 the objection.

15 Q And, Minor, if you talk loud enough I don't have to
16 do it. So talk loud. Tell me what happened with the pants.

17 A They were like pants that can tie to the bed. And then
18 I got down and my pants got caught to the blanket and like
19 got pulled down.

20 Q They fell off of you?

21 A Uh-huh.

22 Q That was an accident that time?

23 A Yes.

24 Q And that's what Man said he was going to tell on you
25 about?

Minor

-DIRECT EXAMINATION

215

- 1 A Yes, and I kind of got afraid.
- 2 Q You got afraid, you say? Afraid that he would tell on
- 3 you?
- 4 A Yeah.
- 5 Q Were there any other times anything happened? Were
- 6 there any other times when he touched you?
- 7 A Yes.
- 8 Q When was that?
- 9 A It was inside.
- 10 Q Inside where?
- 11 A Like inside D.D. ' house.
- 12 Q D.D. and Tonya and Man's house?
- 13 A I think. And once it was like -- we was like --
- 14 everybody was outside. We was just having fun and we was
- 15 listening to music, and then S.B. 's speaker kind of got
- 16 broke and -- and --
- 17 Q Wait a minute. Everybody was outside and S.B. 's
- 18 speaker got broke? Is that what you said?
- 19 A Yeah. It was like it wouldn't work as well as it used
- 20 to do.
- 21 Q What was that last thing you said?
- 22 A It wasn't working like it was before. Like last time
- 23 we was there it was working well, but that time it didn't.
- 24 Q What happened after her speaker broke?
- 25 A She took it to Man to see if he could fix it. And he

Minor

-DIRECT EXAMINATION

216

1 asked if he could like see me because he lied that -

2 Q S.B. 's speaker broke and she took it to Man for him
3 to fix?

4 A Yeah. He was like it was not connected to the
5 Bluetooth.

6 Q He thought what?

7 A It wasn't connected to the Bluetooth or something. And
8 he asked to see it, and that's when he -- it happened again.

9 Q Here's what I heard. S.B. 's speaker broke. She took
10 it to Man to fix. He thought it was something with the
11 Bluetooth.

12 A Yeah. And it was like he called me because he lied and
13 said I was good at technology when I wasn't.

14 Q So he thought you were good at technology, but you're
15 saying you're not?

16 A Yeah. It was just -- I think it was just a distraction
17 so he could do it -- do it to me again.

18 Q You think it was a distraction?

19 A Yes.

20 Q Let me be clear. And like the Judge says, if that's
21 not what you said you've got to repeat -- you've got to

22 correct me. S.B. 's speaker broke. She took it to Man for
23 him to fix.

24 A Yes.

25 Q And he said he felt the problem was with the Bluetooth

Minor

-DIRECT EXAMINATION

217

1 --

2 A Yeah, that was it.

3 Q And so he said Minor needs to come help me because
4 she's good with technology?

5 A Yes.

6 Q And did you go to see him to help look at the radio?

7 A Yeah.

8 Q Where did -- was it S.B. ?

9 A It was S.B. 's speaker, yeah.

10 Q Where did S.B. go after you went to go look at the
11 speaker?

12 A She went back outside.

13 Q She went back outside. So what did Man say when he
14 asked for you to come look at the speaker?

15 A He did like a hand movement that he does mostly all the
16 time.

17 Q I'm going to come over here and see if I can hear you.
18 Say that again.

19 A He did a hand movement that he does it like a lot.

20 Q A hand movement that he does a lot?

21 A Yeah.

22 Q Can you show us what that is?

23 A It was like -- it was like pulling on like his pants
24 like that or --,

25 Q He's pulling on his pants?

Minor

-DIRECT EXAMINATION

218

1 A Yeah, like this (demonstrating). I just got terrified.

2 Q That terrified you when he did that?

3 A Uh-huh.

4 Q Had you seen him do that hand movement before?

5 A Yeah.

6 Q And what did that hand movement mean to you?

7 A I thought he would like pull his pants down or
8 something.

9 Q Had he done that hand movement to you before?

10 A Yes.

11 Q And you're saying you thought that meant for you to,
12 pull your pants down?

13 A Yes. That's why I got so terrified.

14 Q And did you pull your pants down?

15 A No.

16 Q No?

17 A Because after that I kind of like -- I got like -- at
18 that time I was like not that afraid to say no.

19 Q You said no that time?

20 A I was like kind of afraid, but not as much as last
21 time.

22 Q Was that the last time anything happened?

23 A Yes.

24 Q But let me get it straight. He did a hand movement
25 that you thought meant to pull your pants down but you

Minor

-DIRECT EXAMINATION

219

1 didn't do it?

2 A No.

3 Q So we talked about thrêe different times; is that
4 right?

5 A Yes.

6 Q But only one of them he touched you; is that right?

7 A It was more than once.

8 Q What now?

9 A It was more than once.

10 Q Well, we talked about two times where he asked you to
11 pull your pants down.

12 A Yes.

13 Q But the one time in the bathroom when he touched you.

14 Tell us about another time when he touched you?

15 A It only had -- when he pulled my pants down, it only
16 happened once. The touching was like twice.

17 Q Well, you've only told us about one touching time.

18 A Oh, that was like -- the first one was when I pulled my
19 pants down. The second one was like Man touching me
20 inappropriately. Like the third one was like I'm kind of
21 rusty on it.

22 Q You're kind of what?

23 A Kind of rusty on it. Like S.B. , her speaker was
24 broken, so I got confused.

25 Q That's what I just heard. But did he touch you that

Minor

-DIRECT EXAMINATION

220

1 time?

2 A Yes.

3 Q That's what I'm trying to get at. Can we talk about
4 that a little bit?

5 A Yes.

6 Q You're a little bit rusty on that time, you say?

7 A Uh-huh.

8 Q Well, what we just talked about was he did a hand
9 movement. But I thought you said you didn't pull your pants
10 down that time, did you?

11 A It was like touching inappropriately.

12 Q Oh, okay. Was that after he asked you to take your
13 pants down?

14 A Well, it was like second -- first time that was like
15 happening, like the second or third.

16 Q The order it happened isn't so important, Minor, but
17 I just want to make sure we have these different times we
18 talk about. You talked about the one time in the bathroom
19 when we were playing hide and go seek and S.B. went
20 downstairs and he touched on the inside of the heinie.

21 A Yeah.

22 Q And then there was another time in the bedroom and he
23 asked you to pull your pants down?

24 A Yes.

25 Q Did he touch you that time?

Minor

-DIRECT EXAMINATION

221

1 A No.

2 Q No, okay. And then you're saying there was another
3 time when S.B. had a speaker that was broken and she asked
4 Man to fix and Man had you come in there to look at it. And
5 I remember you said he did a hand movement for you to pull
6 your pants down. What else happened?

7 A I think -- So I think I -- I think we went upstairs.
8 Or I get it confused.

9 Q Well, don't -- I only want you to talk about stuff you
10 remember. If you remember it happening. If you don't know,
11 then we don't want to talk about it.

12 A Okay.

13 Q Do you remember him touching you that time?

14 A No.

15 Q No?

16 A Huh-uh.

17 Q So just one time he touched you on the inside of your
18 heinie?

19 A Yeah.

20 Q And that was in the bathroom that time?

21 A Uh-huh.

22 Q Why didn't you tell your mom about this when it
23 happened?

24 A Because I was too afraid to.

25 Q What were you afraid would happen?

Minor

-DIRECT EXAMINATION

222

1 A I was afraid he would spread lies that wasn't even
2 true.

3 Q You were afraid of what?

4 A He was spreading lies that weren't true.

5 Q He would spread lies that weren't true?

6 A Yes.

7 Q Were you afraid you'd get in trouble?

8 A Yes.

9 Q -Are you embarrassed about this?

10 A Kind of right now but not so much.

11 Q Not so much embarrassed?

12 A Huh-uh.

13 Q Okay, good. Has anyone else ever touched you
14 inappropriately?

15 A No.

16 Q After that last time when he touched you on the heinie,
17 in the heinie, what did you tell your mom about going up to
18 Granny Pooh's house?

19 A I told my mom that Man had been --

20 Q I can't hear you. What did you say?

21 A I told my mom that Man has been inappropriately
22 touching me.

23 Q So you said you didn't want to go there anymore?

24 A Huh-uh. Not for a while.

25 Q And what made you finally tell your mom you didn't want

Minor

-DIRECT EXAMINATION

223

1 to go up there anymore?

2 A My little sister. I asked her a few questions.

3 Q You asked your little sister a few questions?

4 A Yeah.

5 Q And that made you decide to tell your mom that you
6 didn't want to go?

7 A I told her about what -- about Man inappropriately
8 touching me.

9 Q You told your sister about it?

10 A No. I asked her like if someone was been doing
11 something to you would you tell mom or would you keep it to
12 yourself and she said I would tell my mom.

13 Q Okay. Is that your little sister?

14 A Yes.

15 Q So you said that if somebody was doing wrong would you
16 tell mom or keep it to yourself? That was your question to
17 her?

18 A Yes.

19 Q And then after she told you what she would do you
20 decided to tell your mother?

21 A Yes.

22 Q How did it feel to finally tell your mom that?

23 A I felt comfortable that I would be able to trust her
24 with everything.

25 Q You felt confident you could trust her?

Minor

-DIRECT EXAMINATION

224

1 A Yes.

2 Q Then do you remember speaking with the policeman?

3 A Yes.

4 Q And do you remember him showing you some pictures of
5 people?

6 A Yeah.

7 Q Let me show you -- this is -- we call this State's No.

8 2. But do you remember seeing this?

9 MR. SCOTT:--Walter, could you get the lineup?

10 Q Do you remember seeing that?

11 A Yes.

12 Q Do you remember seeing that?

13 A Yes.

14 Q And do you remember picking somebody out of that --
15 those pictures? Somebody you recognize?

16 A Yes.

17 Q And how did you show the officer who you were picking?

18 A I checked the one that I --

19 Q You put a checkmark by it?

20 A Yes.

21 Q And who was that person you put a checkmark by?

22 A Man.

23 Q Man? Then do you remember going to speak to a lady at
24 a place called the Dickerson Center and she made a DVD of
25 your all's talk?

Minor

-DIRECT EXAMINATION

225

- 1 A Yes.
- 2 Q And you remember this silly picture?
- 3 A Yeah.
- 4 Q No. 3. State's No. 3. And who put that circle right
5 there?
- 6 A Me.
- 7 Q And what do you call that part that you circled?
- 8 A My heinie.
- 9 Q And why did you circle that part?
- 10 A Because Ms. Trina told me which part where he touched
11 me, so I circled it.
- 12 Q Okay. You know, there's really no bad words in this
13 courtroom right now, so don't be embarrassed about that. So
14 that's a heinie is what you call that?
- 15 A Yes.
- 16 Q Do you have another name for the front part? Just
17 something different?
- 18 A Yeah.
- 19 Q Was that part ever touched?
- 20 A Outside my clothes, uh-huh.
- 21 Q What?
- 22 A Outside my clothes.
- 23 Q Outside of your clothes?
- 24 A Uh-huh.
- 25 Q But not under the clothes the front part wasn't

Minor

-DIRECT EXAMINATION

226

1 touched?

2 A No.

3 Q Just the back heinie?

4 A Uh-huh.

5 Q There was a time -- there was a story about getting hit
6 with Man's knee.

7 A Yeah.

8 Q What as that? Was that just you all playing rough?

9 A Yeah.

10 Q Tell us about that. That was -- we had some questions
11 about that on the video. What was that all about?

12 A The video? Oh, we were just talking about the people
13 that I knew and people -- She was like trying to make me
14 feel comfortable and I would tell her.

15 Q Are you talking about during the interview? But I'm
16 asking about do you remember a time -- I think maybe you
17 were playing rough with Man and his knee hit you somewhere.

18 A Yeah.

19 Q What was that? Tell us that story?

20 A So Sunshine, me and Tamara, we was just playing around
21 and suddenly we -- I was kind of running around and
22 accidentally got hit with Man's knee and I start feeling a
23 pain near my private spot.

24 Q You, Sunshine, and Tamara were playing running around,
25 and what happened next?

Minor

-DIRECT EXAMINATION

227

1 A It was just an accident and I got kind of hit. Got hit
2 with his knee.

3 Q On your private?

4 A Yeah.

5 Q Your front private or your back private?

6 A Front private.

7 Q Tell me how his knee ended up hitting your front
8 private.

9 A His leg was like on the thing and I accidentally ran
10 into it and I got hit in the front private.

11 Q His leg was where?

12 A Like he was standing with his leg on like and I kind of
13 got hit.

14 Q Was that kind of an accident type thing on that one?

15 A Yeah.

16 Q Was it something different? Tell me what happened.

17 You all were playing and he had his leg up and his -- your
18 private hit his knee?

19 MR. VERNER: I don't mean to interrupt, but the picture
20 of the naked child has been up now for the last 15 minutes.
21 I mean, if he's going to go back to it. But I don't know
22 that it needs to be up until cross.

23 THE COURT: Mr. Bentley is taking it down.

24 Q Minor, the knee thing. Tell me how that happened
25 again? Man's knee hit your private. How did that happen?

Minor

-DIRECT EXAMINATION

228

1 A It was like me and Tamara and Sunshine was just doing
2 gymnastics around and I accidentally got hit with his knee. I
3 kind of think it wasn't an accident, because I know -- I
4 think he knew I was going to run past him.

5 Q Okay. You don't think it was an accident, but it was
6 his knee that hit his front private, but it was on the
7 outside of your clothes?

8 A Yes.

9 Q How did that feel?

10 A Really painful.

11 Q Did he say anything to you about that?

12 A No.

13 Q Did you miss going up to your grandmother's house?

14 A Yes.

15 Q Did you miss going to see Tonya and D.D. ?

16 A Yes.

17 Q Did you get in a fight with any -- before -- before the
18 touching and all that happened did you used to have fun with
19 Man?

20 A Yes.

21 Q Minor , I want you to do one more thing for me and I'm
22 going to sit down. Will you point to Man for me?

23 (Whereupon, witness identifies Defendant.)

24 MR. SCOTT: Thank you, Minor .

25 THE COURT: Let the record reflect that she pointed in

Minor

-CROSS EXAMINATION

229

1 the direction of the Defendant and Mr. Verner.

2 Mr. Verner, do you have any cross-examination?

3 MR. VERNER: May it please the Court, Judge.

4 CROSS-EXAMINATION

5 BY MR. VERNER:

6 Q Hello, Minor .

7 A Hello.

8 Q Is it Minor or Minor ?

9 A Minor

10 Q Minor , if you don't mind, I'm going to ask you

11 questions from over here so anybody can hear you. Okay?

12 A Okay.

13 Q When is your birthday?

14 A , .

15 Q Good. Now, do you remember going to a party at HiWire
16 last year?

17 A Yes.

18 Q Who's birthday was that?

19 A I think it was when my little sister's or -- I kind of
20 get confused. I think it's my little sister's.

21 Q Your little sister's?

22 A Yes.

23 Q Now, what is your little sister's name again?

24 A S.S. .

25 Q Was Man at that party?

Minor

-CROSS EXAMINATION

230

1 A Yes.

2 Q And that was last year, wasn't it? When is your
3 sister's -- could it have been around Valentine's day of
4 last year?

5 A Yes.

6 Q And did you all play?

7 A Yeah. I was like playing mostly with D.D. and

8 S.B.

9 Q And who took you to that party?

10 A My mom.

11 Q Now, I did have a question. You indicated for Mr.
12 Scott that you had some incident where the bed had pulled
13 down your pants.

14 A Yes.

15 Q Do you recall getting in trouble with D.D. -- for
16 behaving improperly with D.D. ?

17 A No.

18 Q You didn't get in trouble?

19 A No.

20 Q Mr. Washington, Man, didn't threaten to tell your
21 mother about improperly playing with D.D. ?

22 A I think that never happened.

23 Q When you were playing hide and seek you said at some
24 point he took you into the bathroom?

25 A Yes.

Minor

-CROSS EXAMINATION

231

1 Q Who was -- were the other kids playing with you,

2 Minor ?

3 A Yes. S.B. was it and the rest of us were hiding.

4 Q The rest of you. Who else was there?

5 A D.D. , S.B. , my little sister and I think that's
6 all.

7 Q Typically who were the kids that would go over there
8 and play at Ms. Tonya and Man's home?

9 A Mostly S.B. and me and my little sister.

10 Q And your little sister?

11 A Yes.

12 Q And D.D. ?

13 A Yeah.

14 Q Were there any other kids in the neighborhood who would
15 play?

16 A Sometimes McKenzie would be there.

17 Q What about the little girl we met earlier today?

18 A That's S.B. .

19 Q S.B. . She would sometimes be other there, too,
20 wouldn't she?

21 A Yeah.

22 Q And these kids would have -- would their moms come over
23 and play with them, too?

24 A Mostly Tonya would be outside on the porch talking to
25 my mom and my grandma.

Minor

-CROSS EXAMINATION

232

1 Q This apartment had a front porch or a back porch on it,
2 too, didn't it?

3 A It has like a back -- like it was like in the front.

4 Q In the front?

5 A Uh-huh.

6 Q Was it like concrete on the ground or was it kind of
7 built up in --

8 A It had concrete on the sidewalk, but it was brick.

9 Q And the mother's would sit out there sometimes and
10 talk?

11 A Yes.

12 Q Did you know Ms. Josephine next door?

13 A Yes.

14 Q She's your great aunt?

15 A Yes.

16 Q Would she be over there sometimes, too?

17 A Mostly I kind of don't remember.

18 Q You don't remember whether she was or don't?

19 A Uh-huh.

20 Q I think for Mr. Scott you said one time you touched
21 inappropriately. He took you into the bathroom while the
22 kids were playing hide and seek, right?

23 A Yes.

24 Q Were you all hiding or were you all taking a break from
25 the game or was somebody --

Minor

-CROSS EXAMINATION

233

1 A I was just trying to find another hiding spot.

2 Q What's the incident about getting hit? You got hit by
3 Mr. Washington with his knee in your privates?

4 A It was like straight-out. I was just about to do a
5 cartwheel and I accident ran into him.

6 Q I understand that. Was this inside the home or was
7 this out in the playground, or where was --

8 A Inside the home.

9 Q Well, where were you doing the cartwheel?

10 A In Tonya's room.

11 Q In Ms. Tonya's room?

12 A Yes.

13 Q Were there other kids there while you were --

14 A Yes.

15 Q Who else was with you?

16 A Sunshine and Tamara.

17 Q But it sounds to me like you were saying that he did
18 that to you kind of intentionally. Is that how you took it?

19 A Yeah, because I was like running and suddenly he just
20 put his leg over me and I got hit.

21 Q Was he standing, walking, or sitting, or do you
22 remember?

23 A He was standing.

24 Q And did you feel like he had touched you
25 inappropriately at that time?

Minor

-CROSS EXAMINATION

234

1 A Kind of, yes. It felt like a great pain in my front
2 private.

3 Q Did you get in trouble with your sister hiding before
4 going to visit your dad?

5 A My real dad or my step-dad?

6 Q Your real dad.

7 A Got in trouble?

8 Q Did you get in trouble from times for hiding in the
9 closet with your sister not wanting to go see him?

10 A I never knew that. I was just hiding in there because
11 we were playing hide and go seek.

12 Q Did somebody get angry because you all were hiding?

13 A Yeah.

14 Q But you were just playing a game at that point though?

15 A Yes.

16 Q Who was hiding with you?

17 A My little sister and I.

18 Q Back at Ms. Tonya's house who were some of the adults
19 who would have been there?

20 A Man, and sometimes Tonya would walk in and out.

21 Q Tonya would walk in and out?

22 A Yeah, like go in the kitchen, going back outside.

23 Q Were there some other moms that you might remember?

24 A I think that's all.

25 Q You don't remember any other moms when you were ever

Minor

-CROSS EXAMINATION-

235

1 playing over there? You don't remember S.B. 's mom?

2 A Yeah.

3 Q So she would be over there sometimes, too?

4 A I think she would be outside.

5 Q And the door to the outside, was there like a regular
6 door that opened and closed, or was there like a sliding
7 glass door?

8 A It was like an open and close door with a screen in the
9 front.

10 Q With a screen door. Hold on one second, Minor

11 Minor , can you tell me who you spoke to prior to
12 testifying today? Before you got in that chair right there
13 have you spoken to other people about testifying today?

14 A Testifying?

15 THE COURT: You may want to explain testifying.

16 Q You heard the Judge tell you -- talk about testifying,
17 or that you would testify? That you would tell the truth
18 about what happened from the -- where you are?

19 A Uh-huh.

20 Q Okay. Sometimes people call that testifying. It's
21 just that you tell people what happened. Did anybody go
22 over your testimony with you today, what you're telling us?
23 Did you have a chance to practice it before you came here?

24 A Yes.

25 Q Today or yesterday?

Minor

-CROSS EXAMINATION

236

1 A Yesterday.

2 Q Yesterday? Did anybody suggest to you the word
3 appropriately or inappropriately? Where did you learn that
4 word from?

5 A I don't know what you mean by that.

6 Q I thought it was a very big word you used,
7 inappropriately or appropriately. Is that a word you
8 already knew or just did somebody suggest that word to you?

9 A It's a word that I already knew. We learned it in
10 school.

11 Q They teach you at school about good touching, I guess,
12 or bad -- appropriate touching or inappropriate touching?

13 A Yeah, in DARE.

14 Q In DARE?

15 A Yeah, it's like to resist drugs and violence.

16 Q Good. So at school sometimes they talk to you about
17 that you're able to go talk to an adult when inappropriate
18 things happen, right?

19 A Yes.

20 Q Do you recall when you spoke to your dad about what
21 happen?

22 A Which one?

23 Q Your real dad.

24 A I was in the car and my mom told my real dad.

25 Q Do you remember, was that shortly after you told your

Minor

-CROSS EXAMINATION

237

1 mom or was it a little while later?

2 A It was a little while later.

3 Q When you were talking about what you were going to say
4 today who was going over that with you; your mom, or was it
5 somebody that you -- one of the lawyers or prosecutors?

6 A You mean like?

7 Q When somebody asked you about what you would say today,
8 who went over that with you? Who helped you?

9 A My therapy teacher.

10 Q No. I'm talking about the -- you said you had
11 practiced last night about what you were going to say today.

12 A Oh, no. I just thought you meant like the things Mr.
13 Scott told me to be brave, tell the truth and --

14 Q Okay. And was that yesterday then?

15 A Yeah.

16 Q So Mr. Scott talked to you a little while yesterday
17 before you testified and told you to be brave and that he
18 was going to ask you questions?

19 A I think that was a little bit after we came in the
20 court. That was like a little bit after, I think.

21 Q Was that yesterday or was that earlier than yesterday?

22 A It was like yesterday.

23 Q Has your mom talked to you about this -- what's going
24 on today? Have you discussed this with your mother before?

25 A My mom always says just tell the truth and be brave.

Minor

-REDIRECT EXAMINATION

238

1 Q Good. But prior to today had anybody told you what kin
2 of questions they were going to ask you or gone over your
3 story with you?

4 A Yes.

5 Q I'm just asking who. I just wanted to know who you had
6 spoken to about this before. Had you spoken to Mr. Scott
7 before?

8 A Yes.

9 Q Now, Mr. Scott's got another lawyer helping him. The
10 gentlemen with the beard in the middle. Have you gone over
11 it with him before?

12 A I was talking about it.

13 Q So you had a chance to kind of speak to him before you
14 spoke to him today? Today is not the first day you ever met
15 him, is it?

16 A No.

17 MR. VERNER: Thank you, Minor. I think if Mr. Scott
18 has anymore questions.

19 THE COURT: Redirect..

20 REDIRECT EXAMINATION

21 BY MR. SCOTT:

22 Q Your Honor, what kind of grades do you make?

23 A Usually I get As and Bs.

24 Q And you go to a Magnet School?

25 A Yes.

Minor

-REDIRECT EXAMINATION

239

- 1 Q So you know the word appropriate, don't you?
- 2 A Yes.
- 3 Q They talk about that in DARE? DARE is about not doing
- 4 drugs, right?
- 5 A And resisting violence.
- 6 Q So they talk about what's appropriate and what's not
- 7 appropriate in DARE?
- 8 A Yes.
- 9 Q And that lawyer was just asking you about practicing
- 10 and everything?
- 11 A Yes.
- 12 Q You sat right in that seat yesterday, didn't you?
- 13 A Yes.
- 14 Q And he was in here, too, wasn't he?
- 15 A Yes.
- 16 Q And the Judge was there?
- 17 A Yes.
- 18 Q And we were all in here. And so, you've been in here
- 19 before. And you spoke with me, right? Haven't you spoken
- 20 with me before?
- 21 A Yes.
- 22 Q Did I get you some homework last night?
- 23 A Yes.
- 24 Q What was my homework?
- 25 A To be brave, always tell the truth and work on my

Minor

-REDIRECT EXAMINATION

240

1 voice.

2 Q Okay. Have you said anything different today than what
3 you've said on that video that day?

4 A It was a little bit about the speaker. That was a
5 little bit that I could tell.

6 Q You tell them the speaker part the first time today?

7 A Yes.

8 Q But you understand the importance of telling the truth
9 here today, right?

10 A Yes.

11 Q And nobody told you what to say here today, did they?

12 A No.

13 MR. SCOTT: Thank you, Minor.

14 THE COURT: Recross?

15 MR. VERNER: No, Your Honor.

16 THE COURT: Thank you, Minor. You can step down.

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

19 MR. SCOTT: Your Honor, the State rests.

20 THE COURT: Mr. Foreman, ladies and gentlemen of the
21 jury, the State has indicated that they are resting their
22 case and this is a good time to take another break.

23 Let me go ahead and just explain one thing to you, that
24 -- well, I'll explain that to you in a little bit. What I
25 want you to do is just go back to the jury room. You can

1 take you another about 10 minute break or so, and then we'll
2 proceed forward. I remind you once again, no discussions
3 among yourselves about this case. And I'll bring you back
4 out shortly.

5 (Whereupon, the jury exited the courtroom at 3:53 p.m.)

6 THE COURT: Mr. Verner, we had a conference in chambers
7 and you had indicated that you were thinking about putting
8 up a case. Is that still your plan?

9 MR. VERNER: It is, Your Honor. And my inclination now
10 is that the Defendant, Mr. Washington, will likely testify.
11 We've become kind of accustomed to the Court going over the
12 Fifth Amendment rights --

13 THE COURT: Right, and I'm going to do that. And I'm
14 just -- because as I had indicated in chambers, it was my
15 desire at least to get all the testimony in today and then
16 we'll argue and charge -- because I know you've got some
17 appropriate motions to make. But we get all the testimony
18 in and then argue and charge tomorrow. So what I'm going to
19 do is I'm going to bring the jury back out and give them the
20 opportunity if they need to make any phone calls, to make
21 whatever arrangements, because they are going to be staying
22 a little bit longer than normally. And then we could --
23 I'll hear your motion or motions, certainly advise Mr.
24 Washington as far as his rights to testify or not testify,
25 and then we can go forward.

1 MR. VERNER: Yes, and I would -- is now my opportunity
2 to move for a directed verdict or probably when the jury
3 comes back in.

4 THE COURT: You can go ahead and put your motion on the
5 record now before we bring the jury back out. That will be
6 fine.

7 MR. VERNER: Yes, sir. At this point I would move for
8 a directed verdict that the State has not produced evidence
9 to support the charge. The child, at best, said it felt
10 hard, or butt, but there was no -- other than the -- just
11 what I consider fairly vague, you know, it felt like maybe
12 it was in my butt or it was hard, I would argue does not
13 reach the matter of law and we would ask for a verdict.

14 THE COURT: I understand. Anything on the record in
15 opposition, Solicitor?

16 MR. SCOTT: Yes. Just in a light move favorable to the
17 state, obviously under the age of 11 the sexual battery law
18 says intrusion however slight and she was very clear on what
19 the inside of her heinie meant as opposed to the outside.
20 And again, she talked about the pressure and talked about
21 the same kind of feeling as when she, I guess, would wipe.
22 And I think the evidence taken in a light most favorable to
23 the State there was evidence of intrusion.

24 THE COURT: And you guys very well know, what I'm
25 concerned about is the existence of any evidence. I'm not

1 concerned with the weight. And I do find that there is the
2 existence of evidence to send this case to the jury.

3 Let me -- we'll bring the jury out and explain to them
4 that we're going to go a little later. Give them an
5 opportunity to make whatever phone calls they need to make.
6 And we can proceed forward. Madam Bailiff.

7 THE COURT: Sometimes I don't give enough time for the
8 break and then other times I give too much, right? While
9 we're waiting, let me see the lawyers for a sec.

10 (Whereupon, a sidebar was held.)

11 (Whereupon, the jury entered the courtroom at 3:59
12 p.m.)

13 THE COURT: Ladies and gentlemen, what I want to do is
14 finish all of the testimony today. The Defense is going to
15 put up a case and have several witnesses testify, and I want
16 to accomplish that today. So that would leave us for
17 tomorrow the lawyers closing arguments and the Court's
18 charge. But in order to accomplish that, that's going to
19 mean that we're going to probably be here probably a couple
20 hours more. What I want to do is give you an opportunity if
21 any of you need to make a call home to make whatever
22 arrangements you need to make. I don't know if you do, but
23 if you need to let family members know that you're going to
24 be here potentially a couple more hours, then I want to give
25 you that opportunity to do that. I would imagine that your

1 cell phones are in your cars, or do you have your cell
2 phones with you? Let me ask you, raise your hand if you
3 need to make a call.

4 (Whereupon, jury members raise hands.)

5 THE COURT: There are two. Then what I'm going to do
6 is ask the two to go with Clerk Bowers down to her office
7 and you can use her phone to make the call. The rest of
8 you, if you'll just go back to your jury room. But I think
9 -- I think this is going to be better by just getting all
10 the testimony in today and then just leaving the closing and
11 court charge tomorrow. So appreciate your patience, your
12 understanding. And just go back to the jury room. The two
13 of you all follow Clerk Bowers.

14 (Whereupon, the jury exited the courtroom at 4:03 p.m.)

15 THE COURT: We're just going to be in recess and we
16 won't do anything else until we get all the jury back in.

17 (Whereupon, a recess was held from 4:03-4:21)

18 THE COURT: Mr. Washington, if you'll please stand and
19 let me give you -- advise you of your rights.

20 MR. VERNER: Step on up.

21 THE COURT: You can stay back there. That'll be fine.
22 Madam Clerk, would you swear Mr. Washington in, please.

23 CARROL WASHINGTON, having been
24 first duly sworn, testified as follows:

25 THE COURT: Mr. Washington, I'm going to at this time

1 explain to you certain of your rights, and I'm sure Mr.
2 Verner has gone over these, but I need to. Okay? If you do
3 not understand anything that I say, please let me know. If
4 you want me to explain anything in more detail, please let
5 me know that as well. Do you understand, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: We've now reached the stage of the trial
8 where you may present your defense. You have the right to
9 claim the protections given to you by the Fifth Amendment to
10 the Constitution of the United States. This amendment
11 states in part that no person shall be compelled in any
12 criminal case to be a witness against themselves. This means
13 that you cannot be required to testify in this case. You
14 certainly have the right to testify on your own behalf.
15 However, no one, including myself, can make you testify.
16 This is a personal right and no one can waive this right
17 except you. If you decide to testify you'll be subject to
18 the same rules that govern other witnesses and you may be
19 examined and cross-examined on any relevant issue in this
20 case. In addition, if you have any convictions involving
21 dishonesty or false statement, or for crimes punishable by
22 imprisonment for more than one year and this court
23 determines that the probative value of admitting that
24 evidence outweighs the prejudicial effect to you, the
25 Solicitor would be able to introduce your record, if you

1 have one, to attack your credibility. If you decide to
2 testify, this decision on your part much be freely,
3 voluntarily and intelligently made with the knowledge of the
4 protections given to you by the Fifth Amendment and the
5 consequences of your decision to testify. However, if you
6 decide not to testify, I will instruct the jurors that they
7 cannot give the fact that you did not testify any
8 consideration whatsoever and that there is to be absolutely
9 no prejudice to you because you did not testify. It is left
10 entirely up to you whether or not you testify. You may talk
11 with your lawyer, which I'm sure you already have. Your
12 family, friends, anyone. But the final decision will be
13 left entirely up to you. Have you understood what I've
14 explained to you, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any questions about what I've
17 explained to you?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you need any more time to talk with your
20 lawyer, your family or friends about this decision about
21 testifying?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you made a decision whether or not
24 you'll testify?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And what is that decision, sir?

2 THE DEFENDANT: I'll testify.

3 THE COURT: You're going to testify?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Was that decision made freely, voluntarily
6 and intelligently?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And it's made with the understanding of the
9 protections afforded to you by the Fifth Amendment to the
10 Constitution?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Thank you very much, sir. You can go back
13 to your table.

14 (Whereupon, the Court was in brief recess.)

15 We're going to start the Defense case. And I don't
16 know if I made a finding on the record or not, but I do find
17 that Mr. Washington has freely, voluntarily and
18 intelligently, with assistance from counsel, as elected to
19 testify with full knowledge of the protection and guarantees
20 afforded under the Fifth Amendment to the constitution.

21 Madam Bailiff, if you'll bring the jury back out,
22 please.

23 (Whereupon, the jury entered the courtroom at 4:21
24 p.m.)

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

CANDICE HOPKINS-DIRECT EXAMINATION

248

1 Ladies and gentlemen, one comment I need to make concerning
2 cell phones. I understand that some of you may have cell
3 phones on you, and tomorrow when you come in be sure to
4 leave them in the car. The reason I say that is sometimes
5 we think we've cut the cell phone off and we haven't, and if
6 it were to go off while we're in the trial then it's very
7 disruptive. Even if you put it on vibration sometimes some
8 phones the vibration makes a racket. So I'm just requesting
9 that all of you just leave your cell phone in the car before
10 coming into the courthouse.

11 Mr. Verner, are you ready to proceed sir?

12 MR. VERNER: We are, Your Honor.

13 THE COURT: Okay. You may do it.

14 MR. VERNER: Your Honor, I call Candice Hopkins.

15 CANDICE HOPKINS, having first been
16 duly sworn, testified as follows:

17 MADAM CLERK: Please state your name for the record.

18 THE WITNESS: Candice Hopkins.

19 DIRECT EXAMINATION

20 BY MR. VERNER:

21 Q Ms. Hopkins, if you don't mind, I'm going to ask you
22 questions from over here. Okay?

23 A Okay.

24 Q Just so that -- just to make sure that I can hear your
25 answers, and that way everybody can hear your answers.

CANDICE HOPKINS-DIRECT EXAMINATION

249

- 1 A Okay.
- 2 Q Ms. Hopkins, I apologize, but may I ask you how old you
- 3 are?
- 4 A Thirty-four.
- 5 Q Thirty-four?
- 6 A Yes.
- 7 Q And where do you live?
- 8 A I live in Whitmire.
- 9 Q Whitmire?
- 10 A Yes.
- 11 Q How long have you been in the Whitmire community?
- 12 A My whole life.
- 13 Q Did you go to Whitmire High School?
- 14 A Yes.
- 15 Q Where do you live in Whitmire?
- 16 A I live off of -- it's called .
- 17 Q Do you live -- are you familiar with this apartment
- 18 complex?
- 19 A Yes. I used to stay there and my grandfather used to
- 20 live there.
- 21 Q So you're familiar with it?
- 22 A Yes.
- 23 Q That's not where you live?
- 24 A No, not now.
- 25 Q Not anymore?

CANDICE HOPKINS-DIRECT EXAMINATION

250

1 A No, sir.

2 Q About how far away do you live from that --

3 A Maybe a mile, not a mile.

4 Q Is it an apartment complex or is it a neighborhood?

5 How would you characterize it?

6 A It's an apartment complex.

7 Q Do you know how many roughly apartments there are in
8 that complex?

9 A Maybe five buildings, but each building has like maybe
10 two or three sections to it.

11 THE COURT: Speak up a little bit, ma'am.

12 A Maybe five buildings, but each building has separate --
13 like different sections to it.

14 Q I believe you said there could be two or three
15 different families in each?

16 A Yes.

17 Q Now, the people who lived there, are they typically
18 retirement age older people, or are there younger people, or
19 is it a mix, or how --

20 A It's a variety, yes.

21 Q Are there plenty of children there?

22 A Yeah, there are a couple.

23 Q There are some children in the area. Do you know
24 Carrol Washington?

25 A Yes, I do.

CANDICE HOPKINS-DIRECT EXAMINATION

251

- 1 Q How long have you known Carrol Washington?
- 2 A Roughly, I would say, three or four years. I'm not
- 3 really sure. I'm not good with time. But ever since he's
- 4 been going with Tonya.
- 5 Q You said up to four years?
- 6 A Yes.
- 7 Q Do you know the child Minor ?
- 8 A Yes.
- 9 Q And how do you know Minor ?
- 10 A She's my little cousin.
- 11 Q You're related to her by blood?
- 12 A Yes.
- 13 Q So on her father's side or on her mother?
- 14 A Her mother.
- 15 Q Are you first cousins or more distant than that?
- 16 A No, probably more distant than that.
- 17 Q How long have you known the mother?
- 18 A My whole life.
- 19 Q Are they also from the Whitmire area originally?
- 20 A Yes. Yes.
- 21 Q Now, do you have children yourself, Ms. Hopkins?
- 22 A Yes, I have two.
- 23 Q Boys or girls?
- 24 A Two girls.
- 25 Q How old are they?

CANDICE HOPKINS-DIRECT EXAMINATION

252

1 A My oldest is 15 and my baby is seven.

2 Q And they live with you?

3 A Yes.

4 Q Are you familiar with Carrol Washington's apartment
5 that he lived in with Ms. Tonya Dawkins?

6 A Yes.

7 Q Did you have occasion to visit with them?

8 A Yes. My children would be over there just about every
9 day. My small little child, Ms. Josephine, she used to keep
10 her every day.

11 Q And Josephine is the great aunt of Minor ?

12 A Yes.

13 Q And where does she live in relation to --

14 A Next door to Tonya.

15 Q Next door like in a duplex side-by-side or kind of next
16 door?

17 A No, next door in the same duplex.

18 Q Same building --

19 A Yes.

20 Q -- just next door over in the same building?

21 A Yes.

22 Q Does anybody live with Ms. Josephine?

23 A She used to have a boyfriend that say with her but he
24 doesn't anymore.

25 Q Roughly how old would you estimate Ms. Josephine is?

CANDICE HOPKINS-DIRECT EXAMINATION

253

1 Is she old old or is she kind of --

2 A , No. Maybe, I would say, 60.

3 Q Sixty?

4 A Maybe.

5 Q So she's not quite retirement age?

6 A No.

7 Q Do you know if she works?

8 A She doesn't work. She's retired.

9 Q And you say she keeps her child or children?

10 A Yeah, she used to keep her. She doesn't anymore. But
11 my baby still goes over there if not every day, every other
12 day.

13 Q Still on a good relationship with her?

14 A Uh-huh.

15 Q And how often would -- would you go visit either Carrol
16 Washington or Ms. Tonya Dawkins at their apartment?

17 A I would drop my kids off before I stay -- before I
18 moved away. My kids would be over there every day. But
19 after I moved away I would drop them off all the time.

20 Q Well, you're now on , right, in Whitmire?

21 A Yes.

22 Q So when you say you moved away, is that when you moved
23 out of that apartment complex?

24 A Yes.

25 Q So within the past few years you lived in the apartment

CANDICE HOPKINS-DIRECT EXAMINATION

254

1 complex?

2 A It's been a while.

3 Q Who would you drop your kids off with?

4 A Well, my baby would be with Ms. Josephine and Tonya
5 sometimes, but my oldest daughter, she used to be over at
6 Tonya's all the time.

7 Q Were you familiar with whether the children would play
8 in Ms. Tonya and Mr. Washington's apartment?

9 A Oh, yes. That's where all the kids would like
10 gravitate to.

11 Q Do you know why that was?

12 A I guess it was a fun house.

13 Q Do you remember what the layout is of those apartments?
14 If I walked in, what's the room I would go into?

15 A It depends on which door you walk through.

16 Q There's a front door and a back door?

17 A Yes, a front door and a back door. Where the ladies
18 would sit on the front porch, when you walk through the door
19 it would be the livingroom, and to your left would be the
20 steps to go upstairs. But if you didn't take the steps, to
21 go straight you would walk into the kitchen and out the back
22 door.

23 Q Are there any bedrooms that you're familiar with
24 downstairs?

25 A No, they're not downstairs.

CANDICE HOPKINS-DIRECT EXAMINATION

255

1 Q Is there like a bathroom or a half bath downstairs?

2 A It's a half bath.

3 Q And then what would be upstairs?

4 A Upstairs would be three bedrooms and a full bath.

5 Q Was that a fairly typical layout of these units?

6 A They have two bedroom and three bedroom apartment.

7 Tonya stay in a three bedroom.

8 Q But would the other three bedroom units be pretty much
9 laid out the same way?

10 A Yes.

11 Q And you had been in that home before?

12 A Yes.

13 Q How often do you think that you would go and visit
14 them?

15 A I mean, I would drive my kids over just about every
16 day. I mean, it's very seldom that I would go in. But they
17 would get dropped off all the time.

18 Q Did you feel like you were dropping your kids off at a
19 safe location?

20 A Oh, yes. I mean, they -- all of them good -- they're
21 good with the kids over there.

22 Q And you said -- I think you said something about there
23 would be ladies on the front porch.

24 A Yes.

25 Q Who would typically be out on --

CANDICE HOPKINS-DIRECT EXAMINATION

256

1 A Ms. Josephine, Ms. Ethyl, Tonya. Those three. Those
2 are like the main three.

3 Q Would there sometimes be other mothers coming down,
4 too?

5 A No, not really. No. Not that I can think of.

6 Q Now, what was the name of your child who would go over
7 there?

8 A McKenzie.

9 Q We heard about the girls talking about McKenzie, that
10 would be your daughter?

11 A Yes.

12 Q And she's about the same age as the other girls?

13 A She's seven.

14 Q She's seven now?

15 A Yes.

16 Q But you had your 15-year-old, too --

17 A Yes.

18 Q -- at Ms. Josephine's?

19 A Yes. Well, she would be at -- my 15-year-old would be
20 at Tonya's. And I have custody of my niece and she would be
21 over there also.

22 Q So you have a 15-year-old daughter. What was her name?

23 A My daughter's name is Arielle. My niece name is Amaya.

24 Q So you also have Arielle, your daughter?

25 A Uh-huh.

CANDICE HOPKINS-DIRECT EXAMINATION

257

1 Q And she's 15 now?

2 A Yes.

3 Q So she -- in the last -- in 2012 she would have been
4 around 12?

5 A Yes.

6 Q And Amaya is your niece?

7 A Yes.

8 Q And she lives with you, too?

9 A Yes.

10 Q And how old is Amaya?

11 A She's 14.

12 Q Is she one of the girls who also --

13 A She used to be over -- uh-huh.

14 Q Do you remember some of the other children that you
15 would frequently see over there?

16 A We have Tamara. She stays there. Tamara and her
17 little sister Kaitlyn. And this little fellow named
18 Cameron. And we have a -- it's a little -- it's a fellow
19 that stays over there. He's kind of special needs. His
20 name is James, if I'm not mistaken.

21 Q But he would sometimes -- the boys you remember being
22 there were Cameron, James and D.D. ?

23 A Uh-huh.

24 Q And is it possible on different days there could be
25 more kids and on some days --

CANDICE HOPKINS-DIRECT EXAMINATION

258

1 A Yes.

2 Q -- there would be fewer?

3 A Yes. Yes.

4 Q Do you recall whether this was primarily during the
5 weekdays or weekends or are we talking about during the
6 summer months?

7 A Well, my kids would be over there weekdays and
8 weekends.

9 Q -- Do you recall if the last few years Ms. Tonya was
10 working outside the home?

11 A Not often. Not often.

12 Q So how long -- you've been doing that for about four
13 years; is that what you said?

14 A Doing what?

15 Q That you've been dropping your kids over there?

16 A I mean, I've been dropping them off ever since -- like
17 I said, I used to live there. And even after I moved I was
18 still dropping them off over there. But they been around
19 Tonya all their life. She like raised my oldest daughter.

20 Q And you're aware of the allegation we're in court for?

21 A Yes.

22 Q And do you consider that a serious allegation?

23 A Yes. Yes, I do.

24 Q And you've got three girls?

25 A Yes. I have three girls and I questioned them.

CANDICE HOPKINS-DIRECT EXAMINATION

259

1 Q And did you ever see any indication that your girls had
2 been mistreated?

3 A No.

4 Q About any children who were there?

5 A No.

6 Q Do you know what Mr. Washington's reputation for good
7 character is? Are you familiar with it?

8 A Yes. Everybody over there, you know, I thought he -- I
9 think he's a good person, and I know other people in the
10 complex, you know, they think he's a good person, I mean.

11 Q Does he generally got a reputation for good character?

12 A Uh-huh. Playing with the kids, you know. I mean, most
13 -- you know not a lot of people that do that. And, you
14 know, some people have their bad days and good days. Like
15 they don't play with kids all the time. But he never had a
16 -- you day like that. He always loved playing with kids.

17 Q Have you seen him playing with children before?

18 A Yes.

19 Q Does he seem like he's playing with the appropriately?

20 A Yes.

21 Q Is he kind of a hands-on? Does he like playing, you
22 know, chase games with them, or is it more like --

23 A No.

24 Q -- he's playing video games?

25 A Yeah. I mean, like they'd be out in the field playing

CANDICE HOPKINS-DIRECT EXAMINATION

260

1 softball or something like that.

2 Q And he would go out with them and play?

3 A Yeah.

4 Q And you are family --

5 A Yes.

6 Q -- of the Simms child -- of the child?

7 A Yes.

8 Q On the mother's side?

9 A Yes.

10 Q I have to ask you, are you familiar with the reputation
11 of Ms. Simms for honesty?

12 A Yes, I am.

13 Q What is it?

14 A She's not known for her honesty. I mean, she could
15 fabricate a story.

16 Q Is that her reputation?

17 A Yes. Even all through high school, yes.

18 Q And you think that's the general reputation that she
19 has from the people who live there?

20 A Yes.

21 MR. VERNER: Hold on just one second. Thank you, Ms.

22 Hopkins. If the prosecutor has any questions, please answer
23 them.

24 THE COURT: Solicitor, any cross-examination?

25

CROSS-EXAMINATION

CANDICE HOPKINS-CROSS EXAMINATION

261

- 1 BY MR. SCOTT:
- 2 Q Candice -
- 3 A Yes.
- 4 Q -- is you birthday , ?
- 5 A Yes, sir.
- 6 Q Tell me some of the -- I heard Tamara, Cameron, James.
- 7 Who's Tamara's sister?
- 8 A Kaitlyn.
- 9 Q Kaitlyn. And, of course, Arielle and McKenzie.
- 10 A And Amaya.
- 11 Q Huh?
- 12 A Amaya.
- 13 Q Amaya. Who's that?
- 14 A My niece.
-
- 15 Q And then there was a boy you said special needs but he
- 16 would play along with the other children?
- 17 A That's James.
- 18 Q James?
- 19 A Uh-huh.
- 20 Q Oh, okay. Tamara, where does she live?
- 21 A She lives roughly maybe three apartments over from
- 22 Tonya.
- 23 Q Three apartments over?
- 24 A Uh-huh.
- 25 Q In Whitmire?

CANDICE HOPKINS-CROSS EXAMINATION

262

1 A Yes.

2 Q And, of course, her sister Kaitlyn lives there, too?

3 A Yes.

4 Q Cameron, where does he live?

5 A He doesn't live there anymore.

6 Q Where does he live now?

7 A They stay in the apartment complex down the road.

8 Q Still in Whitmire?

9 A Yes.

10 Q But back in -- during all this that you were talking
11 about when all the kids were hanging out he lived in that
12 apartment complex?

13 A Yes.

14 Q James, did he live in the Apartments?

15 A Yes. He still does.

16 Q And then your three, Arielle, Kaitlyn and Amiya --

17 A No. McKenzie, Arielle and Amaya.

18 Q I'm sorry. You guess all live in the Apartments.

19 A I used to.

20 Q Used to.

21 A Uh-huh.

22 Q Where did Minor live?

23 A With her mom.

24 Q Where was that?

25 A Well, they used to stay there. Nicole used to stay --

CANDICE HOPKINS-CROSS EXAMINATION

263

- 1 Q I know.
- 2 A -- in the apartment complex.
- 3 Q I know.
- 4 A But they used to live --
- 5 Q But around all this time where did they live?
- 6 A Columbia.
- 7 Q So all these other kids had parents that lived in this
- 8 apartment complex --
- 9 A Yes.
- 10 Q -- and they stayed there all the time.
- 11 A Uh-huh.
- 12 Q Minor was down in Columbia and would come
- 13 infrequently, or she would come on weekends.
- 14 A Uh-huh.
-
- 15 Q But she wasn't always there with her parents and
- 16 everything; is that right?
- 17 A I mean, in the summer she would be there.
- 18 Q But she didn't live in the Apartments?
- 19 A No.
- 20 Q And then you talked about -- do you ever call him Man?
- 21 A Yeah.
- 22 Q Do you remember how he got that nickname?
- 23 A No.
- 24 Q You say he played with the kids a lot?
- 25 A Yes.

CANDICE HOPKINS-CROSS EXAMINATION

264

1 Q Would you describe him as kind of maybe associating
2 more with the children more than a lot of the adults?

3 A No, not like that. Just --

4 Q Not like what?

5 A Not like you're trying --

6 Q Well, what am I trying to do?

7 A He would play with them if they were playing like
8 softball or -- because they -- the kids out there, they like
9 to dance and all that. He wouldn't be out there dancing
10 with them or --

11 Q Well, what would he do?

12 A -- anything like that.

13 Q What would he be doing?

14 A I mean, if they were dancing and stuff he wasn't
15 around.

16 Q I'm talking about when he would play with them. Who
17 were some of the other adult men who would play hide and go
18 seek and Wii with them and softball and everything else?

19 A None.

20 Q Did he drive an ice cream truck? Is that true?

21 A Yes.

22 Q And you're good friends with Tonya?

23 A That's my cousin.

24 Q And you've been in here all day today at least. Were
25 you here yesterday?

CANDICE HOPKINS-CROSS EXAMINATION

265

1 A No.

2 Q But you've been in here this morning sitting over there
3 by Tonya?

4 A Yes.

5 Q That was a curious -- to me it was curious when the
6 lawyer asked you would Nicole Simms fabricate a story.

7 A He didn't ask me that. I said that freely.

8 THE COURT: Ma'am, you need to speak up a little bit.

9 A He didn't ask me that. I told him that.

10 Q I thought he just asked you is she known to fabricate a
11 story and you said yes?

12 A No. He asked me about her honesty. I told him that
13 she's not known for being honest. That she would fabricate
14 a story.

15 Q Do you ever fabricate stories?

16 A No, not like she does. Me and Nicole have a history.

17 Q You all have a history?

18 A Yes.

19 Q Well, that's fine. But we're not here to talk about
20 y'all's history.

21 A I know that.

22 Q So if you're here to air something, this ain't the
23 place to do it.

24 A That's not what I'm doing.

25 MR. VERNER: Your Honor, that's not a proper question.

CANDICE HOPKINS-CROSS EXAMINATION

266

1 THE COURT: What did he say?

2 MR. VERNER: He said if you're here to air something
3 this is not the proper way to do it -- proper place to do
4 it. That's not a question.

5 THE COURT: Be sure to form it in question form.

6 Q I do have a question for you. Are you the same Candice
7 Hopkins that was convicted of giving false information in
8 2012?

9 A False information?

10 Q Yeah. Giving false information on your rap sheet?
11 Were you convicted of that?

12 A The driver's license?

13 Q Were you convicted of giving false information February
14 13th, 2012?

15 A I was convicted of -- I had my mother's driver's
16 license.

17 Q Did you tell law enforcement you were somebody who you
18 weren't?

19 A No, I didn't.

20 Q Tell us all the underlying reason why you have a
21 conviction of giving false information to law enforcement.

22 MR. VERNER: Your Honor, if he's impeaching her for a
23 prior conviction. That would be his proper way of doing it.
24 Have you been convicted of giving a false name to law
25 enforcement. Yes, I have.

CANDICE HOPKINS-CROSS EXAMINATION

267

1 MR. SCOTT: She's denying it.

2 MR. VERNER: I don't think she did deny it. She said
3 that she had --

4 A I said I used my mother's license.

5 Q Have you been convicted --

6 THE COURT: Wait a minute. Wait a minute. Answer his
7 question yes or no, and then if you want to offer an
8 explanation you can do that. Repeat the question,
9 Solicitor.

10 MR. VERNER: May I see the report he's --

11 THE COURT: Yeah, go ahead -- before you ask her
12 anything, show Mr. Verner what you got.

13 Q Have you been convicted of giving false information?

14 A Yes.

15 Q And then the fact that you've had prior disagreements
16 with Nicole Simms is not affecting your testimony today?

17 A No, it's not.

18 MR. SCOTT: Thank you.

19 THE COURT: Anything on redirect, Mr. Verner?

20 MR. VERNER: No, Your Honor.

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

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

25 MR. VERNER: Your Honor, I would call Ms. Tonya

TONYA DAWKINS-DIRECT EXAMINATION

268

1 Dawkins.

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

3 TONYA DAWKINS, having first been
4 duly sworn, testified as follows:

5 MADAM CLERK: Please state your name for the record.

6 THE WITNESS: Tonya Dawkins.

7 DIRECT EXAMINATION

8 BY MR. VERNER:

9 Q Ms. Dawkins, I'm going to ask you -- I apologize, but
10 I'm going to ask you how old you are.

11 A Thirty-eight.

12 Q Thirty-eight. Where do you live?

13 A In Whitmire in Apartment

14 Q Are you from Whitmire?

15 A Yes.

16 Q All your life or just --

17 A Yes, all my life.

18 Q Did you go to Whitmire High School?

19 A I did.

20 Q Are you currently employed?

21 A I am.

22 Q Where are you working now, ma'am?

23 A At the SC DHHS in Newberry.

24 Q Is that the Department of Social Services?

25 A Human Health, yeah.

TONYA DAWKINS-DIRECT EXAMINATION

269

1 Q What is your position there?

2 A Administrative assistant.

3 Q And about how long have you been --

4 A About roughly two months.

5 Q Are you aware -- well, let me ask you. How do you know

6 Carrol Washington?

7 A He and I date.

8 Q And how long have you known him?

9 A Four years and some months.

10 Q Does he go sometimes by the nickname Man?

11 A Yes.

12 Q Is that what you call him?

13 A Yes.

14 Q Is that what most his friends call him?

15 A Yeah, everybody that I know that know him calls him

16 that.

17 Q Did you all live together for a while?

18 A Yes.

19 Q Do you still consider that you're currently in a

20 relationship with him?

21 A Yes.

22 Q How long did you all live together?

23 A Three years is the -- almost four years.

24 Q Was that at the Apartment --

25 A Uh-huh.

TONYA DAWKINS-DIRECT EXAMINATION

270

1 Q -- complex?

2 A Yeah.

3 Q Who else lived with you?

4 A My son, D.D.

5 Q How old is your son?

6 A He's 10.

7 Q Ten?

8 A Uh-huh.

9 Q Do you remember when Carrol was arrested in June of
10 2015?

11 A Yes.

12 Q Was he working then?

13 A Yes. In Caterpillar and at Kraft.

14 Q In what section?

15 A In the cafeteria. The canteen area.

16 Q Do you recall what his hours at work were?

17 A From 6:00 to 2:00, and then he was working from 2:00 to
18 8:00.

19 Q Now, when you say 6:00 to 2:00 are you talking about
20 6:00 in the morning until --

21 A 6:00 a.m. to 2:00, and then from 2:00 to 8:00 on
22 Sundays.

23 Q Would those be alternating days or would he work --

24 A Just as needed.

25 Q Did he work on the weekends?

TONYA DAWKINS-DIRECT EXAMINATION

271

1 A If they called him sometimes, but no.

2 Q It was typically a weekday?

3 A Uh-huh.

4 Q And you remember when Carrol was arrested in June of
5 2015?

6 A Yes.

7 Q Prior to him being arrested -- were you all aware of
8 this allegation prior to Carrol --

9 A No.

10 Q -- being arrested?

11 A No.

12 Q Did it kind of come out of the blue?

13 A Yeah, it really did. I got a phone call June the 4th
14 from Officer Epps and he was saying he needed to speak to
15 Carrol and I gave him Carrol's cell phone number. And prior
16 to that I didn't know.

17 Q Had any parent come to you and discussed any issue with
18 you about the children?

19 A No.

20 Q Had any of the children raised any issues with you?

21 A No, not at all.

22 Q Prior to Carrol being arrested when was the last time
23 that you had seen the child Minor ?

24 A Maybe a couple of months before that. They would come
25 off and on on the weekends.

TONYA DAWKINS-DIRECT EXAMINATION

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1 Q Had you seen Nicole prior to -- are you related to
2 Nicole?

3 A Yes. That's my cousin.

4 Q But you had seen them within the past few months prior
5 to you being arrested?

6 A Uh-huh, yes.

7 Q In the apartment complex that you live in, how many
8 other people live in that apartment complex?

9 A We have four sets of family in my building.

10 Q So there are four different families in your building?

11 A Uh-huh.

12 Q Do you have a neighbor -- if I look at your front door,
13 do you have a neighbor on your left?

14 A I currently have a new neighbor, yes.

15 Q There is a lady that lives to your left?

16 A Yes, Josephine. I'm sorry.

17 Q Ms. Josephine lives --

18 A From my front door, yes.

19 Q Do you have people who live on your other side on the
20 right?

21 A I have new neighbors now, but I did have a neighbor
22 that used to live there for a couple of years.

23 Q So your house and unit is kind of in between two other
24 --

25 A Yeah.

TONYA DAWKINS-DIRECT EXAMINATION

273

1 Q Now, back when Carrol was arrested and was charged were
2 you working then?

3 A No.

4 Q Were you a stay at home mother?

5 A Well, I was doing temporary jobs and contract
6 assignments, but mostly going to school online.

7 Q So you were an online student --

8 A Uh-huh.

9 Q -- last year?

10 A Uh-huh.

11 Q I apologize. You're going to have to say yes or no,
12 because the lady in front of you --

13 A Oh, okay.

14 Q So just try to come up with a yes or no or I don't
15 know.

16 A Okay.

17 Q Were you home most of the time last year?

18 A Yes.

19 Q And just quickly, what's the layout of your apartment?

20 A Downstairs is the livingroom, a kitchen and a pantry
21 and a half bath. Upstairs is three bedrooms and a full
22 bath.

23 Q I guess one bedroom would be the master bedroom --

24 A Yes.

25 Q -- that you and Mr. Washington had?

TONYA DAWKINS-DIRECT EXAMINATION

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- 1 A Right.
- 2 Q And then your son D.D. had another bedroom upstairs?
- 3 A Yes.
- 4 Q What would be in the third bedroom?
- 5 A It was just a spare room. It had bunk beds in it and
- 6 an Xbox thing.
- 7 Q Are there any -- and you said there's a bathroom?
- 8 A Uh-huh, a full bath upstairs.
- 9 Q Is that between the bedrooms or is that back in the
- 10 master bedroom upstairs?
- 11 A It's between the master and D.D. ' room.
- 12 Q So accessible to the hallway?
- 13 A Yes.
- 14 Q Do you have like a front porch, or what's the front
- 15 part of the house?
- 16 A It's the front porch area where the porch is connected
- 17 with the other apartments.
- 18 Q So you share -- you have a common porch with your
- 19 neighbor?
- 20 A Uh-huh, we share. Yeah.
- 21 Q And which neighbor would that be?
- 22 A Josephine directly next door.
- 23 Q Was Josephine last year working outside of the home?
- 24 A No, she doesn't work.
- 25 Q Does she take care of kids, or what does she do?

TONYA DAWKINS-DIRECT EXAMINATION

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1 A Well, she used to babysit my son. It's been a while
2 ago. And she used to have McKenzie. But no.

3 Q What's the arrangement with the kids coming in and out
4 of the house?

5 A They just be in there playing. They wanted to come and
6 play with my son. They played the Xbox or the Wii U or
7 dance or whatever. They loved to play.

8 Q Is there a reason that your house is kind of the
9 popular house for kids?

10 A I guess the kids love to play with my son. I'm not
11 sure.

12 Q Who are some of the regular children who come to your
13 home?

14 A Let's see. S.B. and -

15 Q S.B. was the little girl we met earlier?

16 A Uh-huh, yeah. She come all the time, everyday.
17 Armani, Sunshine, and McKenzie. Those are pretty much the
18 regular kids.

19 Q How often would Minor come?

20 A Maybe when they -- during the summertime they would
21 come like everyday if they be with their grandmother. But
22 during school season and stuff maybe every now and then.
23 Not all the time.

24 Q Do you know if they were coming in 2015 to visit you,
25 or did they stop coming in 2014?

TONYA DAWKINS-DIRECT EXAMINATION

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1 A Well, the other child used to come like, you know,
2 pretty regular. But most of the time the other kids were
3 with their father. Their biological father. But it was not
4 all the time, but some weekends.

5 Q So the youngest child didn't share the same father as
6 the older two daughters?

7 A No.

8 Q So when they were with their father for visitation just
9 the younger child would come? The youngest?

10 A Yeah. She come play with my son.

11 Q When Minor came did she come by herself or would she
12 come with her siblings?

13 A Her sisters.

14 Q And you -- who is Minor 's older sister?

15 A N.T.

16 Q N.T. ?

17 A Uh-huh.

18 Q And the baby child would be --

19 A S.S.

20 Q S.S. ?

21 A Uh-huh.

22 Q So the only time they would come alone was when S.S.
23 would come --

24 A By herself, yeah, because the other two siblings would
25 be with their father.

TONYA DAWKINS-DIRECT EXAMINATION

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- 1 Q And who is the father or Minor ?
- 2 A Michael Thompson.
- 3 Q Does he live in the Whitmire community or do you know
- 4 where --
- 5 A No. I think he lives in Columbia.
- 6 Q Did he ever come to see you?
- 7 A To my apartment?
- 8 Q Mr. Thompson.
- 9 A Did he come to see me?
- 10 Q Or did he ever come with the kids, or do you know?
- 11 A No. Not to my apartment, no.
- 12 Q Well, is there a particular time of the day that the
- 13 kids would come over? Would they come in the mornings, or
- 14 would they come around lunchtime, or was it all day?
- 15 A Just all day they be in and out. Whenever they get up
- 16 just in and out playing.
- 17 Q Was there a time when you had to tell the kids that
- 18 they had to be home?
- 19 A Like when it get dark.
- 20 Q Towards dark is when they --
- 21 A Yeah.
- 22 Q What kind of games were the kids playing?
- 23 A Oh, wow. It varied. Baseball, kick ball, basketball,
- 24 the Wii U, Xbox.
- 25 Q So they're playing outside. Where would there be to

TONYA DAWKINS-DIRECT EXAMINATION

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1 play outside?

2 A There's a little area beside my apartment that they
3 call the little tree house. They love to play over there
4 and in the front yard doing gymnastics or dancing, or just
5 whatever kind of games outside. Riding bikes.

6 Q I'm guessing that the boys typically play with the boys
7 and the girls play with the girls, or was it --

8 A Well, they all played together.

9 Q So they played pretty well together?

10 A Yeah. So, I mean, they would have fights every now and
11 then, but they played together.

12 Q Are you aware of a time of Minor ever being there by
13 herself?

14 A No.

15 Q Would she have ever been out there without her siblings
16 with her?

17 A No, because if one came the other two came. She's
18 never just been over there by herself.

19 Q Where were the adults when the kids were playing in you
20 home?

21 A Well, if they're not sitting on the porch, the adults
22 would come over periodically to check on the kids.

23 Q What do you mean by that?

24 A Well, when they stay with their grandmother, the
25 grandmother would come over and check on them.

TONYA DAWKINS-DIRECT EXAMINATION

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- 1 Q Who is the grandmother?
- 2 A Ethyl.
- 3 Q Who testified earlier?
- 4 A Uh-huh.
- 5 Q So she would sometimes come down and check on the kids?
- 6 A Uh-huh.
- 7 Q Would she sometimes spend some time sitting with you
- 8 and talking to you all on the front porch?
- 9 A Yeah.
- 10 Q Would Ms. Josephine be over there at times?
- 11 A Well, when the kids were over there she would come
- 12 check on the kids.
- 13 Q What other -- were there any other mothers that you
- 14 remember would be fairly there, fairly often?
- 15 A No.
- 16 Q So who typically were the adults there during an
- 17 average day?
- 18 A Myself and Carrol.
- 19 Q I'm sorry, who?
- 20 A And Carrol.
- 21 Q Were there any other adults there during a typical day?
- 22 A In and out. But no, not just there like me.
- 23 Q Well, with the ladies who were sitting on the front
- 24 porch, what would you all be doing?
- 25 A Just out there laughing and talking.

TONYA DAWKINS-DIRECT EXAMINATION

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- 1 Q Were there any other men?
- 2 A No.
- 3 Q Carrol was the only --
- 4 A Uh-huh.
- 5 Q Well, how does Carrol get along with children?
- 6 A He loves children. He played good with kids, and he
- 7 talked to them and tried to --
- 8 Q How does he get along with your son, D.D. ?
- 9 A He -- my son loves him.
- 10 Q And how long has he lived with you?
- 11 A Roughly four years. Three to four years. Three years
- 12 and some months.
- 13 Q Did you ever see any inappropriate behavior toward any
- 14 of the children?
- 15 A No.
- 16 Q Did any of the children ever come up to you and say
- 17 that they had been touched inappropriately or anything like
- 18 that?
- 19 A No.
- 20 Q Did you have a -- did you get along with the children
- 21 who would come in?
- 22 A Yeah.
- 23 Q You knew most of them, didn't you?
- 24 A Yeah. All of them that came in.
- 25 Q Are you aware of any time that the child, Minor , ever

TONYA DAWKINS-DIRECT EXAMINATION

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1 became withdrawn or had any incident that raised --

2 A No. I've never noticed anything like that.

3 Q Did you ever see Carrol act inappropriately with the
4 kids?

5 A No.

6 Q Would you be living with him if you had seen him --

7 A Oh, no. No.

8 Q -- be inappropriate?

9 A No. Not at all, no.

10 Q And you're not married to him, right?

11 A No, I'm not.

12 Q Can you tell me what Carrol's reputation is in the
13 community?

14 A Everybody like him. People still ask about him to this
15 day. He get along good with everybody. I've never heard
16 anything bad about him from my neighbors or anybody that
17 know him.

18 Q Do the kids still come over to your home?

19 A Yeah.

20 Q Is there any family or children who don't come to your
21 home anymore because of Minor 's allegations?

22 A No. All the kids still come that was always came.

23 Q Is it fair to say that the people in this neighborhood
24 have heard of this allegation?

25 A Yeah. Oh, yeah.

TONYA DAWKINS-DIRECT EXAMINATION

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1 Q It hasn't been a secret, has it?

2 A No. No.

3 Q But all the children still come?

4 A Yes.

5 Q Did you meet with the investigators in this -- did

6 anybody from the police ever call you and say that they

7 wanted to ask you about what happened?

8 A No. When Officer Epps called he was asking for

9 Carrol's number and I gave it to him. And Carrol came home

10 and told me what happened and I went to talk to the officer,

11 myself.

12 Q So nobody ever asked you to give any kind of witness

13 statement about seeing anything or anything like that?

14 A No.

15 Q So you yourself went and spoke to Investigator Epps?

16 A Yeah.

17 Q Are you familiar with Minor and her sister hiding in

18 the closet not wanting to go to their father's home?

19 A Yeah. They used to cry hysterically not wanting to go

20 and run over to my apartment for whatever reason.

21 Q Did they tell you why they didn't want to go?

22 A No, they never said. They dreaded going to their

23 father's house.

24 Q Did you just -- that was just because of the divorce

25 type --

TONYA DAWKINS-DIRECT EXAMINATION

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1 A I guess. I never really tried to figure it out.

2 Q And you told that -- when did you meet with

3 Investigator Epps?

4 A I think it was maybe June 6th. June 5th, June 6th.

5 Q Did you speak to Nicole about that incident?

6 A No. I've never talked to her about that incident.

7 She's never said anything to me about it. I've never said
8 anything to her about it.

9 Q Are you aware of Minor ever acting inappropriately
10 while she's been over at your home?

11 A Well, I have caught her watching stuff on YouTube and I
12 told her to cut it off. But no.

13 Q What do you mean by stuff?

14 A Well, anime cartoons and kind of perverted stuff of a
15 sexual nature. But --

16 Q Stuff that was just too adult for her?

17 A Yeah. I just reprimanded her and told her not to do
18 it. Not be watching stuff like that.

19 Q Do you have a lock on your bedroom door?

20 A That lock is broke.

21 Q What do you mean by broken?

22 A You can't lock it. I've been meaning to change it, but
23 you can't lock that door.

24 Q How would you lock the inside -- an inside door? Is it
25 got like a button in the middle you press or do you kind of

TONYA DAWKINS-DIRECT EXAMINATION

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1 push the whole door?

2 A Well, it's got a little knob that you can turn left or
3 right to lock and unlock.

4 Q Was it working last year?

5 A No. It's been broke for a while.

6 Q Has it ever worked?

7 A It had when I first moved in there. But I broke it and
8 just never fixed it.

9 Q Are there any rules about where the kids can go or
10 can't go in your home?

11 A Yeah. I try to keep them downstairs and not upstairs.

12 Q Over what period of time was Minor and her sisters
13 coming over to your house? I know you're saying -- well, I
14 mean, for a year they came over, or for several years, or
15 what?

16 A Ever since they were small children they would come
17 over when they were at their grandmother's house.

18 Q So they have been coming over for years?

19 A Uh-huh.

20 Q And have you ever seen any kind of inappropriate
21 behavior on the part of Carrol?

22 A No.

23 Q And you are family of Minor ?

24 A Yes.

25 Q Would you tell us if you had?

TONYA DAWKINS-CROSS EXAMINATION

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1 A Yeah, I would.

2 MR. VERNER: The Prosecutor might have some questions.

3 THE COURT: Cross-examination, Solicitor.

4 CROSS-EXAMINATION

5 BY MR. SCOTT:

6 Q Tonya, you named a few more kids; S.B. , Armani, and
7 Sunshine?

8 A Uh-huh.

9 Q They live at the Apartments?

10 A Not anymore. They used to. Well, S.B. still lives
11 there but not the other ones.

12 Q Is there more kids that live right there in the
13 apartment complex, or used to?

14 A Well, Tamara and Kaitlyn, they still live out there.
15 And that's really it, yeah.

16 Q So far we're talking about S.B. , Armani, Sunshine,
17 Tamara, Kaitlyn, Cameron, James, Arielle, Amaya, McKenzie?

18 A Uh-huh.

19 Q Those are all kids that would play out there. But they
20 all live there at the Apartments, or nearby; is that
21 right?

22 A All of them did at once. But when McKenzie -- McKenzie
23 and her mother moved out. McKenzie, Amaya and Armani, they
24 moved.

25 Q Is it fair to say during this time when they would all

TONYA DAWKINS-CROSS EXAMINATION

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1 get together that all those kids lived right around that
2 apartment complex?

3 A Yeah, right there.

4 Q Around the time he was arrested you said Carrol was
5 working at Caterpillar and Kraft.

6 A Uh-huh.

7 Q Where was he before that?

8 A He was doing odds and ends jobs on --

9 Q -- So kind of --

10 A -- Craigs List.

11 Q I'm sorry?

12 A On Craigs List finding jobs.

13 Q Craigs List?

14 A And doing construction work, outdoor work.

15 Q So hours were kind of irregular at that time; is that
16 correct?

17 A Yeah.

18 Q So he would be home different times of the day?

19 A Yeah. He worked the day shift jobs when he worked, in
20 the daytime.

21 Q Now, the hallway bathroom upstairs. You say that's
22 one that would -- the way I picture it, you'd come to the
23 top of the stairs and then there's bedrooms. There's three
24 bedrooms up there and then --

25 A Uh-huh.

TONYA DAWKINS-CROSS EXAMINATION

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1 Q -- a bathroom just opens up to the common hallway area?

2 A Yeah, it's like a common area.

3 Q And you try to keep the kids from going upstairs but --

4 A Yeah.

5 Q -- but you don't always -- you're not always successful
6 in keeping them from --

7 A No. They don't always mind me, no.

8 Q Well, that PlayStation you got is upstairs, isn't it?

9 A In my son's room. He just got it last Christmas. But
10 the Wii U was downstairs. We've had that a couple years
11 now.

12 Q So they do go up there, especially when they're playing
13 hide and go seek and everything?

14 A Yeah, they run everywhere.

15 Q Now, the adults, for the most part, would be -- well,
16 to the extent adults were there, that would be you and
17 Carrol Washington --

18 A Right.

19 Q -- would typically be the adults there?

20 A Uh-huh.

21 Q Sometimes you talked about you would go out on the
22 porch and just have lady time, I guess?

23 A Yeah, just sit outside and talk and just relax.

24 Q What would Carrol be doing when you all were out there?

25 A Upstairs on the Xbox if he was home.

TONYA DAWKINS-CROSS EXAMINATION

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1 Q And sometimes the kids would be up there playing with
2 him and everything?

3 A Sometimes. Not all the time.

4 Q And I ask, were there other men, adult men that would
5 come around and play with the kids and everything?

6 A No.

7 Q It's fair to say you can't keep your eyes on Carrol
8 Washington at all times, can you?

9 A No, not all the times. But for the most part, yeah.
10 I'm in and out from the porch.

11 Q You've never seen him do anything?

12 A No.

13 Q But again, you don't get to keep your eyes on him the
14 whole time?

15 A Not 24/7 when I'm sitting outside.

16 Q Before all this you were getting along fine with this
17 family. You were getting along fine with Nicole and them,
18 weren't you?

19 A They're my family, yeah.

20 Q You all had no disagreements before any of this?

21 A Not that I was aware of, no.

22 MR. SCOTT: Okay. Thank you, Tonya.

23 THE COURT: Anything on redirect?

24 MR. VERNER: No, Your Honor.

25 THE COURT: Thank you, ma'am, for your testimony. You

1 can step down.

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

4 THE COURT: Mr. Verner, how many more witnesses would
5 you have in your case?

6 MR. VERNER: Your Honor, I anticipate just one.

7 THE COURT: One? Okay. Let's take -- before we go
8 into your last witness let's take one last break for about
9 10 minutes. And so, ladies and gentlemen of the jury, if
10 you'll go back to the jury room. Once again, don't begin
11 any discussions about this case, and then we'll finish up
12 with the Defense's last witness.

13 (Whereupon, the jury exited the courtroom at 5:19 p.m.)

14 THE COURT: We'll be in recess for about 10 minutes.

15 (Whereupon, a recess was held from 5:19 p.m. to 5:36
16 p.m.)

17 THE COURT: Gentlemen, are we ready for the jury to
18 come back out?

19 MR. SCOTT: Yes, sir.

20 MR. VERNER: Yes, sir.

21 THE COURT: All right. Madam Bailiff.

22 (Whereupon, the jury entered the courtroom at 5:36
23 p.m.)

24 THE COURT: Let the record reflect the jury's back in.
25 Mr. Verner, are you ready?

CARROLL WASHINGTON-DIRECT EXAMINATION

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1 MR. VERNER: We are, Your Honor.

2 THE COURT: Okay. You may proceed.

3 MR. VERNER: Your Honor, I'd ask Mr. Carrol Washington
4 to --

5 THE COURT: Okay. Come around, please, sir.

6 CARROL WASHINGTON, having been
7 first duly sworn, testified as follows:

8 MADAM CLERK: Please state your name for the record.

9 THE WITNESS: Carrol Washington.

10 DIRECT EXAMINATION

11 BY MR. VERNER:

12 Q Mr. Washington, I'm going to ask you questions from
13 over here just to make sure everybody that needs to hear you
14 can. Okay? Okay?

15 A Okay.

16 Q How old are you, Mr. Washington?

17 A I'm 32.

18 Q Thirty-two. Speak up just a little bit.

19 A I'm 32-years-old.

20 Q Where did you -- where were you born?

21 A I was born in Greenwood, South Carolina.

22 Q Last year, in June of last year, you were arrested for
23 criminal sexual conduct, correct?

24 A Yes, sir.

25 Q Where were you living at that time?

CARROLL WASHINGTON-DIRECT EXAMINATION

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- 1 A , which is Apartments.
- 2 Q And who were you living with?
- 3 A My fiancée, Tonya Dawkins.
- 4 Q Was anybody else living with you?
- 5 A My step-son, D.D.
- 6 Q Do you have any other children of your own?
- 7 A Yes. I have one daughter in Laurens.
- 8 Q How old is she?
- 9 A She's nine.
- 10 Q Nine. How long have you lived at the
- 11 Apartments in Whitmire?
- 12 A I'd say three years and -- three years and a little
- 13 over six months.
- 14 Q The same apartment the whole time?
- 15 A Yes, sir.
- 16 Q Were you working as of June of last year when you were
- 17 arrested?
- 18 A Yes, sir.
- 19 Q Where were you working?
- 20 A I was working at Caterpillar, and I would go and take
- 21 up a second shift job at Lewis Rich, because my fiancée, she
- 22 wasn't working at the time and she was going to school. So
- 23 I had to do extra hours to get these bills paid.
- 24 Q And what department were you working at Caterpillar?
- 25 A In the canteen.

CARROLL WASHINGTON-DIRECT EXAMINATION

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1 Q In the canteen. Do they feed the workers onsite at
2 Caterpillar?

3 A Yes, sir. And at Louis Rich.

4 Q So they both have cafeterias?

5 A Yes, sir. Same company.

6 Q What would typically be your house you were working?

7 A 6:00 to 2:00, and I would stay at one of my coworker's
8 house to 3:00 and I'll go to Louis Rich.

9 Q But you'd start out in the morning at --

10 A Yeah.

11 Q -- Caterpillar?

12 A Yes, sir.

13 Q And then how long did you have between getting from
14 Caterpillar to Louis Rich?

15 A Like an hour. Just a little downtime is all.

16 Q Was that basically Monday through Friday, or what were
17 your days?

18 A Usually -- well, my -- at Caterpillar it was Monday
19 through Friday, 6:00 to 2:00 every day. 6:00 to 2:00 every
20 day. And Mondays, Wednesdays and Fridays and -- they were
21 short on help. So usually I work like seven days a week
22 pretty much.

23 Q Where would you work on the weekend?

24 A At Louis Rich.

25 Q Did you have any other job at that time, too?

CARROLL WASHINGTON-DIRECT EXAMINATION

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1 A Yes. I was a sous-chef at Steven W's.

2 Q What were your hours at Steven W's? That's the
3 restaurant next to the Opera House?

4 A Yes. Well, in front of the Opera House. Yeah, in
5 front of the Opera House by -- I can't remember the little
6 wine shop that's across the street from it. But in front of
7 the -- or behind --

8 Q How often did you work at Steven W's?

9 A Sir?

10 Q How often did you work at Steven W's?

11 A It was like two days out of the week. And on the
12 weekend when I didn't have to work at Caterpillar, which was
13 from 6:00 to 2:00, I would work Louis Rich in the morning
14 and I would work there in the evenings from like -- from
15 like 4:00 to 9:00 depending on how many tops we have. Which
16 tops are -- those are basically parties. Yeah, so pretty
17 much it was predetermined how long we would work.

18 Q Based on how many tables they had?

19 A Yeah, yeah.

20 Q Any other jobs you had at that time?

21 A I did Straight Talk at Walmart, which it was just maybe
22 one day out of a week. Maybe like one month I'll do, say,
23 six events. And that would be like one day out of the week
24 I'll go there and setup for like six hours, and I'll do that
25 maybe like every two months.

CARROLL WASHINGTON-DIRECT EXAMINATION

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1 Q That's not technically working for Walmart? That's --

2 A No. It was a self-contractor for Walmart which is
3 Straight Talk.

4 Q Straight Talk are like the --

5 A Straight -- prepaid cell phones, yeah. I was a cell
6 phone ambassador. Straight Talk ambassador. I'm sorry.

7 Q What does that mean that you do?

8 A Pretty much when they have promotional deals for
9 Straight Talk, I would stand there with -- stand there at
10 the little table like that and have like pamphlets and give
11 you a reason why you should switch from a contract to a
12 prepaid. And I would sell phone calls and I can activate
13 your phone, deactivate your phone. Just pretty much getting
14 you signed on with Straight Talk, and with promotional
15 deals. Selling -- selling phones that's in the store. Just
16 pretty much making sure that Straight Talk have a good
17 relationship with Walmart.

18 Q When you were arrested on June -- was it June 10th? Do
19 you remember what day you were arrested?

20 A Yeah, I think it was on the 10th. It was somewhere
21 around that time.

22 Q Had anybody come to you or talked to you beforehand and
23 said, hey, you've been alleged of doing such and such, or is
24 that the first you heard about this allegation?

25 A June the 10th? No. It was like, I think, the 4th.

CARROLL WASHINGTON-DIRECT EXAMINATION

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1 Q What happened on June 4th?

2 A I was actually going to Steven W's, and I just had left
3 -- left my friend's house and I was going to Steven W's and
4 I received a phone call and I answered the phone. And I
5 actually thought it was like one of my friends playing with
6 me because I don't do anything to get in trouble. I thought
7 it was one of my friends doing a little prank -- you know, a
8 prank on me. So come to find out that -- I Googled the
9 number that called and it was actually --

10 Q Did you speak to him?

11 A Yeah. I spoke to him and --

12 Q What did he tell you, or what --

13 A He just told me that I would need to come to the
14 Sheriff's Office. And like I just -- honestly, I just
15 thought it was my friend. I told him, I was like the only
16 reason that I possibly would have to talk to a sheriff is
17 because of my child support, which is not even in this
18 county but the county do serve my papers at my house. So
19 that's the only reason why I was thinking that. He wanted
20 me -- he didn't really give me a description of what he
21 wanted. So we initially -- I got off the phone and --

22 Q Had you ever met him before?

23 A No, sir.

24 Q And I think you said you Googled the phone number?

25 A Yeah, I actually -- yeah, I Googled the number, because

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1 there was something just in my mind that told me to Google
2 the number. And I Googled the number and it was actually
3 the Sheriff's Department. So I called him like immediately
4 back, maybe like three minutes I called him back. And I
5 told him that, yeah, I would come. I called my boss and
6 told -- yeah, I called my boss and told him that I was --
7 that I had to handle something, and he let me handle me. It
8 wasn't a problem, and I went and talked to him.

9 Q Where did you talk to him?

10 A At the Sheriff main office. I'm really not familiar
11 with Newberry.

12 Q Do you remember what street that was on?

13 A I Googled it. I want to say maybe Wilson Road.

14 Q So that's where you met with -- did you met with any of
15 the other officers or investigators?

16 A The only officers that I met there was Epps and Womack.

17 Q And did they tell you what the allegations were?

18 A Well, at first -- at first it was just Epps in the
19 room, and he told me what was going on. I was baffled.

20 Q What did he tell you was going on?

21 A At first he just told me, he was like do I know -- do I
22 know Minor . And at first, when he first said the name, it
23 didn't hit me then until he said her mother's name. And
24 that's when I was like yeah, I know -- yeah, I know her, you
25 know what I mean. She's like a family friend.

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1 Q Then he appraised you of the charges that they had made
2 the allegation that you --

3 A No. After the fact of me having recollection of who he
4 was talking about. He didn't tell me for real.

5 Q But he did tell you what they had --

6 A Yeah, after I -- yeah, after I realized who he was
7 talking about, Minor , he told me what the charges was and
8 I -- I mean, I was just -- I couldn't believe it.

9 Q Had any of the officers bothered to tell you -- advise
10 you that they were investigating a crime that you were
11 suspect of and that you would have the right to -- do you
12 know what Miranda rights are?

13 A Now I do. But at that point in time I didn't because
14 I've never been in trouble, so I -- you know what I mean.
15 I'm a dummy to the law.

16 Q But did they tell you --

17 A No, he didn't. Go ahead. I'm sorry.

18 Q I mean, they advised you that you were being
19 investigated as a suspect of a crime or --

20 A Not at any time. The only thing that he said was just
21 the CS -- or however they call the crime. But they didn't
22 tell me that I would be -- what I would say would be used
23 against me or anything like that.

24 Q Did you admit touching Minor ?

25 A No. I've never done anything of that sort.

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1 Q And did you tell the investigator that at the time?

2 A Yeah. And I was talking to the investigator to try to
3 help him with what was going on. You know what I mean. I
4 didn't show any deception at all when I talked -- when I
5 initially talked to him or when I came. You know what I
6 mean. I told -- I told him that I don't have nothing to
7 hide from you. So yeah, I will come and talk to you.

8 That's what I told him on the phone when I came and talked
9 to him.

10 Q Well, I want to ask you how you got the nickname Man.

11 A When I was little they called me Packman. I used to
12 eat a lot. So that's how I got the name Man.

13 Q Why did they call you Packman?

14 A Because I used to eat a lot when I was little.

15 Q You'd eat a lot?

16 A Yeah. Packman, eat a lot.

17 Q So that's the origin of how Man --

18 A Yeah, it derived. Yeah. Yeah, it derived from
19 Packman.

20 Q Well, tell me about your house that you're living in
21 with Ms. Tonya. I think you indicated you had been there
22 for about three and a half years?

23 A Yeah, about three and a half years. Yeah. Yes, sir.

24 Q How often would you have visitors?

25 A The usual kids, which are Money, which I think her name

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1 is Amori, or something like that. But I call her Money by
2 her nickname. Sunshine, which is Amaya. S.B. --

3 Q Well, I'm going to skip the names, just --

4 A Okay. Well --

5 Q But it would be -- it wouldn't be unusual for --

6 A Usually just -- usually --

7 Q -- children to play at your house --

8 THE COURT: Wait a minute. Do not talk over one
9 another.

10 THE WITNESS: Okay. I'm sorry.

11 THE COURT: Mr. Witness, if you will let Mr. Verner
12 finish a question before you answer.

13 THE WITNESS: Okay.

14 THE COURT: Okay?

15 THE WITNESS: Okay.

16 Q Just how often would children come over there and play
17 at your home?

18 A Oh, children from the neighborhood, every day.

19 Q Would that be -- would they come over when you were not
20 there?

21 A Yeah, yeah, yeah. Like, you know what I mean, they
22 never stopped if I'm there or not. My son get out of school
23 they're pretty much there.

24 Q Is there a particular reason why they were coming to
25 your all's house as opposed to the other --

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1 A A lot of the other parents don't -- you know what I
2 mean? I guess they don't want their house to get messed up
3 by any chance, which they don't mess up our house. That's
4 the only reason why I would think.

5 Q You're all just more open to have kids come over and
6 play?

7 A Yeah. That's just something that's been going on even
8 before I moved there, and I felt like it wasn't my right to
9 tell my fiancée, you know what I mean, not to let all of the
10 kids to come over like that.

11 Q Well, we heard it come up. Why weren't there more men,
12 adult men over there?

13 A It's kind of sad to say, it's just a lot of the
14 families in the apartment complex, which I see is a mixture,
15 and the younger -- the younger females, they don't have the
16 kids' fathers with them. So they don't like have fathers
17 there, or boyfriends. So, you know what I mean, they come
18 to the house and --

19 Q So there weren't a lot of men --

20 A No, no, no, no.

21 Q Was there ever a man who came over or was it just
22 primarily you when you were there?

23 A Yeah, just primarily -- yeah, primarily me.

24 Q I think you're saying that the mothers of some of these
25 other children were single ladies?

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1 A Yeah, single.

2 Q What would you do with the kids?

3 A Well, like sometimes if I get off work --

4 Q Well, let me back up. You lived with D.D. for about
5 three and a half years?

6 A Yeah, that's my step-son but I call him my son.

7 Q How do you spend time -- what do you and D.D. --

8 A Oh, man, D.D., man, we got like a -- like a real --

9 he -- he never knew his father. You know what I'm saying?
10 And I grew up in a household with my mother and father. So
11 it was kind of sympathetic. You know what I mean? And he
12 really -- me and really attached to each other.

13 Q But how did you all spend time together?

14 A Me and him spend time together, we play video games.

15 I'm a big Xbox fan myself. I play 2K Madden, which a lot of
16 adults play. I don't play like, you know what I mean,
17 children games, which a lot of adults play Madden 2K. And
18 we do a lot of sports together. Last year we started
19 fishing a lot together. There would be stuff -- I'm a
20 country boy. So, you know, it be stuff like that that my
21 father done with me, I try to do with him.

22 Q But you play -- you played sports together with him?
23 You played basketball?

24 A Yeah, basketball, football, baseball. You know what I
25 mean? Kick ball. Whenever I get a chance. It's not as

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1 frequent as it would seem.

2 Q Do you recall kind of being rough with him? I don't
3 mean hurt him rough, but I mean --

4 A Yeah, he's a boy. He's a boy. You know what I mean?
5 We wrestle. He give me cheap shots. You know what I'm
6 saying? That's my son. That's the only boy I would
7 consider me having besides a girl.

8 Q And Tonya was comfortable with you --

9 A Yeah.

10 Q -- rough play with the kids? With him?

11 A Yeah, yeah, yeah. Because it's not like I'm trying to
12 hurt him. It's just, you know what I mean, he's a boy.

13 Q And would there be some boys coming over, too?

14 A Yeah, Cameron. We have another neighbor called Doodle.
15 James, he's mentally challenged.

16 Q What kind of games -- or what would the boys do when
17 they would --

18 A Oh, boys. Like when they all come over like they --
19 they don't even bother me. Because most of them really
20 don't bother me, because they know once I get on my game --
21 I play on the Internet and I put my earphones on and I talk
22 through my mic. You know what I mean? Pretty much
23 everything else is singled out.

24 Q So when they're over -- which room was that that you
25 would be able to play on your --

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1 A I have a -- well, it's actually D.D. ' bunk bed room.

2 I call it my Xbox room. My game room.

3 Q So that's the third bedroom that --

4 A Yeah, yeah.

5 Q -- has the bunk beds upstairs?

6 A Yeah, yeah.

7 Q Would the boys play like basketball and athletic games
8 outside?

9 A Yeah, basketball, kick ball, football. You know what I
10 mean? I'm too old to get out there and try to tackle with
11 them, so I just be quarterback. Quarterback for both teams.
12 I'll probably pitch the ball to them. Now, basketball,
13 that's like one of my things. So I do get out there and try
14 to run around with them. Try to.

15 Q Was it more on the weekend or -- when these kids are
16 coming over is it a particular time? Like is it after
17 school, or is just on weekends, or is it just about every
18 day?

19 A Well, the kids in the neighborhood pretty much every
20 day. As long as it's no raining outside they're there.

21 Q At any particular day there could be about how many
22 kids playing outside, inside? In the general area of being
23 in your home?

24 A I'd say roughly seven to eight.

25 Q Are there any rules on where they can play in the

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1 house?

2 A Yeah. They really can't come upstairs. But they do
3 sneak upstairs and I tell them not to be upstairs.

4 Q The general rule is they can come in but they --

5 A Yeah, they can come in and play Wii. Because that's
6 like the main games for the kids is the Wii. Because they
7 always say I'm hogging the Xbox, so pretty much the Wii is
8 their game. Which we have like a 72 inch TV screen -- TV
9 downstairs that they sit there and play on the Wii
10 downstairs.

11 Q How many girls would typically come over? On a typical
12 day there could be as many as --

13 A Yeah, as many as six, seven.

14 Q What would their age range be?

15 A Four to, at the time, 14.

16 Q What would the girls typically do when they were over
17 there?

18 A Watch YouTube, watch music videos, go Justin Bieber
19 crazy. Stuff like that. Just girl stuff.

20 Q What about would they play hide and seek and active
21 games, too, or --

22 A No, not really.

23 Q What was your relationship like with Minor ? How well
24 do you know Minor ?

25 A I know her fairly well.

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1 Q What was your relationship like with her?

2 A It was -- it was fairly good. Like I don't dislike one
3 of the kids other than -- you know what I mean? I don't
4 dislike one better than the other one. You know what I
5 mean? But it wasn't like the rest of the kids.

6 Q She wasn't necessarily the favorite child but she
7 wasn't the least favorite?

8 A I'm not going to even go so far to say favorite, but --

9 Q She was just one of the --

10 A Yeah. Yeah, she was just one of the children up there.

11 Q Would you see her as often as the other girls?

12 A No, no, no.

13 Q Well, how often were you at home when the girls would
14 come over and play? I mean, was this like -- how many times
15 a week do you think that you were at home when the kids were
16 playing in the home?

17 A Which kids?

18 Q All of them.

19 A Including Minor ?

20 Q Yes.

21 A Well, like see, with Minor and them, they have to go
22 down to their father's house every like -- I think like two
23 weekends out of a month, which he stays in Columbia. So --

24 Q So they were coming less often than the other kids?

25 A Yeah, yeah, yeah. Most definitely.

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1 Q Would you play with the kids?

2 A If you -- how would you define play? Like --

3 Q Well, I mean, would you play like any hands-on games?

4 Would you play -- let me start with video games. Would you
5 play video games with the kids when they came over?

6 A Dance Central. That's it, downstairs. Dance Central.

7 Q They had a game where they kind of danced to music?

8 A Yeah, Dance Central. Like it's a Wii and it's got a
9 power bar, like it tracks your movement.

10 Q And sometimes you would play that game?

11 A Yeah.

12 Q Well, I mean, did you ever play like football with the
13 boys upstairs or --

14 A No, no, no, no. We don't play football in the house.

15 Q But, I mean, you talked about video football. Like
16 video games.

17 A No. Usually -- usually Xbox is like -- that's mine.

18 Q Just you?

19 A Yeah, that's mine. Yeah.

20 Q But when you would play with them on the video games it
21 was primarily the Wii downstairs?

22 A Yeah, yeah, yeah.

23 Q What were some other things that you would do with the
24 kids?

25 A Sometimes I would take them fishing. Not Minor and

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1 them. But sometimes I take the other kids fishing. Most
2 the time I'm like just playing my game. Like I said, I'll
3 go out there and play basketball with the boys.

4 Q So you weren't regularly playing with the kids when
5 they were there? You would sometimes play with them, but
6 not play with them every time they came over?

7 A No, no. Most the time I was like -- I was beat.

8 Q Doing your own thing?

9 A Yeah, I was beat from working so much.

10 Q Did you all ever feed them?

11 A Yeah, yeah, yeah. I love to cook. I love to cook.
12 So, you know what I mean, they love to eat what I cook. You
13 know what I'm saying?

14 Q So you'd feed some of the kids?

15 A Yeah, yeah, yeah, yeah. That's another reason why they
16 like our house.

17 Q Did the girls, Minor and her sisters, did they ever
18 go from your house to visit their father?

19 A Yeah.

20 Q Was there ever an incident where they hid in the
21 closet?

22 A Yeah, on several occasions.

23 Q What was that about? What happened?

24 A Like they would be at their house when they -- they
25 actually stayed beside -- stayed beside us. Well, I wasn't

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1 actually staying there then. It was more or less me coming
2 over spending the night with Tonya.

3 Q You're talking Ms. Josephine?

4 A No, with Tonya. Me coming to spend the night with
5 Tonya. But no, no. Nicole stayed like to the right of my
6 back door at the time, which it wasn't maybe like three
7 months she stayed there. But she stayed there longer. But
8 when I was there she stayed there like three months and
9 left.

10 Q I guess my question was, were there ever issues of them
11 not wanting to go see their father?

12 A Yeah, like all the time. Like, you know what I mean,
13 all the time. They would like literally cry. And like I
14 would be down the stairs and I would like hear the door
15 slam. Like we got like the little thin wood and I would
16 hear the door slam. The whole house. You know what I'm
17 saying? And I would come downstairs thinking that the kids
18 running through the house or something. And I would hear
19 them in the closet.

20 Q Were they playing or were they --

21 A No. They were like, you know what I mean, scared to go
22 down there.

23 Q Did you tell this to Investigator Epps?

24 A Yeah. I told Investigator Epps that.

25 Q You understand the allegation of Minor

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1 don't you? The girl who testified?

2 A Now I do. But at the time I didn't, because it really
3 wasn't explained to me.

4 Q You understand she's -- the State is alleging that you
5 touched that girl inappropriately?

6 A Yes, yes, now I do.

7 Q Was there ever a time when you were alone with Minor ?

8 A No, sir.

9 Q Did you ever take Minor up in the bedrooms upstairs?

10 A No, sir.

11 Q Would it be -- what would be some of the problems with
12 taking her upstairs to a bedroom upstairs or bathroom?

13 A What would be some of the problems? For one thing,
14 there's too many kids. For one thing. Like --

15 Q Typically somebody -- there are other people in the --

16 A Yeah, yeah. There's other people there. Like you
17 can't -- you won't be able to single out a child.

18 Q What about adults?

19 A Yeah. They come through the house all the time. Ms.
20 Josephine. She comes in the house and check on McKenzie.
21 Ethyl, she comes to the house and check on them, and --

22 Q Other adults would come?

23 A -- Tonya. Well, you know, she stays there. But, per
24 se, say come would be Ethyl and Josephine.

25 Q Would be the -- commonly over there would be Ms. Ethyl

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1 and Ms. Josephine?

2 A Yeah.

3 Q Were there other mothers there sometimes?

4 A Nicole would come sometime, you know what I mean, but
5 she'll stay briefly. I mean, she's done by her business.

6 Q The front door -- was the front door closed or open
7 when the kids would come?

8 A Oh, the door is always open.

9 Q Is there like a screen door?

10 A Yeah, it's a screen door. The door's always open.

11 Q You understand Minor is saying that you told her to
12 take her pants off.

13 A Yes, I understand that.

14 Q Did you do that?

15 A Oh, no, sir. No, sir.

16 Q Did you have her alone in the bedroom?

17 A No, sir. Never had her alone in the bedroom.

18 Q Did you expose yourself to Minor ?

19 A No, sir.

20 Q Do you know why she's saying you did?

21 A I have no earthly idea, sir. And I'm -- I still -- I'm
22 still baffled and I think about it --

23 MR. SCOTT: I object to the mischaracterization of any
24 testimony thus far.

25 MR. VERNER: I just asked if he understood why she was

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1 --

2 MR. SCOTT: He's pitting witnesses, A, and the second
3 he said that she said Mr. Washington exposed himself to her
4 and that was never testified to.

5 THE COURT: I think -- having to speak for the
6 Solicitor, I think Solicitor Scott is saying that the child
7 never said on the witness stand that the Defendant exposed
8 himself.

9 MR. VERNER: Yes, sir. In candor, the child, in my
10 opinion --

11 MR. SCOTT: No. No testimony from the Defense
12 attorney, his opinion, Your Honor.

13 Q Did you touch the child improperly?

14 A No, sir. Never.

15 Q Did you put your fingers on her breast?

16 A No, sir. I never done anything like that.

17 Q On her vagina?

18 A No, sir.

19 Q Did you put your fingers inside of her butt?

20 A No, sir.

21 Q Inside of her anus opening -- or anal opening?

22 A No, sir.

23 Q Did you have Minor alone in a bathroom?

24 A No, sir.

25 Q Is there a lock on the bathroom?

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1 A The one downstairs, no. But the one upstairs, yes.

2 But the one upstairs actually like is broke from the kids

3 running in. Especially D.D. He's rough. Running in and

4 twisting the doors. Like a little flimsy door. So it's

5 barely on there.

6 Q Had anybody ever raised any allegation of -- prior to

7 you being arrested of inappropriately acting with any of

8 these kids?

9 A --No, sir. Nobody's ever said anything like that.

10 Q Can you show me your fingernails? How would you

11 characterize the length of your fingernails?

12 A They're long. Extremely long.

13 Q Were they long at the time last year or is that just

14 something that --

15 A No, they -- yeah, they always been like this.

16 Q You had long fingernails at the time?

17 A Yeah, they're -- they looked a little bit better. A

18 lot better. But yeah, pretty much --

19 Q Longer than average fingernails?

20 A Yeah.

21 Q If you scratched a person would they like leave -- were

22 they long enough to leave marks?

23 A Yeah.

24 Q We've heard some testimony that you drove an ice cream

25 truck in the past.

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1 A Yes, sir.

2 Q Did you have other jobs beyond that?

3 A Between the ice cream truck and Louis Rich -- I mean,
4 Caterpillar, I worked in Greer doing construction, which I
5 used to work 14, 15 hours -- 15 hours a day. I did cable
6 for Charter Communications. I was a subcontractor for
7 Charter Communications. I can't actually remember the
8 number -- remember the precise the company, but it was in
9 Greer right in front of BMW.

10 Q So you've had several jobs?

11 A Yes, sir. Yes, sir.

12 Q I just wanted to -- were you driving an ice cream truck
13 to get proximity to children?

14 A No, no, no.

15 Q That's just a job you had?

16 A Yeah.

17 Q You've had many jobs in your life?

18 A Yeah, that's just a job. Yeah, yeah, yeah.

19 Q Well, we heard the -- did you ever -- do you ever
20 remember a time where you would have kneed Minor even by
21 accident?

22 A No.

23 Q Can you think of a time where you would have given
24 Minor even the opportunity to feel uncomfortable with you?

25 A No, not feel uncomfortable. No.

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1 Q Did you make any kind of motion with your pants that
2 she needed to pull off her pants when she was with you?

3 A No. No, sir.

4 Q Have you ever admonished Minor for her behavior at
5 your home before?

6 A If you mean admonish by like semi-discipline?

7 Q Yes.

8 A Yes, sir.

9 Q What was that?

10 A I smoke cigarettes. One day I had went on the front
11 porch with the ladies and I was out there smoking a
12 cigarette. And when I came back upstairs she was on the
13 computer in the Internet room watching anime cartoons, which
14 they're pretty graphic for --

15 Q You mean like violent graphic or --

16 A Yeah, violent graphic, sexual graphic. You know what I
17 mean? It's like --

18 Q They're adult --

19 A Yeah, yeah, yeah. It's an adult cartoon. It's way
20 worse than Family Guy and stuff like that. Like they --

21 Q So what did you do as a result of that?

22 A I told her to cut it off and I made her go downstairs
23 and I told her she shouldn't be watching stuff like that.
24 And I asked her where did she watch that. Actually, she
25 told me that her mom let her watch it at her house.

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1 Q Is that the only time you've ever had to call her down?

2 A One time I caught them --

3 Q Who is they?

4 A Well, her and D.D.

5 Q D.D. is your step-son?

6 A Yeah, her and D.D. They were supposedly playing
7 hide and go seek. When I come upstairs they had the door
8 shut, and when I opened the door to see what was going on --
9 because I don't like doors to be shut in my house. You
10 know, in our house, especially when kids around. And there
11 was inappropriate stuff going on. And I pulled -- I split
12 then up and and I told them -- I told D.D. -- I actually
13 popped D.D. and I told him don't -- he shouldn't be doing
14 that. And I asked her -- I told her she shouldn't be doing
15 stuff like that. Where did she learn that from. And the
16 only thing that she could do was just say I don't know. I
17 don't know. And that's when I completely stopped them from
18 going upstairs. Like nobody can go upstairs. But the older
19 -- the older girls, which were 13 and 14, or maybe 12 and 13,
20 at the time.

21 Q And you all had a rule that the kids weren't supposed
22 to be upstairs, right?

23 A Yeah.

24 Q What would Ms. Tonya have done if she had seen closed
25 doors upstairs?

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1 A Oh, she would have done the same thing.

2 Q She would open them to see who's in there?

3 A Yeah. She would have done the same thing, yeah.

4 Q And that's one of the problems that you would have with
5 being alone with the child is that the likelihood or the
6 chance of being caught?

7 A Rephrase that again.

8 Q There are plenty of children and other adults in the
9 home?

10 A Yeah, yeah, yeah.

11 Q It's hard to get in a room with a child alone --

12 A Yeah, it's hard -- it's hard to single out anybody in
13 the house. You know what I'm saying? It's hard to single
14 out anybody. Plus it's a concentration of kids, especially
15 downstairs when they love to play the -- like I said, they
16 play the Wii. And sometimes the guys come up there and
17 they, you know what I mean, want to check out what I'm doing
18 on there because they might hear me on the Internet talking
19 junk to the people on the Internet. You know, I mean,
20 that's something that they do. Because when you're on the
21 Internet you're actually playing with real people as if
22 someone was sitting --

23 Q And D.D. himself would be available to go up stairs
24 and downstairs?

25 A Yeah. It's his house. So naturally, yeah.

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1 Q And D.D. himself would be available to go upstairs
2 and downstairs?

3 A Yeah, it's his house, so naturally. Yeah.

4 Q Did you touch Minor ?

5 A No, sir. No in any inappropriate manner.

6 Q Did you touch her below the belt line?

7 A No, sir.

8 Q Did you remove or ask her to remove any of her
9 clothing?

10 A No, sir.

11 Q Did you stare at her while she was -- or tell her to
12 remove her clothes?

13 A No, sir.

14 Q Have you ever been in a room alone with Minor ?

15 A No, sir.

16 Q Any other prior allegations ever made against you prior
17 to the police arresting you on June 4th?

18 A No, sir. I've never been in trouble before.

19 MR. VERNER: If Mr. Scott or Mr. Daniel have any
20 questions for you.

21 THE COURT: Thank you. Solicitor, any
22 cross-examination?

23 MR. SCOTT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. SCOTT:

CARROLL WASHINGTON-CROSS EXAMINATION

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1 Q All right. Mr. Washington, where were you just prior
2 to Caterpillar and Kraft? You've gone on quite a bit about
3 the hours you worked and everything.

4 A Yeah.

5 Q But you don't deny that you were home with those kids a
6 lot of times, too, right?

7 A Sometimes, like -- yeah, like sometimes I would be.

8 Q Well, sometimes, yeah. But you may have had a busy
9 schedule at some point, but there were also times when you
10 were down, wasn't it?

11 A Pretty much during the week, if I would be at home.

12 Q You were at one point looking for jobs on Craigs List,
13 so you kind of had a regular hour then, right?

14 A Well, in actually, me looking for jobs on Craigs List
15 is just me finding extra money. Like I said, I was pretty
16 much the primary caregiver of the house. Tonya was going to
17 school. So, you know, what I mean, I didn't really care if
18 she wasn't working. She was doing something constructive
19 with herself going to school. A lot of people don't do
20 that. So I really, you know, appreciate it that she was
21 doing that. So, you know, being me, as a fiancée, I would
22 prefer to go out and get extra money.

23 Q Okay. Well, that's good of you. But let's don't beat
24 around the bush. You were home with those kids oftentimes.
25 I mean, you know them by their first names, don't you?

CARROLL WASHINGTON-CROSS EXAMINATION

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1 A Yeah, I know them by their first names, just like they
2 pretty much know me by my name.

3 Q So you were -- that's great. I'm glad you had that
4 job. But you're not denying the fact that you were at the
5 house a lot of times, too, when the kids were there?

6 A Depending on which kids.

7 Q Let's just go with Minor . You've been in the house
8 when Minor was there, right?

9 A Sometimes, yeah.

10 Q That's all I'm asking. You're not denying that, right?

11 A No.

12 Q So you did have these jobs where you worked hours, but
13 that didn't prevent you from being in the house when Minor
14 was there, did it?

15 A I don't understand what you're saying.

16 Q You were talking about Miranda and they didn't advise
17 you of Miranda. Tell me your understanding of what Miranda
18 is?

19 A Now? It was just you are -- your rights. You know
20 what I mean? The right -- like if you say something that
21 can be used against you in a court of law. Stuff like that,
22 you know what I mean. Usually what they always say when you
23 get locked up. I watch Cops and, you know what I mean.
24 Even before they lock you up they tell you -- I mean, let
25 you know what you got going on.

CARROLL WASHINGTON-CROSS EXAMINATION

320

1 Q So the way you understand Miranda is from the TV show
2 Cops?

3 A Yeah. And police movies and stuff. But like I said,
4 I've never had to deal with police.

5 Q But your testimony was they didn't give you Miranda the
6 first time they spoke with you; is that right?

7 A No. No.

8 Q Well, were you under arrest?

9 A Was I under arrest?

10 Q Were you under arrest?

11 A The first time they talked to me?

12 Q The first time they talked to you.

13 A No.

14 Q No?

15 A No.

16 Q So why would they have to give you Miranda?

17 A Like I said, I don't know. You know what I mean? Like
18 I said, I'm a dummy to the law.

19 Q But you know they do it on Cops and TV shows?

20 A Yeah, I'm a dummy to the law. You know what I mean?
21 Maybe that's a good thing, maybe that's a bad thing.

22 Q But what you did end up telling them was -- they told
23 you about what the allegations were, right?

24 A Uh-huh. Epps did, yeah.

25 Q And your response was you don't know Minor like I

CARROLL WASHINGTON-CROSS EXAMINATION

321

1 know her. She's a fast little girl.

2 A Not exactly like that, no.

3 Q Tell us exactly what you said.

4 A Not exactly like that. He asked me a question, and I
5 answered his question with that. And fast meaning

6 promiscuous. That don't mean like I'm saying that she

7 sexually active or nothing. That just means promiscuous,

8 you know what I mean. You do maybe -- you know, you maybe

9 kiss boys, stuff like that. You know what I mean? That's

10 pretty much -- it's just a country saying. That's all.

11 Q Promiscuous is a country saying?

12 A Well, no. I'm talking about -- pretty much that's what
13 it means.

14 Q So that little girl we saw in here today, that
15 eight-year-old, is a fast little girl to you?

16 A Promiscuous, yeah.

17 Q How is she promiscuous to you?

18 A Like I've said, I've seen her -- I caught her watching
19 anime.

20 Q Yeah, I'm going to get to that. I'm going to get to
21 that. How else is she fast though? Tell me.

22 A Watching anime. Like I said, I caught her doing some
23 inappropriate things with my step-son. That pretty much
24 sums it up.

25 Q That girl we saw earlier today is the fast promiscuous

CARROLL WASHINGTON-CROSS EXAMINATION

322

1 little girl you're talking about?

2 A Yeah.

3 Q Do you know a lot of promiscuous and fast eight,
4 nine-year-old girls?

5 A At these days and times things like that, you know what
6 I mean, you -- it's a lot of things on TV.

7 Q Let's talk about the time you caught Minor upstairs
8 with your boy. Now, I thought they weren't supposed to be
9 upstairs?

10 A That was -- that was before the fact of me telling
11 them. I told them not to go upstairs. But that's when I
12 caught her watching it. But they snuck upstairs while I was
13 outside smoking a cigarette with the ladies. Which they
14 don't smoke cigarettes. But I was out there smoking because
15 I don't smoke cigarettes in the house.

16 Q You don't?

17 A No. I don't smoke cigarettes in the house.

18 Q But back then you did and you found yourself upstairs
19 with D.D. and Minor. And they were doing something that
20 you're just going to describe as promiscuous or
21 inappropriate --

22 A Yeah, inappropriate, yeah.

23 Q And then, of course, you went and told Minor's mom,
24 right?

25 A No.

CARROLL WASHINGTON-CROSS EXAMINATION

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1 Q Well then, of course, you went and told Tonya, right?

2 A Yeah.

3 Q Is it the same Tonya in here who said she never saw
4 anything like that happen?

5 A Said she saw anything like that happen?

6 Q You were here when Tonya testified?

7 A Yeah. Well, she didn't see anything like that happen.
8 I told her.

9 Q She had no knowledge of that?

10 A I don't get what you're saying, she had no knowledge of
11 that.

12 Q Did she have any knowledge of this? The inappropriate
13 behavior with D.D. ? Where is he, by the way? Where's
14 D.D. ? He's been here all day. Where is he now?

15 A He at baseball practice.

16 Q So he's gone now and Tonya's not here, and neither is
17 the other woman. But you're here to day you saw them
18 inappropriate together sometime in the past and you're the
19 only one who has any knowledge of it; is that right?

20 A Yeah.

21 Q And I want to ask you, you've never been alone in a
22 room with Minor ?

23 A No.

24 Q Well, go ahead and describe that anime thing where you
25 found yourself alone and upstairs with her on the computer.

CARROLL WASHINGTON-CROSS EXAMINATION

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1 A I wasn't alone. There was kids -- it was kids out
2 there in the hall. Actually Money, which I can't remember
3 her real name. But Money, she's the oldest -- oldest -- one
4 of the oldest girls that come there. She actually told me
5 about it. And I went upstairs and she followed behind me,
6 and she was up there watching me. I told her she couldn't
7 watch it. Watch it -- watch stuff like that and I made her
8 go outside.

9 Q What's this girl's name again?

10 A Money.

11 Q Money?

12 A Yeah.

13 Q Why didn't you mention her when you were telling Mr.
14 Verner about this anime story?

15 A When I told him about it?

16 Q Yeah. You never mentioned this other girl the first
17 time?

18 A Well, that don't mean nothing.

19 Q So -- but the children would play hide and seek
20 throughout the house; isn't that correct?

21 A Every now and then.

22 Q And they would play PlayStation?

23 A No. Actually, the PlayStation just recently came there
24 while I've been incarcerated.

25 Q The PlayStation what?

CARROLL WASHINGTON-CROSS EXAMINATION

325

1 A The PlayStation just recently came in the house when I
2 was incarcerated. So I've actually never seen the
3 PlayStation. Playstation and Xbox -- we got like three
4 different game systems. Xbox, PlayStation, Wii U.

5 Q What was the one you're the master at that you get on?

6 A Oh, Xbox. Xbox. Xbox.

7 Q The kids would play PlayStation and Xbox upstairs?

8 A It wasn't -- by then there wasn't a PlayStation there.

9 Q Okay. Xbox. I'm sorry.

10 A Kids usually don't play the Xbox. I play the Xbox.

11 Q Usually don't. But they would play from time to time?

12 A Mainly they play Wii. Downstairs they play Dance
13 Central, Just Dance, Mario Kart. Usually that's what they
14 play downstairs. It's more of a kid friendly game system.

15 Q You're not going to say the kids never went upstairs,
16 are you?

17 A Kids never went upstairs?

18 Q You're not going to say the kids never went upstairs,
19 are you?

20 A The kids went upstairs?

21 Q You are not here to say the kids never went upstairs,
22 are you? Is that what you're saying, the kids never went
23 upstairs?

24 A Yeah, the kids -- yeah, the kids -- yeah, went upstairs
25 sometimes. But usually when that happened Tonya's upstairs.

CARROLL WASHINGTON-CROSS EXAMINATION

326

1 Q What about when she's on the porch?

2 A When Tonya's on the porch the kids are usually outside.

3 Q How do you know that?

4 A How do I know that? Because usually I'm either on the
5 back or on the front, or I'm upstairs and the kids are
6 downstairs.

7 Q So it never happens that Tonya's on the porch and
8 you're upstairs and the kids come upstairs? That never
9 happens?

10 A D.D. . Maybe Money and Shine. They're older. You
11 know what I mean. They can come up there. We only allow
12 the older kids come up there because they know better.

13 Q All right. Now you've got to explain this rule all
14 over again. What's the age limit where they get to go
15 upstairs?

16 A At the time they were 13 and 14, or 12 and 13. D.D.
17 naturally can come upstairs because he stays there.

18 Q What is it like, a rope? If you're under 12 you can't
19 come up past this stairwell, or how does that work?

20 A Well, kids are younger. You know, they don't really --
21 they'll junk up stuff. Stuff like that. We try to keep our
22 house fairly clean, even though with all the kids being
23 around. So that's the main purpose.

24 Q You remember when S.B. and Minor were upstairs
25 playing hide and seek upstairs?

CARROLL WASHINGTON-CROSS EXAMINATION

327

1 A Remember S.B. and Minor playing up? I can't
2 necessarily say so.

3 Q But you don't deny that they were upstairs playing hide
4 and go seek while you were up there?

5 A I'm not going to say they were. I'm not going to say
6 were -- they weren't upstairs. I have no recollection of
7 it.

8 Q And you play with the kids a lot? You play sports.
9 You play video games. You even dance with them, it sounds
10 like.

11 A Yeah, Just Dance. It's a video game.

12 Q Is no other adult man who are out there playing with
13 these kids?

14 A There's -- like I said, once again, it's a mixed
15 community.

16 Q What's that mean?

17 A A mixed community. A lot of older -- older people stay
18 out there. And the younger females that stay out there,
19 they don't have a father figure in their household. So
20 that's the -- that's the reason why a lot of men don't --
21 you know what I mean, be out there interacting with the
22 kids.

23 Q Well, I mean, this -- there's five different buildings
24 with multiple units in each one of them, isn't there?

25 A Yeah.

CARROLL WASHINGTON-CROSS EXAMINATION

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1 Q There's no men out there at that place?

2 A It was only one, and he actually played ball with his
3 son. He'd come out there and play ball sometimes. I can't
4 remember his name. Cameron's step-dad.

5 Q So he's only other man besides you in that whole
6 complex?

7 A Which I don't know how old he is. I'm pretty much the
8 youngest out -- yeah, I'm pretty much the youngest out
9 there. And at that time there's a guy named Irvin. -- He was
10 staying there then. But yeah, other than that, yeah.

11 Q So all females in all five buildings in that complex --

12 A There's older men out there. Yeah, there's older men.

13 Q Is it safe to say that you were the adult man who was
14 playing with all these little girls and boys?

15 A Well, like I say, sometimes -- I can't remember -- I
16 think the guy's name is Greg. Yeah, he'll come out there
17 and, you know what I mean, play ball with us. He'll come
18 out there and play ball. Like I say, I'll be alternate
19 quarterback for the guys. You know what I mean? And
20 especially like when Money and Shine and D.D. , they
21 started playing baseball. I would get out there and help
22 them with the baseball. Help them, you know what I mean,
23 play the baseball. They wanted to learn how to, you know,
24 play baseball. Because, like I said, they don't have a
25 father figure in their lives to, you know what I mean,

CARROLL WASHINGTON-CROSS EXAMINATION

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1 really show them how to do things like that. Like I said, I
2 grew up with my mother and father and I had the privilege of
3 having that and, you know what I mean, if I can do something
4 like that why deprive them of that if I have time.

5 Q And you knew Minor fairly well? That's what your
6 testimony was, right?

7 A Yeah, I know her. Yeah.

8 Q And you knew she had lived up there in Whitmire, didn't
9 you?

10 A Yeah, she stays in Columbia.

11 Q All these other kids live up in Whitmire, don't they?

12 A Yeah. Yeah.

13 Q And you have been alone with her in a room before,
14 haven't you?

15 A No.

16 Q You can testify to that under oath you've never been in
17 one room alone with her before ever?

18 A No. I've never been in a room with her alone.

19 Q And you can put your hand on that Bible beside you and
20 say that?

21 A Yeah. I've never been in the room with her alone.

22 Q And you can put your hand on that Bible and say that?

23 A Yeah. You want me to?

24 Q Can you put your hand on that Bible and say that?

25 A Yeah. If you're insinuating me to do it.

CARROLL WASHINGTON-CROSS EXAMINATION

330

1 Q Your fingernails, how long have they been like that?

2 A I been having these fingernails like -- I've been
3 having fingernails.

4 Q Why do you wear your fingernails so long anyway?

5 A I just -- they're kind of long now, but, you know, I
6 mean, they usually --

7 Q They haven't always been like that, have they?

8 A You can ask Epps. When he first seen me my nails was
9 long. So if you're saying I'm just trying to grow them now.

10 Q Why do you wear them like that?

11 A I can do that.

12 Q That's true. I just wondered if there was an
13 underlying reason for that.

14 A No.

15 Q You're kind of child like, aren't you, as far as just
16 the way you act? You have tendencies that children -- you
17 enjoy the things children enjoy. Is that not fair to say?

18 A No, that's not fair to say, because I know a lot of
19 adults that play Xbox. I know a lot of adults that shoot
20 basketball.

21 Q I'm just thinking the ice cream truck, the video games,
22 playing with the children. You wouldn't think you'd have a
23 lot of the same interests as these little children?

24 A No. I wasn't on the ice cream truck to enjoy it. I
25 was on the ice cream truck to take care of myself and start

CARROLL WASHINGTON-CROSS EXAMINATION

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1 getting out here doing things that other people do to get
2 money. I'm a law abiding citizen, so I do the right thing.
3 However, by any means necessary to take care of myself or
4 take care of my family, I'll do it.

5 Q You've had all the police reports and all the evidence
6 they got against you, hadn't you?

7 A Probably maybe like two months.

8 Q You've been able to go through it though, haven't you?

9 A Yeah. I'm supposed to. It's my stuff.

10 Q Then you heard Minor testify, so you know what it is
11 that you're accused of doing, don't you?

12 A Yeah.

13 Q That wouldn't necessarily take a long time to
14 accomplish, would it?

15 A What you mean?

16 Q What she said you did to her. That wouldn't really
17 take a long time to do, would it?

18 A I wouldn't have no earthly idea.

19 Q Well, it's your testimony all those different times
20 she's been there you've never found yourself in the same
21 room with her?

22 A No. Because, for one being, Minor - I mean, yeah,
23 Minor wouldn't be there by herself. When she come, she
24 come with her sister -- her two sisters, and D.D. is going
25 to be there, and pretty much the other three kids are Money,

CARROLL WASHINGTON-CROSS EXAMINATION

332

1 Shine. They're going to be there, too. Like you know what

2 I mean? It's just not one child there alone.

3 Q Except when they play hide and go seek, right? They've

4 got to separate when they play hide and go seek? That's the

5 only way to play it, isn't it?

6 A Well, if you say so. But like I don't have them --

7 they don't come upstairs to play it.

8 Q I thought you said they did? Sometimes they do go

9 upstairs and play. What about S.B. and Minor?

10 A I don't have any recollection of them being upstairs

11 playing.

12 Q But you don't deny it though, right?

13 A I've never seen them upstairs.

14 MR. SCOTT: Thank you, Mr. Washington.

15 THE COURT: Mr. Verner, any redirect?

16 MR. VERNER: No, Your Honor. We'll close.

17 THE COURT: All right. Thank you for your testimony,

18 sir. You can step down.

19 THE WITNESS: Thank you, sir.

20 (Whereupon, the witness stepped down from the witness

21 stand.)

22 THE COURT: Any other witnesses?

23 MR. VERNER: No, Your Honor. We'll close.

24 THE COURT: All right. The defense rests. Does the

25 State have any reply case?

1 MR. SCOTT: No, Your Honor.

2 THE COURT: Okay. The evidentiary record in this case
3 is closed. Ladies and gentlemen, it's getting really close
4 to 6:30. You all have worked very hard and I do appreciate
5 that. It would be tiring just sitting there all day long
6 which you have done. And I've watched you and you've been
7 very attentive, and I certainly appreciate that. We're
8 going to go ahead and recess until 9:30 in the morning.
9 Again, what we have left to do is the lawyers will make
10 their closing arguments to you, and then I will instruct
11 you on the law, and then I will instruct you when to begin
12 your deliberations, and you'll get the case sometime
13 tomorrow. So get you another good night's rest. And
14 remember about cell phones. Don't bring them into the
15 courthouse, and have a good evening. No discussion with
16 anybody about this case, and we'll see you in the morning at
17 9:30. Have a good evening.

18 (Whereupon, the jury was released for the day at 6:28
19 p.m.)

20 THE COURT: Gentlemen, anything this afternoon or this
21 evening before we go ahead and recess until in the morning?

22 MR. VERNER: Your Honor, I renew my motions for the
23 directed verdict.

24 THE COURT: Certainly. So noted for the record. Let's
25 try to get together about 9:00 in the morning and we can

1 have a little charge conference. Okay? Everybody have a
2 good evening.

TRIAL DAY 3-03/02/2016

1 THE COURT: Gentlemen, we're back on the record.
2 Anything we need to put on the record before we bring the
3 jury out and start with closing?

4 MR. SCOTT: Nothing from the State, Your Honor.

5 MR. VERNER: None, Your Honor.

6 THE COURT: Is the State going to open on the law or
7 charge in full?

8 MR. SCOTT: No, Your Honor. We reserve the -- just
9 close in full.

10 MR. VERNER: All right. Very good. Madam Bailiff, if
11 you'd bring the jury out, please.

12 (Whereupon, the jury entered the courtroom at 9:57
13 a.m.)

14 THE COURT: Let the record reflect that the jury is
15 back in. Good morning, ladies and gentlemen. As I
16 indicated to you yesterday when we adjourned, what we have
17 left to do are the closing arguments. The Defense will give
18 their closing argument first and then the State will give
19 theirs. We'll probably take a little small break after
20 that, and then I will charge you on the law in the case.
21 These lawyers have worked very hard, so if you will give
22 them your close and strict and undivided attention.

1 Mr. Verner, you ready, sir?

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

3 THE COURT: Yes, sir.

4 CLOSING ARGUMENT

5 BY MR. VERNER: Mr. Foreman, members of the jury. With
6 terrible actions there are terrible consequences. I mean,
7 make no mistake about that. That's what you're here for
8 today is whether the State has produced without any
9 reasonable doubt that there was criminal sexual conduct in
10 the first degree. But understand, this is a weighty case.
11 There is nobody after you today who can undo your verdict.
12 And I've had that come up sometimes with jurors over the
13 years. I've been here about 15 years. Well, somebody kind
14 comes back and kind of looks over what we do and makes sure
15 everything -- that's not right. Nobody, not the Judge,
16 nobody can change a fact that the jury finds. The Courts
17 are exclusively concerned with the law charged. I've got
18 great respect for Judge Hocker out of Laurens today. But
19 the Supreme Court didn't send him to Newberry today for a
20 non-weighty case. And I understand Judge Hocker has a lot
21 of authority, a lot of power. Really today he is the least
22 important person at this moment, because Judge Hocker cannot
23 comment. He cannot opine. He can have no opinion in this
24 case. Can't undo your findings of fact. I can at least
25 argue what I submit what the evidence shows, and so can the

1 lawyers on the other side. The case ends with you, but
2 there's no cavalry who's going to undo your verdict today.
3 So it is important that you all get it right. This is a
4 criminal prosecution. The State has charged Carrol with
5 first degree criminal sexual conduct with a minor. They
6 basically have to prove two things. That the child, the
7 victim, is under 10-years-old. Is 10-years-old or younger.
8 For first degree criminal sexual conduct, which is what the
9 State -- what they have chosen to bring this case as. First
10 degree rape. First degree criminal sexual conduct with a
11 minor. The State has to prove beyond any reasonable doubt
12 that what we're saying happened without any question the way
13 we're saying it happened, based on the evidence, that Carrol
14 Washington had sexual intercourse with a child. The
15 cunnilingus or fellatio. I'm not going to define those.
16 They haven't alleged that. Anal intercourse. They haven't
17 alleged that. The fourth -- the fifth of these five
18 categories is intrusion into the child's anal opening,
19 orifice, even if it's slight. But it has to be -- an object
20 has to be inserted, it can be a hand, into the child's
21 vagina or anus. But there has to be without any reasonable
22 doubt an intrusion for a first degree charge that the State
23 has brought. This is the heaviest charge and this is what
24 we're here for. If there is any possibility that it didn't
25 happen completely the way you've heard it or that it

1 happened entirely different. That the only person you all
2 have a duty to is Carrol Washington to give him the benefit
3 of the doubt. He's the one who picks up the check today
4 based on your verdict. That's the end of the case. If
5 there is any doubt on any element of their claim he is
6 entitled to a not guilty verdict or you will be convicting
7 an innocent man. And I understand. I saw the child victim.
8 I saw Minor testify. I would say for 15, 20 years, you
9 can see, children are always persuasive witnesses. They're
10 hard to question. Sometimes answers are incomplete. It's
11 almost like when you have a dream sequence. The testimony
12 is just blurbs and bits and pieces of dream sequences and
13 then you wake up the next morning and you have to piece them
14 altogether and try to figure out without any doubt what my
15 dream was from point A to point Z, and you're kind of going
16 on dream sequences. Well, this kind of happened but, then we
17 were playing on the playground. There's just not linear
18 testimony like an adult. And the State will tell you -- I
19 think sometimes they harp on it too much, but a child's
20 testimony by law does not have to be corroborated, and the
21 State will tell you that again and again. But that's not a
22 lower standard for the child's testimony. An adult's
23 testimony doesn't have to be corroborated. You can be
24 convicted on a he said/she said case. If 12 members all
25 unanimously agree there is no other reasonable doubt other

1 than guilt you can be convicted of he said/she said
2 testimony. That is enough. Whether it's a child's
3 testimony, whether it's an adult's testimony. But that
4 doesn't mean that you weigh the child's testimony any less
5 than you would an adult. You have to consider the source of
6 the testimony, but you still have to weigh it just like an
7 adult. It does not have to be corroborated. But it does
8 have to be proven. And the way to do that is you consider
9 the child's testimony. And then I think you have to
10 consider all of the other evidence in the case. The
11 totality of the circumstances that supports the case. In
12 this case you don't have any corroborating -- there's no
13 medical testimony. There are no other child -- the only
14 other eyewitness that they presented was the child S.B.

15 And I thought that was interesting testimony, their witness,
16 who said he never put his hands on me. I saw him grab
17 D.D. one time, but he never put his hands on me. That, to
18 some extent, is inconsistent with their allegations. The
19 fact that there were -- would have been multiple adults
20 coming and going from the premises doesn't mean it doesn't
21 happen. But it certainly means that it might not have, but
22 it certainly would not have been a great place to commit a
23 crime when you have adults coming and going. You have
24 children coming and going, upstairs, downstairs. And their
25 best witness is, a child who said, well, he never grabbed me,

1 but I think I remember he took Minor into the bathroom. I
2 think I remember he was in the bathroom with Minor because
3 we were playing hide and seek, I was it and I found them in
4 there. I submit to you, if you're going to commit a crime
5 in the middle of a game of hide and seek while somebody's
6 actively searching for you is possibly inconsistent with the
7 child's version of the facts. The fact that the child --
8 and I can understand the allegations. She understands the
9 appropriate touching and the -- to some extent she does, but
10 to some extent she doesn't because she -- even with the
11 interview she's talking about, well, he kneed me one time.
12 I was running past there, or I got kneed in my stomach and
13 my chest. And when you saw the child testify she felt that
14 that was something wrong that he should have been punished
15 for. She couldn't equate at that age, and she's two years
16 older now, and she couldn't equate -- she still felt that --
17 what she said was I ran into his knee, and she still felt
18 that that was part of the inappropriate touching. And we
19 know it wasn't. But it's in that grey area of the child
20 where she doesn't have a clear comprehension of what was the
21 appropriate and what was not. And you just have to factor
22 that in. I don't dispute that the child was a very
23 forthright, attempting to be open. I do also suggest that
24 for the past few years that people have been talking to her,
25 asking questions, putting her ideas, and then she's got a

1 blended memory now. Her stories, as you heard from the
2 witness stand and two years ago, they don't -- they don't
3 fit squarely. The child has a blended memory of even then
4 when she was seven of what happened without fully
5 understanding the consequences. I will tell you, and the
6 Judge will tell you, if you find that the activities were
7 suspicious he's entitled to a not guilty verdict. You
8 cannot convict somebody on suspicion. It has to be hard
9 proof beyond a reasonable doubt.

10 The fact that he worked full-time he would not have
11 been a regular person -- now, the Solicitor says, well, I
12 think it's weird that this adult man spends time with
13 children and he drives an ice cream some time in his past.
14 That's kind of weird. I don't -- he's a man with children
15 in his home and from time to time he plays with the kids.
16 He may have driven on one of his many jobs an ice cream
17 truck. I don't think that adds anything to their story one
18 bit at all. It doesn't move the football back. It doesn't
19 move the football forward. I think he's going to present it
20 to you as suspicious. I think his story is right. As an
21 adult man you wouldn't go to a neighbor's house to play with
22 children. But if they come to you house and you spend some
23 time with children playing from time to time, I don't think
24 that's enough to convict him, and I don't think it's
25 suspicious.

1 Some other factors just from the testimony. That
2 Minor -- I don't think they've proved it one way or the
3 other. But she never could have been to that property by
4 herself. As you heard, she was either at her father's house
5 who -- it's not evidence, but he's not here. Why didn't he
6 testify. At no part in the trial did you hear from her
7 father. And I'm going to come back to that in a second. It
8 doesn't -- that's not proof, but I'm going to come back to
9 exactly why it's significant to me. But she was never at
10 that home alone. She had an older sister who was two years
11 older than her. She had a sister who was a year younger
12 than her. She never would have -- or she was not there. I
13 understand they're going to say, well, children don't
14 immediately report things, but sometimes they do. But you
15 have to factor in, you know, what they are saying as an
16 excusable two year delay in saying some of these things
17 without really dating them when they happened.

18 I think you have to consider the testimony of Candice
19 Hopkins, cousin of the victim's family. No relation this
20 side. Friends, cousins of his girlfriend, but no family
21 relations to Carrol Washington. Her cousin says that
22 sometimes the reputation in the community is that we don't
23 get credible information from that family is her reputation
24 in the community. All the other mothers still come and
25 play. In fact, she said Carrol's reputation in that

1 community is good. The other mothers still come. He's got
2 a good reputation. And the Judge will tell you, he's had no
3 prior trouble before. He's got a good character, good
4 reputation. That is something in and of itself you can find
5 somebody not guilty of. If somebody comes to court and says
6 for 30 years I've led a law abiding good life, I'm of good
7 character, that in and of itself is sufficient to find
8 somebody not guilty if there is not beyond a reasonable
9 doubt evidence of guilt. Candice, familiar with the scene,
10 said I felt -- I don't know what happened, but it was
11 unlikely that something happened. And so did Ms. Tonya. I
12 understand she's got a bias. I understand the girlfriend's
13 got a bias. But she also testified that there would have
14 been adults, other women in the house moving up and down,
15 that would make these allegations unlikely.

16 And finally, I've got some concern also about the
17 child's testimony. We know, they admitted, the officer, the
18 Investigator Epps testified to it. There have been some
19 allegations of prior abuse. Now, when the Officer said he
20 investigated it he said I thought we were talking about her
21 older sister. The mother testified and said no, it was her,
22 from the father's side. And we don't know anything about
23 that. It wasn't investigated. It wasn't brought up on the
24 witness stand. I don't know how much you all weighed that
25 but I don't think that you call can consider that child's

1 testimony without considering that this is a child of tender,
2 years who has other memories of abuse. And I submit to you
3 that there is a very real danger that she may be projecting
4 it onto Carrol Washington. We've just got dream bits of
5 testimony that they want you to convict somebody of first
6 degree rape, criminal sexual conduct to a minor. And I
7 submit to you that that's probably not fair.

8 Now, the State gets the final argument because they've
9 got the burden of proof. I hope you -- if you have a
10 question about testimony, it's a court of record. Testimony
11 is recorded. It can be played for you. It wasn't any long
12 trial, I submit. That you all saw as much as I did and
13 heard as much as I did. Just the only thing we're here --
14 we're not here as fact finders. We're here to determine if
15 the State has enough evidence to deprive somebody of
16 liberty. And it is your job to defend the citizen unless
17 you have no other choice but to find him guilty because the
18 case is so strong that he should be removed from society.
19 And I think that their case -- I submit to you that their
20 case might fall just a bit short, without knowing exactly
21 what happened.

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

23 MR. SCOTT: Yes, sir.

24 CLOSING ARGUMENT

25 BY MR. SCOTT: Sometimes, if you listen carefully, the

1 softest voices speak the loudest. Sometimes the words of
2 the smallest carry the greatest weight. There are times
3 that a voice like this cries out from the dark begging to be
4 heard, asking to be believed. And this is what a child in
5 this case looks like. And this is the kind of case that
6 demands justice. This is why we have a criminal justice
7 system. Because after all, if we have a criminal justice
8 system that can't speak up and protect the most vulnerable
9 of us, the most helpless of us, then what good is it. You
10 were called here today to make a decision in just such a
11 case. Will you believe the soft voice of the meek whose
12 message rings the loudest, or are you going to believe the
13 voice of the taker? The taker has taken away so much from

14 Minor . Taken away her security, feeling of
15 safety. Taken away all those good times in Whitmire. Taken
16 away her innocence. And the taker stands here today and
17 tells you don't believe her. She's just 10-years-old. My
18 voice is loud.

19 Whitmire used to be such a fun place for Minor . That
20 was -- I think it was clear that was a place she very much
21 enjoyed going. Where her Granny Pooh lived. And that was
22 kind of -- you know, Whitmire to her was school breaks,
23 weekends with grandma. Getting away from the home that
24 you're in day in and day out and kind of, you know, maybe
25 grandma let's you get away with more than mom does at home.

1 At least that's how it was when I was growing up. But she
2 also had all the friends there. All the little kids her age
3 that she could run outside with, play games with and
4 everything else. It just abruptly comes to an end. Why is
5 that? Why is this place that Minor loved so much suddenly
6 she's begging her mom don't take me there. I don't want to
7 go there. It kind of confused Nicole because this is
8 somewhere she's begging -- begging to go up and then all of
9 a sudden it's like a lightbulb. I do not want to go there
10 anymore mom. Please don't make me go. Why is that? We
11 know why not. It's because the last few times the taker had
12 waited until she was alone and gradually he's getting ready
13 to take her pants down so he can look at her. That happens
14 a couple of times. They call this grooming. And, what the
15 molester does, what the taker would do, is gauge how much he
16 can get away with. And he gets bolder and bolder until it
17 leads to that one situation in the bathroom when he's
18 touching her. It's progressing. And don't -- don't mistake
19 yourself. It would continue to progress had she not been
20 brave enough to finally tell her mom I don't want to go up
21 there anymore. Make no mistake about it. He had grown bold
22 enough to slip his hand down her pants. Yeah, I think it's
23 funny because -- I don't know. Depending on who you ask.
24 She was always supervised. She was never alone. Never for
25 one second was she alone. It only takes a couple seconds to

1 do what he had done. Don't get me wrong. That was one step
2 in progressing and progressing because that's what a taker
3 will do. He's going to take what he can when he can when
4 the opportunity presents itself. Now, how long do you think
5 it would take him to slip his hand down the back of her
6 pants and inside her buttocks? It wouldn't take but a few
7 seconds. And that's all it did take. And make no mistake
8 about it, he has been in a room with her alone before. He
9 took great pains. He took a lot of effort to stand up here
10 and try to tell you that could never have possibly happened.
11 But, well then, I don't know. Maybe -- I can't deny that it
12 didn't happen. But there's no way it could happen because
13 the parents were there all the time and the kids were
14 everywhere. He was trying very hard. But make no mistake
15 about it. He's been in a room alone with her. S.B., the
16 other little girl, saw it with her own eyes. She saw it.
17 It only takes a second, because the taker is opportunistic.
18 When the opportunity arises he's going to take it, and he
19 did in such a situation. And it's been consistently
20 testified to by Minor from the time she did the forensic
21 interview to yesterday when she was in here. I just want to
22 -- do any of you people truly believe an eight, nine, 10-
23 year-old is capable of concocting something like this.
24 Going someplace like the Dickerson Center, sitting alone in
25 a room with a perfect stranger and disclosing all these

1 things in great detail like she did, and then months later,
2 almost a year later come in this courtroom. You all seem
3 to be very nice people, but you're complete strangers to me.
4 You're complete strangers to her. And she had to sit up
5 here and besides y'all and she had to look out here at all
6 these people and the person who did this to her and she had
7 to again speak in great detail about this sort of thing.
8 And that's a 10-year-old girl. I can't imagine being in her
9 shoes. I'm a great deal older than her, but that takes the
10 kind of bravery that I don't know that I can muster. But
11 here she is doing it, and for what. For what? What's the
12 agenda? What's the motivation for making this up? Have you
13 heard one? Has anyone heard one? She lived going to
14 Whitmire. Never had a problem with Man. Never had a
15 problem with the taker. Never had a problem with Carrol
16 Washington before this. What's the motivation? Did that
17 occur to you guys when you were hearing it? I kept asking.
18 I kept asking on the Defense. I kept asking my own
19 witnesses. Nicole, did you have a falling out with Man?
20 Did you have a falling out with Tonya? Did you all have
21 some kind of -- no. We've always been on good terms.
22 That's my family. And then they call the Candice girl. You
23 know; well, they ask -- they ask her, you know, what's the
24 thing going on here. And the best she could say was Nicole
25 sometimes doesn't tell the truth. And then she said, well,

1 me and her have problems. Now, she had some kind of
2 problem, but she was just a witness and that Bible just
3 about caught on fire when she was testifying. I don't find
4 her to be a very credible witness at all because I said,
5 well, aren't you the same Candice Hopkins that has a charge
6 of lying to law enforcement. You have some convictions on
7 here and one of them is just you've lied to law enforcement.
8 They asked you a question and you lied to them about it.
9 And then she lied to me. --And--said no, that's not me. I
10 said, what's your birthday. And I read her birthday, and
11 she said, oh, that is my birthday. And I said, well, okay.
12 Are you sure you didn't have a conviction for lying to the
13 police? No, that's not me. I had to take it up with her
14 until she finally said you got me. I don't find her
15 testimony very credible at all. Aside from her they called
16 Tonya. You all remember Tonya. That's Carrol Washington's
17 girlfriend. I said, do you have a problem with this man?
18 Somebody gave you a reason why this girl would concoct this
19 story and make this whole thing up. And she said, no. I
20 never had a problem with her. I think the testimony was
21 that Nicole had been on the phone with Tonya talking about
22 being in her wedding just prior to this. No, that's my
23 family. I don't have a problem with her. Mr. Washington
24 took the stand. I said, Mr. Washington, you know, have you
25 had any kind of falling out with Nicole and this family?

1 No, no, no, no, no. There's no agenda here. There's
2 absolutely no motivation for this girl to concoct this
3 story. This story has been consistent from the very get go
4 from the initial allegation to the times -- you all going to
5 get to watch that forensic interview as much as you all want
6 to, by the way, and you're going to find, and you can
7 compare it to her testimony yesterday, that it's wholly
8 consistent. Is a nine, 10-year-old capable of doing that.
9 You know, if you're lying, you got to be good at it. If
10 you're lying you got to remember what the lie is so you can
11 carry it on. You know what I'm saying? But if you tell the
12 truth you don't have to do all that because you remember
13 what happened. If you're telling the truth your story is
14 going to be consistent. The big part's going to be
15 consistent, and that's what you're going to find when you
16 watch that forensic interview and you remember how she
17 testified yesterday. She's talking about things here that a
18 nine-year-old doesn't probably really know about. She uses
19 terms like a heinie. She didn't even have, I guess, a word
20 for her genitalia. She's every naive. She's very young.
21 But she's describing those things that we know sometimes
22 child abusers do. Describing giving her hand gestures to
23 make her pull her pants down. She's describing how he'll
24 stand there and watch her as she's standing there naked in
25 front of him. She described him cornering her in that

1 bathroom, slipping his hand down the back of her pants,
2 putting it inside her butt. A nine, 10-year-old doesn't
3 know that kind of thing because they don't understand things
4 sexual in nature to that degree. And then she's describing
5 the intrusion. She's describing it -- and I'm sorry. It
6 was -- I'm trying to get it out of her because you could
7 tell the shame in her voice. You could tell the shame in
8 her demeanor while she's up here. That's the tragedy in
9 these kind-of situations. The child always thinks they did
10 something wrong. They child thinks they're the reason. The
11 child thinks they had something to do with it. The child
12 thinks they should have something to be embarrassed about.
13 The taker is the one who did it. The taker is the reason
14 that girl is going to remember this the rest of her life.
15 The taker is the reason she had to sit up here and tell you
16 all about this thing. And she did. And she was brave. She
17 told you what happened. She told you about how the best way
18 I can describe it is how I have to wipe my heinie. How I
19 have to put my hand in there. That's where his hand was.
20 And she talked about the pressure she was feeling and that
21 was against her anus, because he's trying to penetrate her
22 anus with his finger. How would an eight, nine, 10-year-old
23 know how to talk about something like that? And it ain't
24 coming from Japanese animation or whatever they're talking
25 about catching her watching on the computer, which

1 incidently they never told her parents about. But why make
2 this up if you're a 10-year-old girl and continue it? What
3 does she have to gain from this? Did that ever occur to you
4 guys? What is the end game here for a 10-year-old. I mean,
5 it would have been very easy just to say I don't want to do
6 this anymore. I forgot. I can't remember what happened.
7 Just make it stop. I don't want to do this. There ain't no
8 motivation here. And I'm not going to harp on it. But
9 there need not be no corroboration of her testimony. It's
10 just hard when you get -- when you get a grownup in here,
11 and you got a little girl like that. Just the meekest,
12 mildest little girl. She's trying to tell you what
13 happened. She's trying to articulate it. She's trying to
14 tell you. And it's true, kids don't communicate like adults
15 do, but she's trying. And then you got the taker over
16 there. She's saying here's what happened to me. Please
17 believe it. And he's saying, don't believe her. She's 10-
18 years-old. But the law does say her testimony, her -- what
19 she says does need to be corroborated. In this case it is.
20 We got Washington over here saying I've never been in the
21 same room with her. I just want you to know that. It's
22 impossible. Tonya had said something to the effect of,
23 well, parents sometimes over there. But, you know, most of
24 the times the kids just came to our house. I'll be outside
25 smoking cigarettes and talking with the ladies. Carrol will

1 be playing with the kids. He'd be upstairs on his game or
2 playing with the kids or whatever. But he wants you all to
3 know that he's ever been in the same room with Minor .
4 Well, her testimony says otherwise and it's corroborated by
5 S.B. who said I specifically remember one occasion when we
6 were playing hide and go seek. I was upstairs. I went
7 running down the stairs and I looked and I saw Man. I saw
8 Carrol Washington and Minor in the bathroom alone
9 together. Completely contradicts what we've been trying to
10 tell you guys that it could not happen. It's impossible.
11 It could never happen. But S.B. has already corroborated
12 Minor 's testimony. She said I saw it with my own two
13 eyes. And now he's in the situation where he's saying,
14 well, don't believe Minor . That nine, 10-year-old. But I
15 also don't want you to believe S.B. because she's
16 10-years-old, too. Just believe me. Minor was the
17 perfect victim. You saw it with your own eyes. You saw
18 that little leg of hers shaking the whole time she was
19 testifying. You heard her voice wavering. You saw me
20 trying as hard as I could to get her to raise her voice.
21 That's just her nature, I think. But I think it's
22 intensified, it's magnified when you're in this environment,
23 this situation. But aside form that, aside from her
24 stature, aside from her personality. Here's the people I
25 would count. He named a lot of kids that were hanging out

1 over there. There was S.B. , Money, Sunshine, McKenzie,
2 Kaitlyn, Tamara, Cameron, James, Arielle, Amaya. Do you
3 know what they all have in common? They all lived at the
4 Apartments. You know what made Minor a little bit
5 different? She didn't. She lived down in Columbia. So
6 Man, Carrol Washington, the man who spent all this time
7 playing with the kids while the women were doing their
8 thing, was able to pick the vulnerable one. Pick the one
9 whose parents weren't living next door to them. Pick the
10 one who wasn't there every day, you know. Pick the one who
11 didn't live in close proximity to him. Pick the tiny one
12 and he can focus on her. He identified her as the most
13 vulnerable without all her people around all the time. I
14 think she made the perfect victim for somebody like Carrol
15 Washington, and I think that's why he targeted her. And I
16 think it's interesting when they first ask him about it he
17 pipes up she's a fast little girl. When he was on the stand
18 yesterday he wanted you to know she's a promiscuous little
19 girl. I'm going to leave that to you guys. I'll leave that
20 to you all. You all saw the same thing I did. If you all
21 thought that was a fast little girl, a promiscuous little
22 girl, that's going to be up to y'all to make that decision.
23 And that's going to be up to y'all to decide who was
24 credible and who was not. That's one of your jobs. And to
25 determine this case you're going to decide whose story do I

1 believe. You know, S.B. , when she said she saw them in
2 that bathroom together was she telling the truth, or maybe
3 she had something -- some hidden agenda. I don't think so,
4 because she still lives over there with them. She says she
5 loves Man and she loves Tonya. She loves hanging out over
6 there. Her testimony was she caught them in the bathroom
7 alone together. Do you all find that credible or not. Did
8 -- Minor got up there and you saw her demeanor. You saw
9 her trying to testify and you saw her taking a deep,
10 swallowing hard before she testified. Is that something
11 that you think the average nine, 10-year-old is capable of
12 doing, coming in here and swearing on the Bible telling that
13 story like that in front of you all. In front of everyone
14 here. In front of that Judge. I submit to you she was
15 wholly credible. That she's only capable of telling the
16 truth. She's not capable of carrying on a lie to that
17 degree for that long. A child just isn't capable of doing
18 that. And they tried to crack her under the pressure. They
19 have cross-examination at one of their - - they question her
20 and question her until she cracks and they catch her in a
21 lie. They couldn't do it. And a child will fold under a
22 cross-examination because they're not capable of lying to
23 that degree and to that extent and her story was consistent.
24 Sometimes the softest voices carry the most weight. I tell
25 you that. All the taker could muster was she was a fast

1 little girl.

2 It's not in question that she was under 11. That's
3 element number one that I've got to prove for this charge.
4 She's 10-years-old now, so we know it had to happen when she
5 was less than 11-years-old. The question is was there a
6 sexual battery. Sexual battery in this case is an
7 intrusion, in a legal term, an anal opening. The testimony
8 from Minor was he put his hand under her pants, put his
9 fingers in her butt. And she described the same feeling as
10 when you're wiping and she described the pressure of
11 something entering her anal opening. And that's y'all's
12 decision. That's what you're going to go back there and
13 decide. And you're going to put all 12 of your minds
14 together? And you're going to put all 12 of your
15 recollections together, and you're going to put all that
16 lifetime experience that each one of you have and you're
17 going to combine it. And y'all are all from different
18 points in this county. And you're going to speak to the
19 consciousness of this county. That's what you are. You're
20 going to speak for the ideals of Newberry County. And
21 you're in that place because you're all residents of
22 Newberry. I couldn't serve on a Newberry jury. I don't
23 live in this county. The Judge couldn't serve on a Newberry
24 County jury. He doesn't live in this county. The Defense
25 attorney, he couldn't serve on a Newberry County jury. He

1 doesn't life in Newberry. You guys speak for your home.
2 You speak for this county and the values and the morals of
3 Newberry County. And you're going to speak for what
4 Newberry County will decide is acceptable and not
5 acceptable. Do you understand? I'm going to ask you to go
6 back there, give voice to the weak. Do what's right. Do
7 what justice calls for. Do what all the evidence points at.
8 Find the taker guilty of what he's done. Find him guilty of
9 taking everything that he's taken. Find him guilty of that
10 indicted charge, criminal sexual conduct with a minor first
11 degree for what he did to little Minor. Thank
12 you.

13 THE COURT: Thank you, Solicitor. Mr. Foreman, ladies
14 and gentlemen of the jury, we're going to take about a 10
15 minute break, and then I'll bring you back and charge you on
16 the law. Again, don't start your deliberations yet. No
17 discussion among yourselves, and we'll see you in about 10
18 minutes. Okay?

19 (Whereupon, the jury exited the courtroom at 10:36
20 a.m.)

21 THE COURT: We'll be at recess about 10 minutes. The
22 final charge and verdict form has been emailed to everybody.
23 So take a look at that during the recess and make sure
24 you're okay.

25 (Whereupon, a recess was held from 10:36 a.m. to 10:50

1 a.m.)

2 THE COURT: We're back on the record. Let me just put
3 on the record that it was by way of agreement that the
4 verdict form would not include a finding by the jury as to
5 the type of sexual battery if, in fact, they were to find
6 the Defendant guilty. That was -- the discussion was based
7 on 16-3-655 subsections (d)(1). Anything further before we
8 bring the jury out for final charge?

9 MR. SCOTT: Nothing from the State, Your Honor.

10 MR. VERNER: Nothing.

11 THE COURT: All right. Madam Bailiff.

12 (Whereupon, the jury entered the courtroom at 10:50
13 a.m.)

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

15 Mr. Foreman, ladies and gentlemen of the jury, I am now
16 going to charge you the law applicable to this case and you
17 must consider the charge as whole and not focus on some
18 portion to the exclusion of other portions.

19 The indictment charges, as I briefly explained to you,
20 charges the Defendant with criminal sexual conduct with a
21 minor first degree as pursuant to section 16-3-655 Code of
22 Laws for South Carolina. I remind you that the fact that
23 the Defendant was arrested, charged and indicted in this
24 case is not evidence in this case and cannot be considered
25 by you as evidence of guilt in this case, nor does it create

1 any presumption or inference of guilt. This document is
2 simply the formal written instrument which contains the
3 charges made against the Defendant. It is the formal
4 document by which this case is brought into this Court.

5 I also remind you that during this trial you and I have
6 had certain duties to perform. As the trial judge it's been
7 my responsibility to preside over the trial of this case,
8 and I also have had the duty to rule on the admissibility of
9 evidence offered during this trial. You are to consider
10 only the competent evidence before you. If there's any
11 testimony ordered stricken from the record in this case
12 during this trial, and I believe that there was, you must
13 disregard that testimony. You are to consider only the
14 testimony which has been presented from this witness stand,
15 any exhibits which have been made a part of the record in
16 this case and any stipulations of counsel. I have the
17 additional duty to charge you the law applicable to this
18 case. As the presiding Judge I am the sole judge of the law
19 in this case, and it's your duty as jurors to accept and
20 apply the law as I now state it to you. As I told you
21 yesterday, if you already have any ideas of what the law is
22 or what the law ought to be and it does not agree with what
23 I now tell you the law is, you must abandon your idea,
24 because you are sworn to accept the law and apply the law
25 exactly as I state it to you. As I also told you, in every

1 care case tried in this Court before a jury, the jury
2 becomes the sole and exclusive judge of the facts in this
3 case. A trial judge cannot intimate, state, comment on or
4 make any statement to a trial jury about the facts in the
5 case. Since you, the jury, are the sole judge of the facts
6 in this case you are not to infer from what I have said
7 during the progress of this trial in ruling upon the
8 admissibility of evidence or otherwise or anything that I
9 say now during the course of this instruction to you that I
10 have any opinion about the facts in this case. I do not
11 have any opinion about the facts in this case. The law does
12 not allow me to have any opinion about the facts in this
13 case. This is a matter solely for you, the jury, to
14 determine. As jurors it is your duty to determine the
15 affect, value, weight and truth of the evidence presented
16 during this trial.

17 Now, the Defendant has pled not guilty to this
18 indictment, and that plea of not guilty puts the burden of
19 proof on the State to prove the Defendant guilty. A person
20 charged with committing a criminal offense in South Carolina
21 is never required to prove himself innocent. I charge you
22 that it is an important rule of law that a Defendant in a
23 criminal trial, no matter what the seriousness of the charge
24 may be, will always be presumed to be innocent of the crime
25 for which the indictment was issued unless guilt has been

1 proven by evidence satisfying you of that guilt beyond a
2 reasonable doubt. This presumption of innocence does not
3 end when you begin your deliberations but it accompanies the
4 Defendant throughout the trial unless you reach a verdict of
5 guilt based on the evidence satisfying you of that guilt
6 beyond a reasonable doubt.

7 This presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the Defendant
9 which remains with the Defendant unless it has been stripped
10 of the Defendant satisfying you of the Defendant's guilt
11 beyond a reasonable doubt. Now, this presumption of
12 innocence is not mere legal theory and it's not just a legal
13 phrase. It is a substantial right to which every Defendant
14 is entitled unless you, the jury, are satisfied from the
15 evidence of the Defendant's guilt beyond a reasonable doubt.

16 Let me explain to you what reasonable doubt is. The
17 State has the burden of proving the Defendant guilty beyond
18 a reasonable doubt. Some of you may have served as jurors
19 in civil cases where you are told that it is only necessary
20 to prove that a fact is more likely true than not true, such
21 as by the greater weight or the preponderance of the
22 evidence. In criminal cases the State's proof must be more
23 powerful than that. It must be beyond a reasonable doubt.
24 Proof beyond a reasonable doubt leaves you firmly convinced
25 of the Defendant's guilt. Now, there are very few things in

1 this world that we know with absolute certainty, and in
2 criminal cases the law does not require proof that overcomes
3 every possible doubt. If, based on your consideration of
4 the evidence you are firmly convinced that the Defendant is
5 guilty of the crime charged, you must find the Defendant
6 guilty. If on the other hand you think there's a real
7 possibility that the Defendant is not guilty, you must give
8 the Defendant the benefit of the doubt and find him not
9 guilty.

10 Now, Mr. Foreman, ladies and gentlemen of the jury,
11 there are two types of evidence which are generally
12 presented during a trial. That being direct evidence and
13 circumstantial evidence. Direct evidence directly proves
14 the existence of a fact and does not require deduction.
15 However, circumstantial evidence is proof of a chain of
16 facts and circumstances indicating the existence of a fact.
17 Crimes may be proven by circumstantial evidence. The law
18 makes no distinction between the weight or value to be given
19 to either direct or circumstantial evidence. However, to
20 the extent the State relies on circumstantial evidence, all
21 of these circumstances must be consistent with each other,
22 and when taken together point conclusively to the guilt of
23 the accused beyond a reasonable doubt. If the circumstances
24 merely portray the Defendant's behavior as suspicious, the
25 proof has failed. The State has the burden of proving the

1 Defendant guilty beyond a reasonable doubt, and this burden
2 rests with the State regardless of whether the State relies
3 on direct evidence, circumstantial evidence, or some
4 combination of the two. Necessarily, you must determine the
5 credibility of witnesses who have testified in this case.
6 Credibility simply means believability. It becomes your
7 duty as jurors to analyze and to evaluate the evidence and
8 determine which evidence convinces you of its truth. In
9 determining the believability of witnesses who have
10 testified in this case you may believe one witness over
11 several witness, or several witness over one witness. You
12 may believe a part of the testimony of a witness and reject
13 the remaining part of the testimony of that same witness.
14 You may believe the testimony of a witness in its entirety
15 or reject the testimony of a witness in its entirety. You
16 may consider whether any witness has exhibited to you any
17 interest, bias, prejudice or other motive in the case. You
18 may also consider the appearance and manner of a witness
19 while on the witness stand.

20 At issue in this case is the identification of the
21 Defendant as the person who committed the crime charged.
22 The State has the burden of proving identity beyond a
23 reasonable doubt. You must be satisfied beyond a reasonable
24 doubt of the accuracy of the identification of the Defendant
25 before you may convict the Defendant. Identification

1 testimony is an expression of belief or impression by a
2 witness. You must determine the accuracy of the
3 identification of the Defendant. You must consider it a
4 believability of each identification witness in the same way
5 as any other witness. You may also consider whether the
6 witness had an adequate opportunity to observe the offender
7 at the time of the offense. This will be affected by things
8 like how long or short of time was available. How far up
9 close the witness was. The lighting conditions. And
10 whether the witness had the chance to see or know the person
11 in the past. Once again, I instruct you, the burden of
12 proof on the State extends to every element of the crime
13 charged, and this specifically includes the burden of
14 proving beyond a reasonable doubt the identity of the
15 Defendant as the person who committed the crime. After
16 examining the testimony you have a reasonable doubt as to
17 the accuracy of the identification, you must find the
18 Defendant not guilty.

19 Now, criminal intent is a necessary element of each
20 crime and must be proven by the State beyond a reasonable
21 doubt. Criminal intent is always a matter that must be
22 determined by the jury from the circumstances surrounding
23 the situation. Now, there's no way to improve intent to a
24 mathematical certainty. There's no way medical science can
25 dissect a person's brain to determine what he or she had in

1 mind. So the law states criminal intent may be inferred
2 from the circumstances shown to have existed both before and
3 after the fact. This is how you, the jury, makes a
4 determination of whether or not the element requiring an
5 intent was present. Criminal intent is a state of mind that
6 operates jointly with an act or omission in the commission
7 of a crime. Criminal intent is a mental state of conscious
8 wrongdoing. So it is up to you, the jury, to determine what
9 the Defendant intended to do based on the circumstances
10 shown to have existed. I tell you that the State must prove
11 criminal intent beyond a reasonable doubt just as the State
12 must prove every element beyond a reasonable doubt as I have
13 previously explained to you.

14 Now, a statement alleged to have been made by the
15 Defendant has been admitted into evidence in this case.
16 While the Court has determined that the statement is
17 admissible, I instruct you that you make the ultimate
18 decision of whether or not the Defendant made the statement.
19 If the Defendant did make the statement, you must determine
20 whether the statement was made by the Defendant voluntarily
21 and of his own free will. This means that the his statement
22 was not caused by pressure, force, fear, threats, coercion,
23 or intimidation, or by hope or a promise of leniency or
24 reward of any kind. In determining whether a statement was
25 voluntary you should consider both the characteristics of

1 the Defendant and the details of the questioning. Some of
2 the factors that you may consider are the age of the
3 Defendant, the Defendant's education or lack of education,
4 the Defendant's mental ability or capacity, the Defendant's
5 IQ or intelligence, the Defendant's background and
6 environment, the place and length of detention, the nature
7 of the questioning. You must carefully consider all the
8 surrounding circumstances before you give any weight to an
9 alleged statement.

10 The State has the burden of proving beyond a reasonable
11 doubt that the alleged statement was voluntary. If you
12 determine it was, you may give the statement any further
13 consideration that you deem proper. You must decide what
14 weight, if any, should be given to the alleged statement.
15 If you determine the alleged statement was not the free and
16 voluntary statement of the Defendant, you should not
17 consider the statement at all.

18 Now, Mr. Foreman, ladies and gentlemen of this jury,
19 during this trial you have heard testimony from children.
20 When a witness is a child you must determine, as with any
21 witness, whether that testimony is believable. In deciding
22 believability you may consider not only matters that I have
23 already discussed with you, but you may also consider the
24 age of the child. The child's ability to observe and
25 remember facts. The child's ability to understand and

1 answer questions. Because young children may not fully
2 understand what is happening here, it is up to you to decide
3 whether the child understood the seriousness of appearing as
4 a witness in this criminal trial, whether the child
5 understood the questions, whether the child has a good
6 memory, and whether the child understands the difference
7 between lying and telling the truth. In addition, young
8 children may be influenced by the way that the questions are
9 asked. It is up to you to decide whether the child
10 understood the questions asked.

11 Mr. Foreman, ladies and gentlemen of the jury, I charge
12 you that evidence of good character and good reputation may,
13 in and of itself, create a doubt as to guilt and should be
14 considered by the jury along with all other evidence in
15 determining the guilt or innocence of the Defendant. I
16 further charge you that the testimony of the victim need not
17 be corroborated in prosecutions under Section 16-3-655 Code
18 of Laws for South Carolina.

19 Now, as already instructed to you, the Defendant has
20 been charged with first degree criminal sexual conduct with
21 a minor. The State must prove beyond a reasonable doubt the
22 Defendant engaged in a sexual battery with the victim. A
23 sexual battery is sexual intercourse, cunnilingus, fellatio,
24 anal intercourse, or any intrusion however slight of any
25 part of a person's body or of any object into the genital or

1 anal openings of another person's body, except when the
2 intrusion is accomplished for medically recognized treatment
3 or diagnostic purposes. The State must then prove beyond a
4 reasonable doubt that the victim was less than 11 years old
5 at the time of the sexual battery.

6 Consent, willingness, indifference or ignorance on the
7 part of the minor, if any, as to what was taking place does
8 not in any way affect the charge of criminal sexual conduct
9 with a minor, because an unmarried woman under the age of 14
10 cannot legally consent to any sexual intercourse or a sexual
11 battery.

12 Now, Mr. Foreman, ladies and gentlemen of the jury,
13 there are only two possible verdicts in this case. And I'm
14 going to come down in just a moment and show you the verdict
15 form. That being guilty and that being not guilty. And
16 there's no significance to placing guilty ahead of not
17 guilty. One has to go before the other. But your verdict
18 that you reach, Mr. Foreman, and ladies and gentlemen of the
19 jury, must be unanimous among the 12 of you, and when you
20 have reached a verdict you are to knock on the door and
21 notify the bailiff that, in fact, you have reached a
22 verdict.

23 Now, I told you a lot in these last 20 some odd
24 minutes. I'm going to give you a copy of what I have just
25 read to you to take back into the jury room for your use

1 however you deem appropriate and necessary for purposes of
2 your deliberation.

3 Mr. Foreman, this verdict form is very simple. It just
4 has -- this would be what we call the caption of the case,
5 The State of South Carolina vs. Carrol Tremayne Washington.
6 And it says, "We, the jury, unanimously find the Defendant
7 in connection with indictment," and there's the indictment
8 number and the charge, criminal sexual conduct with a minor
9 first degree. Under that section either guilty or not
10 guilty. You'll place your X or your checkmark at either
11 guilty or not guilty depending upon the verdict you reach,
12 and you'll sign and date the verdict form.

13 Now, I'm going to send all 14 back to the jury room.
14 Do not start your deliberations yet. I need to talk with
15 the lawyers to make sure that my charge to you was proper.
16 That I don't need to make any additions or corrections to
17 what I have charged you. Now, if I don't bring you to do
18 that, and when the bailiff brings to you the exhibits, which
19 I think are only two exhibits, verdict form and the charge,
20 that will be your cue for two things to happen. I need the
21 two alternates to exit the jury room. Mr. Foreman, then you
22 can begin your deliberations. Okay?

23 Go back to the jury room, all 14 of you. Do not begin
24 any discussion yet.

25 (Whereupon, the jury exited the courtroom at 11:07

1 a.m.)

2 THE COURT: Does the State have any exceptions or
3 objections to the final charge?

4 MR. SCOTT: No, Your Honor.

5 THE COURT: From the Defense?

6 MR. VERNER: No, sir.

7 THE COURT: Thank you very much. We have three
8 exhibits, as I understand.

9 MR. SCOTT: Yes, sir.

10 THE COURT: Everybody in agreement on that?

11 MR. SCOTT: The identification, the photograph and then
12 the DVD. And how are we doing the DVD?

13 MR. SCOTT: There's a TV in there.

14 THE COURT: If they want to watch the DVD, then -- is
15 there a TV back there that they can use? This one here?

16 MR. SCOTT: Yes, sir.

17 THE COURT: They'll just have to request it and then
18 we'll probably just bring them out. Probably the easiest
19 thing would be to bring them out and let them look at it
20 again. All right. Give these to the bailiff.

21 (Whereupon, jury began deliberations at 11:10 a.m.)

22 (Whereupon, a recess was held from 11:10 a.m. to 12:30
23 p.m.)

24 THE COURT: It's my understanding that the jury has
25 reached a verdict in this case. Anything we need to put on

1 the record before we have the jury come out?

2 MR. SCOTT: Nothing from the State, Your Honor.

3 MR. VERNER: No, Your Honor.

4 THE COURT: Madam Bailiff, if you would bring the jury
5 out, please. Mr. Washington, if you'll please stand, and
6 officers, if you will --

7 (Whereupon, the jury enters the courtroom at 12:35
8 p.m.)

9 THE COURT: Let the record reflect that the jury is
10 back out. Mr. Foreman, it's my understanding that the jury
11 has reached a verdict in this case.

12 MR. FOREMAN: Yes, Your Honor.

13 THE COURT: And without telling me what the verdict is,
14 was and is your verdict unanimous among the 12 of you?

15 MR. FOREMAN: Yes, Your Honor.

16 THE COURT: Okay. Would you hand the verdict form to
17 the bailiff, please. Madam Clerk, would you publish the
18 verdict, please.

19 MADAM CLERK: Yes, sir. "State of South Carolina
20 versus Carrol Tremayne Washington. We, the jury,
21 unanimously find the Defendant in connection with indictment
22 2015-GS-36-546 charging him with criminal sexual conduct
23 with a minor, victim under 11 years of age, first degree,
24 section 16-03-0655 Code of Laws of South Carolina, the
25 verdict of the jury is guilty," and it's signed Lloyd

1 Arrowood. Mr. Foreman, ladies and gentlemen, if this is
2 your verdict, please indicate by raising your right hand.

3 (Whereupon, jurors raise their right hand.)

4 THE COURT: Let the record reflect that all 12 raised
5 their hands. Does either side want individual polling of
6 the jury?

7 MR. SCOTT: None from the State, Your Honor.

8 MR. VERNER: Yes, sir. Let's poll the jury.

9 THE COURT: Okay. Madam Clerk, if you will --

10 MADAM CLERK: As I call your name please raise your
11 hand and I'll ask you a question and please respond. Robert
12 Ott. Mr. Ott, was this your verdict and is it still your
13 verdict?

14 THE JUROR: It is.

15 MADAM CLERK: La'tisha Chalmers, was this your verdict
16 and is it still your verdict?

17 THE JUROR: It is.

18 MADAM CLERK: Shykerra Burnside, is this your verdict
19 and is it still your verdict?

20 THE JUROR: It is.

21 MADAM CLERK: Doris Sheppard, was this your verdict and
22 is it still your verdict?

23 THE JUROR: Yes.

24 MADAM CLERK: Timothy Hudson, was this your verdict and
25 is it still your verdict?

1 THE JUROR: Yes.

2 MADAM CLERK: Lloyd Arrowood, was this your verdict and
3 is it still your verdict?

4 MR. FOREMAN: Yes.

5 MADAM CLERK: Sharon Derrick, was this your verdict and
6 is it still your verdict?

7 THE JUROR: Yes.

8 MADAM CLERK: Sara Wessinger, was this your verdict and
9 is it still your verdict?

10 THE JUROR: Yes.

11 MADAM CLERK: Robert Griffen, was this your verdict and
12 is it still your verdict?

13 THE JUROR: Yes.

14 MADAM CLERK: Justin Dickert, was this your verdict and
15 is it still your verdict?

16 THE JUROR: Yes.

17 MADAM CLERK: Norman Way, was this your verdict and is
18 it still your verdict?

19 THE JUROR: Yes.

20 MADAM CLERK: Troy Pridham, was this your verdict and
21 is it still your verdict?

22 THE JUROR: Yes.

23 MADAM CLERK: Thank you.

24 THE COURT: Thank you, Madam Clerk. Mr. Washington,
25 you can have a seat.

1 Ladies and gentlemen of the jury, I want to take this
2 opportunity once again to thank you for your jury service.
3 As I mentioned, I think maybe yesterday before we adjourned.
4 I commented on the fact that you remain very attentive
5 throughout this entire trial and that's, of course,
6 absolutely essential for a jury to do is be very attentive
7 to everything that goes on and be attentive to the testimony
8 presented, and we appreciate that very much. Also, we had
9 to send you out a time or two to your jury room and keep you
10 back there for periods of time and you were very patient
11 with us and we appreciate that as well. I hope that serving
12 on this jury was an educational experience for you,
13 especially for those of you who have not sat on a jury
14 before. This is a difficult job that you had, and your
15 verdict means nothing to me. I accept your verdict,
16 whatever it is. But you have performed your duty admirably
17 and conscientiously, and that's what we expect of juries.

18 We have no further business for a jury this week. So
19 you will not need to come back. You are free to discuss
20 this case if you like with anyone. You don't have to, but
21 you are free to discuss it if you wish to. I understand
22 that there is a check downstairs at the window at the
23 Clerk's Office. So when you leave, go down there and pick
24 up your check for service on this jury this week. And I
25 hope sometime down the road that you'll have an opportunity,

1 once again, to serve on a jury, whether it's a criminal jury
2 or whether it's a civil jury. As I mentioned to you on
3 Monday, service on a jury is considered by many to be the
4 second highest responsibility -- civic responsibility that
5 we have second to only serving in the military. So it's a
6 very important role that you have performed and have taken
7 on this week, and certainly your contribution to our justice
8 system.

9 I like to shake the hands of my jury, so as you leave
10 I'll shake your hand and you are free to go.

11 MADAM CLERK: Excuse me. I need Mr. Arrowood to sign.

12 THE COURT: Mr. Arrowood, when you leave, if you'll go
13 right to the Clerk. You need to sign an additional paper.
14 Thank you, sir.

15 (Whereupon, the jury was released.)

16 THE COURT: Mr. Verner, do you need a few minutes?

17 MR. VERNER: No, sir.

18 THE COURT: I'll be glad to hear from the State first
19 as it relates to sentencing.

20 MR. SCOTT: Judge, Nicole Simms, the mother of the
21 victim, would like to speak. I have nothing to say on
22 behalf of the State. But would you like to hear from her
23 now?

24 THE COURT: Ms. Simms, I'll need to have you sworn in
25 now. Madam Clerk, would you swear her in.

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

3 THE COURT: Ms. Simms, I'll be glad to hear from you,
4 ma'am.

5 MS. SIMMS: I'm Minor 's mom. I just want to
6 let everybody know that it's affected Minor . Even though
7 he was incarcerated Minor also was incarcerated, having
8 nightmares, wouldn't go around nobody, cry constantly. My
9 10-year-old even started wetting in her bed because the
10 nightmares. And the bad part about it is she trusted you.
11 She thought of you as family. And the reason why she came
12 out with the truth is because she didn't want Tonya to hurt.
13 But you hurt my baby. You changed her life completely.
14 Thank you.

15 THE COURT: Thank you, Ms. Simms. Nothing further from
16 the State, Solicitor?

17 MR. SCOTT: No, Your Honor.

18 THE COURT: All right. Mr. Verner, I'll be glad to
19 hear from you and then if the Defendant wishes to address
20 the Court and anybody that may be here, I don't know if
21 there are, on his behalf.

22 MR. VERNER: Judge, Carrol is 32-years-old. He's been
23 in jail continuously since June 10th of 2015. I don't know
24 the time but that will be his sentence start date, June 10th
25 of '15. Other than one bad check, he's never been arrested

1 for anything. He was full-time employed. Judge, I just --
2 in a case like this where the sentence is kind of either/or,
3 if this is his first general session ever, I'm not making
4 light of the charge but I would say fact-wise this would be
5 at the lower end of a criminal sexual conduct. I understand
6 there might be evidence of repeated type conduct, but I
7 don't think it -- fact-wise it would be warranting the life
8 sentence. So we feel that would be 25 years is appropriate.

9 THE COURT: Thank you, Mr. Verner.

10 MR. VERNER: Do you want to anything, Carrol, at this
11 time.

12 THE COURT: Let me hear from Ms. Dawkins. I think the
13 last name is Dawkins, right?

14 MS. DAWKINS: Yeah.

15 THE COURT: Ms. Dawkins, if you want to address the
16 Court I need to have you sworn in. Yes, ma'am. I'll be
17 glad to hear from you.

18 MR. VERNER: She just said she's here for moral
19 support. To support him.

20 THE COURT: Oh, I'm sorry. Mr. Washington, I'll be
21 glad to hear from you. Anything you'd like to tell me, sir.

22 THE DEFENDANT: I know I was found guilty of the crime,
23 but sir, I did not do anything. I still maintain my
24 innocence. Ever since I first talked to Epps I told him
25 that, you know, something was going on with the kid with her

1 father, which I believe. He didn't show up. She said that
2 it did happen. So I'm just another innocent person. I
3 don't have anything else to say. It's a shame that there
4 were no hardcore facts to indicate that I done anything,
5 which I didn't do anything. I'm a law abiding citizen.
6 I've been doing it ever since I've been able to be charged
7 with anything. And I work. There were just so many other
8 children that come to our house that didn't have, you know
9 what I mean, nothing be said. Her background tells it all.
10 People - people know her in the town of Whitmire as a liar.
11 I just think the child is covering up for her father or
12 whoever. She actually said it out of her mouth before the
13 whole time that the case was being processed from March to
14 June. They actually came down to Whitmire during the whole
15 case.

16 MR. VERNER: Is there anything just sentence-wise you
17 want him to know?.

18 THE DEFENDANT: I just wish that you would take --
19 since this is my first time ever being in trouble or charged
20 with a crime.

21 MR. VERNER: Your Honor, I don't anticipate, but I
22 would ask 10 days to file post-trial motions.

23 THE COURT: Sure.

24 MR. VERNER: But I don't anticipate any, but I'll just
25 ask for that time.

1 THE COURT: You've got the 10 days if you determine
2 that's something you need to do.

3 MR. VERNER: Thank you, Your Honor.

4 THE COURT: Everybody be at ease for just a moment.

5 (Whereupon, there was a brief pause in the
6 proceedings.)

7 THE COURT: For purposes of the record I need to put
8 several findings on the record. This is a violent felony
9 pursuant to Section 16-23-500 pursuant to or in connection
10 with any future ownership of possession of any firearms.
11 This is a sexual violent offense for purposes of potential
12 sexually violent predator act proceedings. In addition,
13 I'll require sex offender registry. And lastly, the
14 Defendant will be placed on the central registry of child
15 abuse and neglect pursuant to Section 17-25-135.

16 Mr. Washington, in light of the fact that we do have a
17 pretty substantial mandatory sentence, and in light of the
18 fact that you do not really have a prior record, unless one
19 bad check charge, the sentence of the Court is you be
20 committed to the State Department of Corrections for a
21 period of 25 years and I'll give you credit for 266 days
22 that you have been incarcerated. Good luck to you, sir.

23 MR. SCOTT: Thank you.

24 MR. VERNER: Thank you, Your Honor.

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1 Certificate of Reporter

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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.

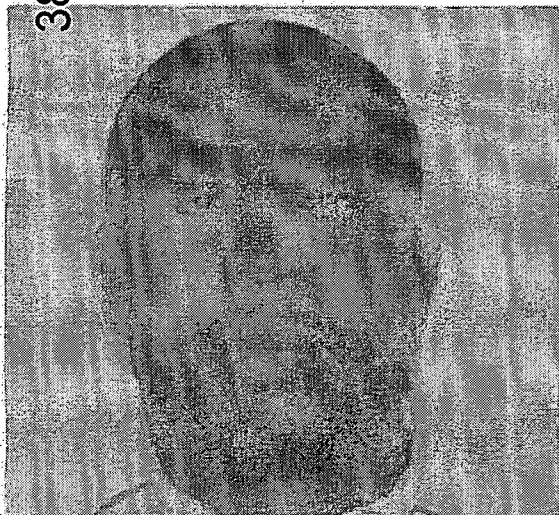
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR

Circuit Court Reporter

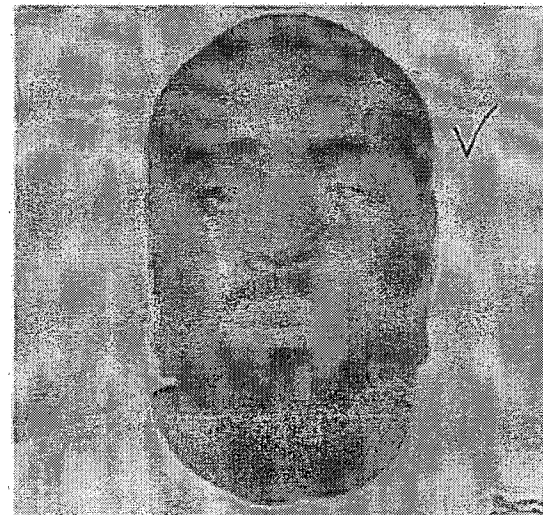
September 28, 2016



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2/89



3/89



4/89



5/89



6/89

WCO



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WITNESSES

Stephen Bradley Epps
Newberry County Sheriff

WARRANT NUMBER

2015D3600100033

ERUE WILL

THE STATE

Phyllis Sanders

Foreman of the Grand Jury

Date: *10-9-15*

VERDICT

Guilty

Sheryl Arnold

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

October Term, 2015

Indictment # 15GS36- *0546*

THE STATE

vs.

Carrol Tremayne Washington

INDICTMENT FOR

Sex / Criminal Sexual Conduct with Minor - victim

under 11 yrs of age - First degree

§16-03-0655

CDR: 0385

3/2/16

✓

WITNESSES

Stephen Bradley Epps
Newberry County Sheriff

WARRANT NUMBER

2015D3600100033

ERUE WILL

TOP NOTY

Phyllis Sanders

Foreman of the Grand Jury

Date: *10-9-15*

VERDICT

Guilty

Alfred Arnold
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

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vs.

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Sex / Criminal Sexual Conduct with Minor - victim

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§16-03-0655

CDR: 0385

3/2/16

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF NEWBERRY****Sex / Criminal Sexual Conduct with Minor - victim
under 11 yrs of age - First degree
§16-03-0655**

At a 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 3, 2012 to March 25, 2015, in Newberry County, being older than the victim, willfully and unlawfully commit 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 eleven (11) years, to wit: one Minor (DOB:), 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.

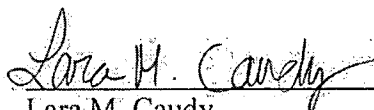


Taylor Daniel
Assistant Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211-1589

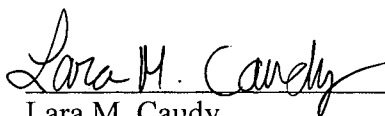
ATTORNEY FOR APPELLANT

This 17th day of March, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of March, 2017.

RECEIVED

MAR 17 2017

SC Court of Appeals